

Insights: Alerts

Time to Comment: EEOC Issues Proposed Regulations to Implement the Pregnant Workers Fairness Act

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I. Background of PWFA and the Issuance of the Notice of Proposed Rulemaking (“NPRM”)

On December 29, 2022, President Biden signed the Pregnant Workers Fairness Act (“PWFA”) and gave the U.S. Equal Employment Opportunity Commission (“EEOC”) one year from the law's enactment to issue regulations. On June 27, 2023, the EEOC began accepting charges alleging violations of the PWFA (the law's effective date). Yesterday, on August 7, 2023, the EEOC issued a Notice of Proposed Rulemaking (“NPRM”) and unveiled the proposed regulations for implementing the PWFA. The NPRM will be published in the Federal Register on August 11, 2023, and the public will have 60 days from publication of the NPRM to provide comments. After the comment period closes, the EEOC has until December 29, 2023, to issue final regulations.

II. Content of the NPRM

The PWFA requires employers to provide reasonable accommodations, absent undue hardship, to a qualified employee or applicant with a known limitation related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions. The law aims to fill the gaps of currently existing legislation, including Title VII of the Civil Rights Act, the Family and Medical Leave Act, the Americans With Disabilities Act, and other state and local laws.

The EEOC's regulations address each element of the PWFA's requirement. Additionally, the section-by-section analysis in the NPRM provides examples of the types of reasonable accommodations that a worker may seek under the PWFA, including but not limited to: job restructuring; part-time or modified work schedules; more frequent breaks; acquisition or modification of equipment, uniforms, or devices; allowing seating for jobs that require standing or standing in jobs that require sitting; appropriate adjustment or modification of examinations or policies; permitting the use of paid leave (whether accrued, short-term disability, or another type of employer benefit) or providing unpaid leave, including to attend health care-related appointments and to recover from childbirth; assignment to light duty; telework; and accommodating a worker's inability to perform one or more essential functions of a job by temporarily suspending the requirement that the employee perform that function, if the inability to perform the essential function is temporary and the worker could perform the essential function in the near future. The NPRM also contains a non-exhaustive list of examples of pregnancy, childbirth, or related medical conditions that the EEOC has concluded generally fall within the statutory definition. Among other

conditions, these include current pregnancy, past pregnancy, potential pregnancy, lactation (including breastfeeding and pumping), use of birth control, menstruation, infertility and fertility treatments, endometriosis, miscarriage, stillbirth, or having or choosing not to have an abortion. The NPRM also provides examples of how employees should communicate to request an accommodation under the PWFA.

While comment is welcome on the NPRM as a whole, the NPRM includes an extensive list of Directed Questions that the EEOC is encouraging the public to comment on, including the definitions of “communicated to the employer,” “temporary,” “in the near future,” and “essential functions.” It also seeks comment on whether it should provide more examples of reasonable accommodations, as well as seeking comment regarding any existing data quantifying the average cost of pregnancy-related accommodations and existing data quantifying the proportion of pregnant workers who need workplace accommodations. A full list of the Directed Questions can be found at pages 116-119 of the [PDF of the NPRM](#).

III. Why it is Important to Review the NPRM and Provide Comment Right Now

From August 11, 2023, until October 10, 2023, is the time to be heard on any concerns regarding the contents of regulations and pose any additional questions that you believe the EEOC needs to be aware of in finalizing the regulations. Any member of the public may make comments on the NPRM at www.regulations.gov until the comment period closes. Any comments may be responsive to the Directed Questions drafted by the EEOC or about the NPRM in general.

Kilpatrick Townsend's Labor & Employment team are here to assist with any further questions and needs. Our team will continue to monitor any additional updates or material put out by the EEOC and update this Legal Alert accordingly.