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## EMPLOYER ALERT

### NEW LAWS GIVE PREGNANT AND NURSING WORKERS INCREASED LEGAL PROTECTIONS

June 2023

Last year, Congress passed two (2) new laws that provide pregnant and nursing employees more rights and legal protections: (1) the Pregnant Workers Fairness Act (“PWFA”); and (2) the Providing Urgent Maternal Protections for Nursing Mothers Act (“Pump” Act).

The PWFA is very similar to the accommodation requirements of the Americans with Disabilities Act (ADA). But, instead of applying to an employee’s disability, the requirements of the PWFA apply to pregnancy, childbirth, and related medical conditions.

The PUMP Act expands existing rules that require employers to designate time and space for nursing employees to pump breastmilk during the work day. It provides accommodations for lactating employees whether they are paid an hourly rate or a salary. The PUMP Act expands the remedies available for lactating employees, but requires a notice and cure period before an employee may commence an action against her employer for failing to provide adequate space for breastfeeding.

#### **Pregnant Workers Fairness Act**

The PWFA applies to employers with 15 or more employees and goes into effect on **June 27, 2023**. Covered employers must provide the following protections to pregnant employees and job applicants with physical or mental conditions affected by or arising out of pregnancy, childbirth, or related medical conditions:

- **Reasonable accommodations.** Employers must make reasonable accommodations for employees and applicants who disclose physical or mental conditions that are affected by or that arise out of pregnancy, childbirth, or related medical conditions. As is the case under the ADA, there is an exception for employers that can demonstrate such accommodations would result in undue hardship to the operation of the business.
- **Interactive process.** Employers must engage in the same type of interactive process that is required under the ADA. Thus, the employer, employee (or applicant) and the health care provider should communicate and exchange

information about limitations, if any, that may affect the individual's ability to perform the essential job duties.

- **Employment opportunities.** Employers cannot deny employment opportunities to a pregnant worker because of the need for reasonable accommodation.
- **No requirement to take leave of absence.** Employers must offer a reasonable accommodation *other* than taking a leave of absence (paid or unpaid), if one exists.
- **No adverse effect on employment privileges.** Pregnant workers must enjoy the same terms, conditions, and privileges of employment that they would have experienced had they not needed, or even requested, a reasonable accommodation.
- **Prohibition against retaliation.** Employers may not retaliate against an individual in the exercise or enjoyment of rights under the PWFA, or discriminate against an employee for opposing any act rendered illegal by the PWFA.

Remedies under the PWFA are the same as those under Title VII of the Civil Rights Act, which include injunctive and other equitable relief, compensatory and punitive damages, and attorney's fees. Individuals can file charges with the Equal Employment Opportunity Commission (EEOC) and/or state and local agencies for investigation.

### **PUMP for Nursing Mothers Act**

The Pump Act updates the FLSA as follows:

- **Accommodations for all lactating employees.** Employers must now provide break times and a place for all lactating employees, whether hourly or salaried.
- **Compensation for partial relief of duties.** Break time does not count as hours worked if the employee is completely relieved of duties during the break. If the employee is only partially relieved of duties, then break time under the Pump Act is compensable (or “on the clock”).
- **Remedial notice requirement.** Before seeking recovery for an employer’s failure to comply with the Pump Act’s requirements, the aggrieved employee must provide notice to the employer and 10 days to cure before commencing an action. This notice requirement does not apply to an employee who was terminated for requesting an employer's compliance, or when an employer has indicated it will not comply.
- **Expansion of remedies.** The remedies an employee may receive for violations of the Pump Act have been expanded to include unpaid wages, reinstatement, and liquidated damages.

The Pump Act became effective on **April 28, 2023**.

## **What Employers Should Do:**

Employers should review or adopt the following policies:

- A reasonable accommodation policy to include pregnancy, childbirth, or related medical conditions.
- A lactation policy consistent with the requirements of the Pump Act.

Employers should also train supervisors and human resource employees on how to accommodate the needs of employees (or applicants) who are pregnant or who have recently given birth.

Finally, employers who have employees in multiple states should remember that state and local jurisdictions may still require greater protections for pregnant and/or lactating employees than those provided under federal law. The PWFA and Pump Act provide minimum standards for compliance, and they do not preempt state or local laws that may afford more protections to affected individuals.

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