Insights, News & Events

EEOC'S ABORTION ACCOMMODATION MANDATE STRUCK DOWN BY FEDERAL COURT: WHAT EMPLOYERS NEED TO KNOW

Insights
May 22, 2025

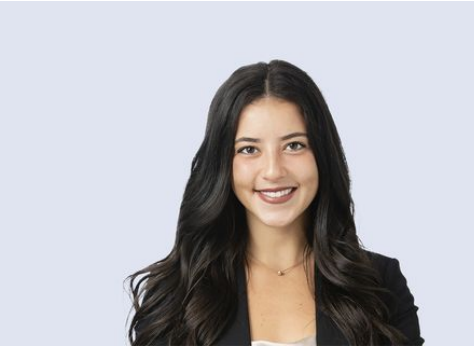
A federal judge in Louisiana ruled yesterday that the Equal Employment Opportunity Commission (EEOC) overstepped its authority by requiring employers to accommodate elective abortions that are not medically necessary. Although multiple lawsuits are currently pending on the issue, the order applies nationwide until and unless a higher court rules otherwise. The judge's May 21 decision vacated relevant parts of a Biden-era rule implementing the Pregnant Workers Fairness Act (PWFA) – which was already living on borrowed time given the new administration's position on the matter. Notably, Acting EEOC Chair Andrea Lucas has publicly opposed her agency's abortion-related accommodation rule, was planning on taking steps to overturn the rule, and is expected to support the court's ruling – though we could see worker advocacy groups pick up the battle in the agency's place. Here's what employers need to know about the ruling and how it impacts your policies and practices.

Key Takeaways For Employers

- **Pregnancy Accommodation Rules:** The PWFA mandates that covered employers provide reasonable accommodations for a qualified employee's known limitations due to pregnancy, childbirth, or related medical conditions, unless it causes the employer undue hardship. The terms "pregnancy" and "childbirth" under the PWFA extend beyond just a current pregnancy or childbirth – they also cover past, intended, or potential pregnancies. If you would like a comprehensive recap, you can read our

Related People

Jessica D. Causgrove
Partner
312.346.8061



Daniella C. Infantino
Associate
704.778.4162

detailed FAQs about the PWFA here or a more in-depth discussion of the act here.

- **Shifting Priorities for New Administration:** Acting EEOC Chair Andrea Lucas has publicly voiced concerns over the agency's final rule implementing the PWFA, criticizing it for conflating pregnancy and childbirth accommodations with broader accommodations related to female biology and reproduction. The most controversial aspect of the April 2024 PWFA rules is the requirement that employers accommodate applicants and workers who need time off or other workplace modifications for an abortion procedure.
- **EEOC Limitations:** With just two active commissioners (Andrea Lucas and Kalpana Kotagal), the Commission currently lacks the required three members to make decisions, enforce policies, or withdraw existing rules. This means Lucas would need a court to step in to scrap the rules, and the federal district court in Louisiana did just that.
- **The Lawsuit:** In *Louisiana v. EEOC*, the states of Louisiana and Mississippi, along with several organizations associated with the Roman Catholic Church, sued the EEOC over the abortion accommodation mandate. The states contend that the EEOC exceeded the authority it was given by Congress.
- **The Ruling:** Judge David Joseph of the US District Court for the Western District of Louisiana sided with the plaintiffs, vacating parts of the rule that include "abortion" as a "related medical condition" of pregnancy and childbirth. The court also vacated parts of the rule that require or suggest to employers that they are required to provide employees with accommodation for purely elective abortions that are not necessary to treat a medical condition related to pregnancy. The court instructed the EEOC to revise the rule and all related implementing regulations and guidance in accordance with the order.
- **Watch for More:** You should note that other lawsuits are still pending that raise the same challenges, including one in Arkansas that the 8th US Circuit Court of Appeals recently gave the greenlight to proceed. So, the Louisiana court's order may not be the last word on the issue.

Service Focus

Counseling and Advice

Employee Leaves and Accommodations

Employment Discrimination and Harassment

Litigation and Trials

- **Consult Legal Counsel:** Given the compliance confusion, you may want to reach out to experienced legal counsel to help you create a plan of action.

What Should Employers Do Now?

While the future of the PWFA's abortion-related accommodation mandate is still uncertain, the requirement is no longer in effect ... for now. Meanwhile, you should recognize that the rest of the rule still applies. If you want a comprehensive recap, you can read our detailed FAQs about the PWFA here. Additionally, here are steps you can take to maintain compliance with the act:

1. Train your managers and HR department on the nuances of the PWFA and suggested accommodations to ensure compliance. Remember, unlike under the ADA, employers may be required to temporarily suspend an essential function of the job for a qualified employee. Further, and also unlike the ADA, the PWFA prohibits employers from placing qualified employees on a leave of absence when a different reasonable accommodation is available.

2. Recognize requests for an accommodation under the PWFA and remember the EEOC has made clear that the request does not have to be in writing, on a particular form, or include special words such as "reasonable accommodation," "Pregnant Workers Fairness Act," or "limitation."

3. Be aware that ADA and FMLA paperwork is likely unnecessary and inappropriate under the minimum documentation standard. Under the PWFA, employers can request medical documentation only when it is both reasonable and necessary. ADA and FMLA forms may not be applicable or required for accommodation requests under the PWFA. Employers must act promptly to obtain reasonable documentation, as delays in providing accommodations could result in violations. Furthermore, employers must give employees ample time to secure the required documentation. Here are examples of what constitutes reasonable or unreasonable documentation requests, according to the EEOC:

- **Reasonable documentation requests:**
    - Confirm the limitation;

- Confirm the limitation is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions; and
- Confirm and describe the adjustment or change at work that is needed because of the limitation.

- **Documentation requests are unreasonable if:**
  - The limitation and need for an adjustment or change is obvious and the employee self-confirms;
  - The employer already has sufficient information about the limitation and the adjustment or change needed due to the limitation;
  - The employee is currently pregnant and needs breaks for the bathroom, to eat, or to drink; needs to carry water; or needs to stand if their job requires sitting or sit if their job requires standing;
  - The employee is lactating and needs modifications to pump at work or nurse during work hours;
  - The accommodation requested is one provided to other employees; or
  - The employer requires that the healthcare provider submitting the documentation be the provider treating the condition at issue.

4. Consult your legal counsel before denying a PWFA accommodation request under the undue hardship theory. When an employee requests an accommodation under the PWFA, the employer must carefully assess the request, check whether the EEOC has already approved it as a reasonable accommodation, and decide if granting the request would create an undue hardship. An accommodation may be considered an undue hardship if it imposes significant difficulty or expense on the employer's operations. Given the high stakes involved, employers should consult with their legal counsel before denying any accommodation request under the undue hardship theory to ensure full compliance with the PWFA and avoid potential legal consequences.

5. Be aware of additional protections for pregnant workers. The PWFA does not replace other federal, state, or local laws offering greater protections for pregnant workers. For

example, the federal Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act requires employers to provide time and space for breastfeeding employees for up to one year after childbirth, including salaried employees. For hourly workers, breastfeeding time counts as hours worked if the employee is on duty. The act also mandates that employers provide a clean, private, and functional space for breastfeeding or pumping.

Conclusion

We will monitor developments related this law, so make sure you are subscribed to Fisher Phillips' Insight System to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our Employee Leaves and Accommodations Practice Group.