

Employment & Labor Law Alert

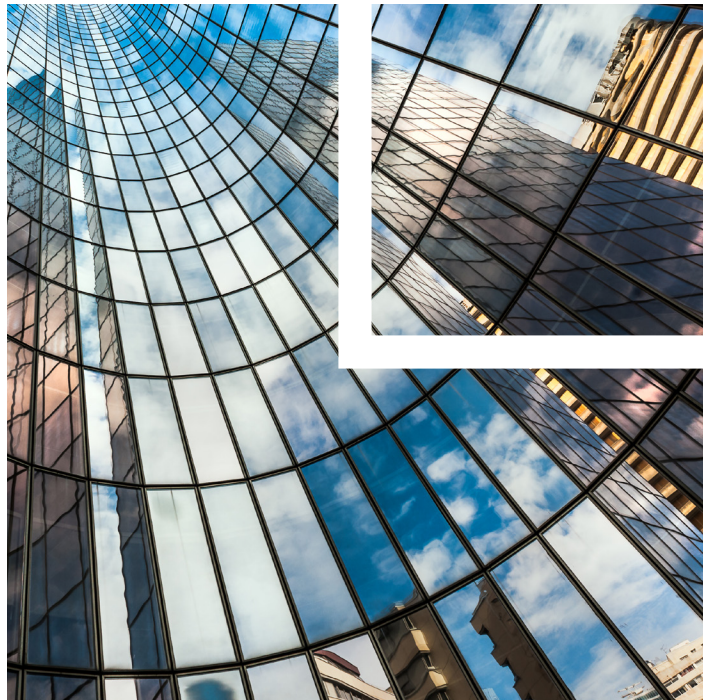
August 2023

EEOC Proposes Rule to Implement Pregnant Workers Fairness Act

The Equal Employment Opportunity Commission (EEOC) has issued a Notice of Proposed Rulemaking (NPRM) to implement the recently enacted Pregnant Workers Fairness Act (PWFA). The NPRM explains how the EEOC proposes to interpret the PWFA and certain terms in the statute, such as “temporary,” “essential functions,” “undue hardship,” “communicated to the employer” and who is a “qualified employee” or “applicant.” The NPRM also includes a non-exhaustive list of examples of potential reasonable accommodations including more frequent breaks, job restructuring or creating part-time or modified work schedules; acquiring or modifying equipment, uniforms or devices; and telework options. The NPRM is currently available for review at <https://www.federalregister.gov/d/2023-17041>.

The EEOC issued its proposed version of the PWFA regulations so the public can offer comments before the regulations become final. The NPRM seeks comment on any part of the proposed regulations, including defining key terms, addressing assurances that workers are not penalized for using reasonable accommodations, and on whether more examples of reasonable accommodations would be helpful as the EEOC looks to provide real-world guidance to help employers comply with the PWFA. Public comments will be accepted at www.regulations.gov for 60 days starting Aug. 11.

The PWFA, which became effective June 27, 2023, expands on existing protections against pregnancy discrimination under Title VII of the Civil Rights Act to ensure that qualified employees or applicants of covered employers with known limitations experiencing pregnancy, childbirth or related medical conditions have the right to reasonable workplace accommodations unless the accommodation would cause the employer an undue hardship.



“The PWFA is a step forward for workers, families and the economy. This important new civil rights law promotes the economic security and health of pregnant and postpartum workers by providing them with access to support on the job to keep working, which helps employers retain critical talent,” said EEOC Chair Charlotte A. Burrows. “The EEOC’s bipartisan proposed regulation furthers the agency’s leadership role in fulfilling the promise of the PWFA’s protections. We encourage the public to provide meaningful feedback about how the proposal would impact workplaces and ways to assist employers and workers in understanding the law.”

Here’s what employers need to know going forward:

1. The EEOC has until December 29, 2023 to issue final regulations.
2. “Covered employers” include private and public sector employers with at least 15 employees, Congress, federal agencies, employment agencies and labor organizations.

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3. The PWFA applies only to accommodations. Existing laws that the EEOC enforces make it illegal to fire or otherwise discriminate against workers on the basis of pregnancy, childbirth or related medical conditions.
4. The PWFA does not replace federal, state or local laws that are more protective of workers affected by pregnancy, childbirth or related medical conditions.
5. The EEOC began accepting charges under the PWFA on June 27, the day the law became effective, despite not having formal regulations in place yet.
6. Reasonable accommodations are changes to the work environment or to typical or established work processes and procedures. The range of reasonable accommodations may expand under the proposed regulations.
7. As always, employers should be ready to review and adjust any written policies to comply with the upcoming EEOC final regulations.

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