

Human Resources **BULLETIN**



EEOC's Final Rule Implementing the Pregnant Workers Fairness Act is In Effect

● **June 21, 2024** ●

On April 15, 2024 The U.S. Equal Employment Opportunity Commission (EEOC) announced a **Final Rule** implementing the Pregnant Workers Fairness Act (PWFA). The Final Rule was published in the Federal Register and became effective June 18, 2024. The Final Rule provides clarification to employers regarding their responsibilities under the PWFA. This bulletin is intended to summarize the PWFA and the implementing regulations (Final Rule) and provide information for employers to consider to comply with the PWFA's requirements.

While the Final Rule is now in effect, complying with the Pregnant Workers Fairness Act (PWFA) has been a requirement for employers since the Act's original June 27, 2023 effective date. The PWFA impacts employer responsibilities related to workplace accommodations for pregnancy related conditions. Although the PWFA has been the law, and employers have been responsible for complying with the Act, the final regulations are important. They provide greater clarity, examples, and definitions that help employers understand their responsibilities under the PWFA and how the Act will be interpreted and enforced.

Overview of The Pregnant Workers Fairness Act

The PWFA provides protection for employees who have known limitations related to pregnancy, childbirth and related medical conditions. The Act applies to covered employers with at least 15 employees in the private or public sector.

There are many important provisions of the PWFA for employers to understand, including the following:

- Employers must not require an employee to accept an accommodation without a discussion between the employee and the employer related to the accommodation.
- Employers must not deny employment opportunities to a qualified employee or job applicant because of the person's need for a reasonable accommodation under the PWFA.
- Employers must not require an employee to take a leave if there is a reasonable

accommodation that would allow the worker to remain working.

It is unlawful under the PWFA for employers to retaliate against a person who reports or opposes prohibited discrimination under the Act or who participates in a PWFA proceeding or investigation. Any interference with an employee's rights under the PWFA is prohibited by the Act. There are many more essential PWFA provisions and employers should make sure to review and understand the Act's requirements related to leave and work accommodations.

PWFA's ADA-Like Requirements

The PWFA has ADA-like accommodation requirements and borrows definitions and the requirement of engaging in an interactive process from the ADA. An important distinction between the ADA and the PWFA is that under the PWFA employers need to accommodate employees who are unable to perform even an essential job function provided the inability is for a temporary period, the essential job function can be resumed in the near future, and the inability to perform the essential job function can be reasonably accommodated. Under the ADA, a qualified employee must be able to perform the essential functions of their job with or without accommodation.

Notably, the PWFA's Final Rule confirmed that for conditions related to a current pregnancy, it would be reasonable for employers to provide accommodations for up to 40 weeks. For conditions other than a current pregnancy, employers should determine the appropriate time for accommodations on a case-by-case basis.

The PWFA is modeled after the ADA and reasonable accommodations under the PWFA may include changes to the work environment and general work processes. Under the PWFA employers are required to provide such reasonable accommodations unless they would create an "undue hardship" to the employer's business operations. The standard for establishing an undue hardship is whether the accommodation creates a significant difficulty or expense for the employer. As with the ADA, establishing that



an accommodation creates an undue hardship can be difficult for employers and the determination considers the size and financial resources of the employer's operations.

While the Final Rule is mostly consistent with the previously issued proposed rule from 2023, employers should make sure to understand the additional clarifying aspects of the Final Rule when contemplating the various potential reasonable accommodations that may be appropriate for employees. The appropriate accommodations for a particular scenario will vary based on the type of work the employee is performing and the employee's specific pregnancy related limitations.

The U.S. Equal Opportunity Commission (EEOC) has provided, through the Final Rule, examples of possible accommodations that are instructive to employers.

PWFA accommodation examples include:

- Allowing pregnant workers to have flexible work hours;
- Providing parking closer to the employee's work location;
- Providing additional break time to eat, rest and use the bathroom;
- Taking leave or time off to recover from childbirth; and
- Temporarily excusing work tasks that are strenuous or that require exposure to compounds unsafe for pregnancy.

Notable guidance provided by the EEOC's Final Rule that can help employers understand and meet their responsibilities under the PWFA includes:

- Examples of reasonable accommodations including time off for health care appointments, temporary job reassignment and temporary suspension of certain job duties.
- Guidance encouraging communication between employers and workers to timely bring and resolve requests for reasonable accommodations.
- Clarification that employers should only request supporting documentation when it is reasonable under the circumstances.
- Explanation of when an accommodation would impose an undue hardship on an employer.

The Final Rule also provides a list of covered pregnancy related conditions which can require reasonable accommodations that includes, but is not limited to, pregnancy, lactation, miscarriage and stillbirth.

Training HR and Management on the PWFA's Requirements

Employers should make sure that management and human resources employees understand the requirements of the PWFA and the importance of providing timely pregnancy related accommodations to employees. It is especially important that front-line management employees be able to identify accommodation requests and understand the need to direct any accommodation requests to the appropriate human resources personnel. Making sure human resources or other trained and knowledgeable employees are conducting the required interactive process serves to mitigate risk and protect the employee's privacy.

The PWFA's Interaction with State or Local Laws

The PWFA does not replace any federal, state or local laws that offer more extensive protection to employees affected by pregnancy, childbirth or pregnancy related medical conditions. Employers in states with more protective laws related to pregnancy and pregnancy related conditions need to make sure they are providing the greatest applicable required protections to their employees while complying with their obligations under the PWFA.

Impact of the PWFA and the Final Rule for Employers

Because employers have been subject to the PWFA since the original effective date of June 27, 2023 and the final implementing rules do not vary significantly from the proposed rules, the impact on employers that have been applying the requirements of the PWFA should be limited. The Final Rule is important because it confirms and clarifies how the EEOC will interpret and enforce the PWFA. The Final Rule provides examples and greater clarity on what is required of employers, the process they must engage in, the actions they must take and the accommodations they must provide to comply with the Act.

The Final Rule provides that certain accommodations will be reasonable in nearly every circumstance. These accommodations include additional food and drink breaks, access to water and other drinks, additional restroom breaks and the ability to sit or stand at work.

Next Steps

Now that the final implementing regulations for the PWFA are in effect, employers should make sure their HR and management staff are trained to recognize and comply with the Act. By understanding the EEOC's Final Rule for the PWFA, employers can knowledgeably support their employees who need pregnancy related accommodations and comply with the Act. Understanding the PWFA's requirements and the employer's responsibility to engage with employees to determine appropriate accommodations (the interactive process) is essential. Employers need to be able to show that an employee's accommodation needs were considered and addressed in a timely manner. Appropriate documentation of the communications with

the employee and the interactive process steps taken should be created and retained to demonstrate the employer's compliance with the Act's requirements.

Employers should make sure the latest "Know Your Rights Workplace Discrimination is Illegal" poster, which includes the PWFA, is posted at their worksites and on their company intranet site, if applicable.

ADDITIONAL RESOURCES

[EEOC Final Rule Implementing the Pregnant Workers Fairness Act](#)

["What You Should Know About the Pregnant Workers Fairness Act" FAQs](#)