

Client Alert **Employment and Labor**

Mandated Reasonable Accommodations for Pregnant Workers Under New Federal Law

[The Pregnant Workers Fairness Act](#) (“PWFA”) has created new accommodation requirements for covered employers effective June 27, 2023.

The PWFA vastly expands on pre-existing federal law regarding accommodations for pregnant and post-partum employees and applicants. Prior to the passage of the PWFA, employees seeking reasonable accommodations under federal law were required to: (1) have a pregnancy-related disability, or (2) identify other similarly situated employees who received accommodations. Now, covered employers will be required to provide accommodations to employees with “known limitations” covered under the PWFA unless doing so imposes an undue hardship.

Covered Employers

The PWFA applies to all private and public employers with 15 or more employees.

Covered Individuals

Covered employers will be required to provide reasonable accommodations to qualified applicants and employees with “known limitations related to pregnancy, childbirth, or related medical conditions.” While no specific conditions are referenced in the law, “known limitations” is defined by the PWFA as a “physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or employee’s representative has communicated to the employer.”

An aim of the PWFA was to fill a coverage gap for pregnant workers left by the Americans with Disabilities Act (“ADA”) and the Pregnancy Discrimination Act of 1978 (“PDA”). “Known limitations” covered under the PWFA do not need to be considered a “disability”

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under the ADA, nor does a worker need to identify similarly situated non-pregnant employees receiving accommodations as was required to receive accommodations under the PDA. Notably, the PWFA does not replace federal, state or local laws that are more protective of employees and applicants affected by pregnancy, childbirth, or related medical conditions.

Reasonable Accommodations

Covered employers are now required to provide reasonable accommodations for “known limitations”, unless the employer can show the accommodation imposes an “undue hardship”. The PWFA applies the ADA’s definition of “undue hardship,” defined as any action requiring “significant difficulty or expense” for an employer.

Recently, the Equal Employment Opportunity Commission (the “EEOC”) issued a guidance document titled [“What You Should Know About the Pregnant Workers Fairness Act”](#), which includes the following examples of possible accommodations under the PWFA:

- ability to sit or drink water;
- closer parking;
- flexible hours;
- appropriately sized uniforms and safety apparel;
- additional breaks to use the restroom, eat, and rest;
- leave or time off to recover from childbirth; and
- be excused from strenuous activities and/or activities that involve exposure to compounds not safe for pregnancy.

Before the end of 2023, the EEOC is expected to issue final regulations related to the PWFA to provide more detail regarding the law and its implementation.

Similar to the ADA, employers must engage in an “interactive process” with their employees requesting accommodations in order to determine what accommodations may be reasonable. This involves a good faith discussion to determine a workable solution that meets the needs of the employer and employee.

Additional Prohibitions under the PWFA

The PWFA also prohibits a covered employer from:

- requiring an employee to accept an accommodation without a discussion about the accommodation between the worker and the employer;
- denying a job or other employment opportunities to a qualified employee or applicant based on the person’s need for a reasonable accommodation;
- requiring an employee to take leave if another reasonable accommodation can be provided that would let the employee keep working;

- retaliating against an individual for reporting or opposing unlawful discrimination under the PWFA or participating in a PWFA proceeding (such as an investigation); and
- interfering with any individual's rights under the PWFA.

Key Takeaways

In light of the recent enactment of the PWFA, we recommend that employers review and update their reasonable accommodation policies and practices to comply with the PWFA. Further, it is important to train necessary personnel on these new requirements in order to navigate new components of this law.

Our Sills Cummis Employment and Labor Practice Group
can assist employers regarding the issues raised in this alert.

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