Preparing for Compliance With the PUMP Act and Pregnant Workers Fairness Act

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Pregnant workers are currently protected under various acts including Title VII, the Americans with Disabilities Act (ADA), the Family and Medical Leave Act of 1993 (FMLA), and the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP). With all of these acts, gaps still exist in the protections for pregnant employees. On June 27, 2023, a new act, the Pregnant Workers Fairness Act goes into effect and attempts to fill some of these gaps.

Who is a covered employer under the Pregnant Workers Fairness Act?

A covered employer is any private or public employer with at least 15 employees.

What restrictions are placed on employers under the Pregnant Workers Fairness Act?

Under this new law, employers must:

- Make **reasonable accommodations** to adapt to the known limitations related to pregnancy, childbirth, or related medical conditions of a qualified employee, unless such accommodation would be an undue hardship on the operation of the business. A known limitation is the mental or physical conditions related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee has communicated to the employer. The condition does not have to meet the definition of a disability to qualify as a known limitation.
- Determine the reasonable accommodation through an **interactive process** with the employee. It is unlawful under the Pregnant Workers Fairness Act for an employer to require a qualified employee to accept an accommodation without working together to determine if the limitation can be reasonably adjusted.
- **Not deny employment opportunities** based on the need to make reasonable accommodations to the known limitations of pregnancy, childbirth, or related medical conditions of a qualified employee.
- **Not require a qualified employee to take leave** if another reasonable accommodation is available. Requiring a qualified employee to take leave, whether paid or unpaid, instead of providing an available reasonable accommodation is unlawful under the Pregnant Workers Fairness Act.
- **Not take adverse action** in the terms conditions, or privileges of employment against a qualified employee because the employee requested or utilized a reasonable accommodation to the known limitations of pregnancy, childbirth, or related medical conditions.

What are some examples of reasonable accommodations under the Pregnant Workers Fairness Act?

A reasonable accommodation is a change to the work environment, or the way things are usually done at work. Some examples of a reasonable accommodation include the ability to sit or drink water, receiving a closer parking spot, providing flexible hours, providing appropriately sized uniforms and safety apparel, providing additional break time to use the bathroom, and rest, the ability to take leave to recover from childbirth, and excusal from strenuous activities or activities that involve exposure to compounds not safe for pregnancy.

How does the Pregnant Workers Fairness Act fit into other laws protecting pregnant workers?

Under Title VII, employers are prohibited from discriminating against an employee based on pregnancy, childbirth, or related medical conditions.

The ADA protects employees from discrimination based on a disability. While pregnancy is not a disability under the ADA, pregnancy related conditions may be considered a disability if the condition substantially limits one or more major life activities such as walking, standing, or lifting, or affects major bodily functions such as musculoskeletal, neurological, cardiovascular, circulator, endocrine, or reproductive functions. If a pregnancy-related condition is determined to be so severe it affects major life activities or major bodily functions, it may be a disability under the ADA and an employer would be required to provide that employee with reasonable accommodations.

The FMLA allocates twelve workweeks of leave per year for the birth of a child and to care for a newborn. This leave is unpaid but provides job-protection for the employee that they will return under the same terms and conditions as if the employee had not taken leave.

Finally, the PUMP act requires employers to provide reasonable break time for an employee to express breast milk for a nursing child, every time the employee requires it. Employers must provide a place to pump at work, other than a bathroom, shielded from view and free from intrusion from coworkers and the public.

Amongst these other laws protecting pregnant workers, the PWFA broadens pregnant workers' right to accommodations in the workplace. Under the PWFA, a pregnant worker is entitled to accommodations for conditions related to, arising out of, or affected by pregnancy. These accommodations must be provided regardless of whether the condition rises to the point of disability. Thus, the PWFA offers more broad protections for pregnant workers and entitles them to reasonable accommodations for their work.

Recommendations for Employers

Before the PWFA goes into effect in June, employers should develop an interactive process to determine the reasonable accommodations available to qualified employees under the Pregnant Workers Fairness Act. While an accommodation does not have to be made if it would cause an undue hardship to the operation of the business, it is important to keep an open mind during the interactive process.