

The Pregnant Workers Fairness Act (PWFA) Goes Into Effect on June 27, 2023

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On December 29, 2022, President Biden signed the PUMP for Nursing Mothers Act and Pregnant Workers Fairness Act ("PWFA" or "Act") into law. The PWFA requires "covered employers" to provide "reasonable accommodations" to a worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an "undue hardship."

The Act applies only to accommodations, and does not replace federal, state, or local laws that provide greater protections to workers affected by pregnancy, childbirth, or related medical conditions.^[1] The PWFA goes into effect on **June 27, 2023**.

The PWFA applies only to "covered employers" which is defined as private and public sector employers with at least 15 employees, Congress, Federal agencies, employment agencies, and labor organizations. The Act requires such employers to provide "reasonable accommodations" to a worker's known limitations related to pregnancy, childbirth, or related medical conditions.

Reasonable accommodations are changes to the work environment or the way things are usually done at work. When determining possible reasonable accommodations, employers may consider:

- The ability to sit and drink water;
- Closer parking;
- Flexible hours;
- Appropriately sized uniforms and safety apparel;
- Additional break time to use the bathroom, eat, and rest;
- Leave or time off to recover from childbirth; and
- Reassignment from strenuous activities and/or activities that involve exposure to compounds not safe for pregnancy.

Covered employers are required to provide reasonable accommodations unless the employer can demonstrate that the accommodation would cause an "undue hardship" on the employer's operations. To determine whether an action would cause an undue hardship, an employer may consider its size, financial resources, nature, and structure of its business.

The Act also prohibits covered employers from conduct such as:

- Requiring an employee to accept an accommodation without a discussion about the accommodation between the worker and the employer;
- Denying a job or other employment opportunities to a qualified employee or applicant based on the person's need for a reasonable accommodation;
- Requiring an employee to take leave if another reasonable accommodation can be provided that would allow the employee to continue working;

- Retaliating against an individual for reporting or opposing unlawful discrimination under the PWFA or participating in an PWFA proceeding (such as an investigation); or
- Interfering with any individual's rights under the PWFA.

To ensure best practices, employers should:

- Provide training to human resources and supervisors on potential reasonable accommodations;
- Review or update policies to ensure compliance with the new accommodation law; and
- Be alert for proposed regulations issued by the Equal Employment Opportunity Commission.

Members of the Labor and Employment Group at White and Williams LLP are available to assist employers with guidance under the PWFA and litigation related to the Act. If you have questions, please contact Nancy Conrad (conradn@whiteandwilliams.com; 610.782.4909), Joseph M. Carr (carrj@whiteandwilliams.com; 610.782.4907), or another member of the Labor and Employment Group.

For more developments on labor and employment, head to The Employment Law Counselor blog and listen to the latest Employment Law Counselor podcast related to the topic, *New Laws Address Pregnancy Issues in 2023*.

[1] The Pennsylvania Human Rights Commission has interpreted the Pennsylvania Human Relations Act's prohibition on sex discrimination to require that employers apply all policies, including leave and benefit policies, equally to those employees who have a disability due to pregnancy or childbirth as to those with other disabilities.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.