

Employee Benefit ■ Plan Review

Proposed Equal Employment Opportunity Commission Regulations Mandate Employers to Accommodate Pregnant and Postpartum Workers Regardless of Circumstances

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Effective June 27, 2023, covered employers now must comply with the Pregnant Workers Fairness Act (PWFA)¹ – a new law that requires covered employers to provide “reasonable accommodations” to workers limited by pregnancy, childbirth, or related medical conditions, absent an “undue hardship.” But the new law left many questions unanswered regarding what accommodations a covered employer must grant its pregnant and postpartum workers.

Now, the U.S. Equal Employment Opportunity Commission (EEOC) has introduced proposed regulations to assist covered employers in their implementation of the PWFA. The proposed regulations identify certain accommodations for pregnant and postpartum workers that must be provided regardless of the circumstances. As a result of these proposed regulations, employers throughout the nation should be preparing themselves to identify and better manage requests for accommodation from pregnant and postpartum workers.

WHAT’S THE STATUS OF THE PROPOSED REGULATIONS?

The EEOC unveiled the proposed regulations on Monday, August 7, 2023, and

subsequently published these proposed regulations in the Federal Register on Friday, August 11, 2023. The public has 60 days to comment on the proposed regulations. The EEOC has asked for input on specific areas including defining key terms and examples of what would constitute reasonable accommodations under the law.

HAS THE EEOC IDENTIFIED REASONABLE ACCOMMODATIONS?

The EEOC has identified four pregnancy accommodations that should be granted in almost every circumstance. These accommodations include allowing employees to carry and drink water as needed, additional restroom breaks, standing and sitting options, and additional breaks to eat and drink.

Additionally, the EEOC identified other examples of possible reasonable accommodations that a covered employer must provide unless it can demonstrate that the accommodation would impose an undue hardship, including:

- Schedule changes, part-time work, and paid and unpaid leave;
- Telework;

- Closer parking spaces;
- Light duty;
- Making facilities accessible or modifying the work environment; and
- Job restructuring.

WHAT'S THE INTERPLAY BETWEEN THE PWFA, THE PDA AND THE ADA?

Historically, two federal laws have governed an employer's obligation to pregnant and postpartum workers. The Pregnancy Discrimination Act of 1978 (PDA) prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions. By contrast, the Americans with Disabilities Act of 1990 (ADA) prohibits discrimination based on a disability, including a disability related to a pregnancy (i.e. diabetes that develops during pregnancy). The PWFA bridges the gaps between these two federal laws, both of which provide minimal guidance with regard to appropriate reasonable accommodations for pregnant and postpartum workers.

The PWFA does not replace federal, state, or local laws that are more protective of employees and applicants and the PWFA does not apply

to claims of discrimination. Rather, the PWFA focuses only on a covered employer's obligation to provide reasonable accommodations.

WHAT CAN EMPLOYERS DO NOW TO COMPLY WITH THE PWFA?

The EEOC began accepting charges alleging violations of the PWFA on June 27, 2023, leaving employers in a quandary as to how to comply with the new law with very little guidance. The EEOC's proposed regulations shed some light on what accommodations may pass muster, but what practical measures should a covered employer consider now to manage risk? Here are some tips:

- *Policy Updates:* While many employers may already have policies in place that comply with the PDA and ADA, covered employers should review and, if necessary, update their accommodation policies to ensure compliance with the PWFA, as well as related state laws.
- *Revamp Protocols:* Employers must reevaluate and/or formalize processes for managing requests for accommodation

from pregnant and postpartum workers, thereby ensuring that employers consistently satisfy their obligation to engage in the interactive process pursuant to the PWFA.

- *Training:* Employers should consider training managers on how to identify requests for accommodation from pregnant and postpartum workers, including channeling these requests to the appropriate individual(s) within the organization who is tasked with facilitating workers' accommodation requests.

To navigate these new accommodation requirements, employers should update their policies and procedures and train human resources and supervisors to identify and better manage pregnant and postpartum workers' requests for accommodation. 🌐

NOTE

1. <https://www.congress.gov/117/bills/hr2617/BILLS-117hr2617enr.pdf#page=1626>.

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Number 8, pages 9–10, with permission from Wolters Kluwer, New York, NY,
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