The Pregnant Workers Fairness Act (PWFA)

June 21, 2023

The federal government recently passed the Pregnant Workers Fairness Act ("PWFA"), which is set to take effect on June 27, 2023. For Massachusetts-based companies, employers will already be familiar with the PWFA's general requirements, which closely mirrors the Massachusetts Pregnant Workers Fairness Act, which took effect in 2018. Now employers outside of Massachusetts must also become familiar with the new rules and best practices surrounding pregnant employees in the workplace.

WHAT IS THE PREGNANT WORKERS FAIRNESS ACT?

The PWFA requires employers with 15 or more employees to provide accommodations to workers with known limitations related to pregnancy, childbirth, or related medical conditions. For those familiar with the Americans with Disabilities Act ("ADA"), the PWFA operates similarly, requiring an employer to have a discussion with the employee about what accommodations may be reasonable to allow the pregnant employee to perform the essential duties of the job. Employers also cannot retaliate against an employee who requests an accommodation, nor can employers deny a job or other employment opportunity to an employee who requests an accommodation under the law. Lastly, the employer cannot require an employee to take leave if a different accommodation could be provided and would allow the employee to continue working.

WHAT CONDITIONS ARE COVERED?

The PWFA covers "known limitations related to pregnancy, childbirth, or related medical conditions." The PWFA does not identify what this means specifically, but it does identify that the limitation must be a "physical or medical condition" related to "pregnancy, childbirth, or related conditions."

WHAT TYPES OF ACCOMMODATIONS ARE COVERED?

Accommodations must be reasonable for the employer and not cause an undue hardship, similar to the requirements of the ADA. Accommodations can be anything from providing a closer parking space, flexible hours, ability to sit or drink water while on duty, additional time to use the bathroom, or even light duty. Employers and employees can work collaboratively, through the interactive process, on finding an accommodation that would, in the best circumstances, allow the employee to continue working and support the essential duties of the job. Unpaid leave may also be a reasonable accommodation in the event another reasonable accommodation cannot be found.

WHO ENFORCES THE PWFA?

The U.S. Equal Employment Opportunity Commission ("EEOC") will be in charge of enforcement, and will begin accepting charges related to violations of the PWFA on June 27, 2023. Any charges filed at the EEOC will need to allege a violation of the law that occurred *on or after* June 27, 2023.

The EEOC additionally released FAQs related to the PWFA to help employers implement the

new law and set up best practices, and will be providing additional guidance as well.

WHAT ARE THE PENALTIES FOR VIOLATION?

Employees who successfully prove a violation of the PWFA may be entitled to back pay, reinstatement, and reasonable attorney's fees.

ARE THERE ANY OTHER FEDERAL LAWS COVERING PREGNANT WORKERS?

Yes, Title VII of the Civil Rights Act of 1964 ("Title VII") protects employees from discrimination based on gender, sex, pregnancy, childbirth, or related medical conditions (among other protected categories).

Pregnant workers may be entitled to protections under the ADA. The ADA protects employees from discrimination based on a disability. While pregnancy alone is not considered a disability under the ADA, some medical conditions related to pregnancy may be a disability under the ADA.

Lastly, another new law, the PUMP Act (Providing Urgent Maternal Protections for Nursing Mothers Act) provides protections for employees who need to express breast milk at work. This new law went into effect in April 2023.

WHAT SHOULD EMPLOYERS DO NOW?

Employers should re-visit handbook policies and revise to provide employees information related to their rights – and to explain any internal processes. Employers should also train managers on the law's new requirements and what to do if an employee requests any accommodations under the PWFA.

If you have any questions regarding the Pregnant Workers Fainess Act or other Employment topics, please contact our Employment Team.