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New Federal Law Requires Employers to Provide Reasonable Accommodations for Pregnant Workers

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On June 27, 2023, the Pregnant Workers Fairness Act (PWFA) went into effect. Under the PWFA, private and public sector employers with fifteen or more employees are required to provide a reasonable accommodation to a worker's known limitation related to pregnancy, childbirth, and related medical conditions, unless the accommodation will cause the employer an undue hardship, which is defined as significant difficulty or expense for the employer.

Background

The PWFA supplements existing federal protections against pregnancy discrimination that exist under the Pregnancy Discrimination Act (PDA, also referred to as Title VII) and the American with Disabilities Act (ADA). The PDA was enacted in 1978 and prohibits pregnancy discrimination based on potential, current, or past pregnancy, medical conditions related to pregnancy, including breastfeeding, birth control, and having or choosing not to have an abortion. The ADA was enacted in 1990 and prohibits discrimination against people with disabilities in the workplace and other areas. Pregnancy itself is not covered under the ADA but the Equal Employment Opportunity Commission (EEOC) has indicated that some impairments related to pregnancy may be considered a disability under the law. However, neither the PDA nor the ADA require that an employer provide reasonable accommodations for pregnant workers. The PWFA changes this gap in the law.

Examples of Reasonable Accommodations for Pregnant Workers Under the PWFA

Under the PWFA, a reasonable accommodation is defined as changes to the work environment, or the way things are usually done in the workplace. Examples of reasonable accommodations outlined in the House Committee on Education and Labor Report on the PWFA include the ability to sit or drink water; receive closer parking; have flexible work hours; receive appropriately sized uniforms and safety apparel; receive additional break time to use the bathroom, eat, and rest; take leave or time off to recover from childbirth; and to be excused from strenuous activities and/or activities that involve exposure to compounds that are not safe for pregnant workers.

A "Known Limitation" Under the Law

A known limitation under the PWFA is defined as "a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or employee's representative has communicated to the employer whether or not such condition meets the definition of a disability under the [ADA]."

Prohibitions Under the PWFA

Covered employers are required to discuss with the worker any proposed accommodation. An employer may not force an employee to take leave if another reasonable accommodation can be provided that would permit the employee to continue working. An employer may not deny a job or employment opportunity to a qualified worker or applicant based on the person's need for a reasonable accommodation. The PWFA also prohibits an employer from interfering with a pregnant worker's rights under the PWFA or retaliating against an individual for reporting or opposing unlawful discrimination under the PWFA or participating in a PWFA proceeding, such as an investigation.

Equal Employment Opportunity Commission Accepting Charges Related to PWFA Violations

The EEOC is now accepting charges (a signed statement claiming an employer committed employment discrimination) under the PWFA. The PWFA is only applicable if the situation complained of occurred on June 27, 2023 or later. A pregnant worker seeking an accommodation prior to June 27, 2023 may only do so under the PDA and/or ADA.

The EEOC is required to issue regulations to carry out the PWFA. The EEOC has indicated that it will issue a proposed version of the PWFA regulations for public commentary prior to the regulations becoming final.

New York State Law Provides Protection for Pregnant Workers Similar to PWFA

In January 2016, New York State enacted a law similar to the PWFA, which explicitly guarantees pregnant workers the right to reasonable accommodations for any pregnancy-related conditions, including occasional breaks to rest or drink water, a modified work schedule, leave for related medical needs, available light duty assignments, and transfers away from hazardous duty. New York State law also requires that if an employee takes leave due to a pregnancy or a pregnancy-related condition, the employee has the right to return to the same job. An employer may not require the employee to remain on leave until the employee gives birth, and the employer must hold the employee's job for as long as the employer would for employees who take leave for other reasons.

If you have any questions regarding any aspects of employment law feel free to contact Jennifer McLaughlin at 516-357-3889 or via email at jmclaughlin@cullenllp.com, Brian B. Selchick at 518-788-9426 or via email at bselchick@cullenllp.com, Ariel Ronneburger at 516-296-9182, or via email at aronneburger@cullenllp.com or Seema Rambaran at 516-296-9104 or via email at srambaran@cullenllp.com.

Practices

- Labor and Employment

Attorneys

- Jennifer A. McLaughlin
- Brian B. Selchick
- Ariel E. Ronneburger
- Seema Rambaran