Patterson Belknap

Employment Law Alert
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The Pregnant Workers Fairness Act Expands Federal Protections

In late 2022, Congress passed the Pregnant Workers Fairness Act ("PWFA"), which expands federal protections for pregnant employees and applicants by requiring covered employers to provide "reasonable accommodations" for an employee's known limitations related to pregnancy, childbirth, or related medical conditions. The PWFA echoes the protections already provided by the New York State and New York City Human Rights laws, so further action may be unnecessary for many New York employers. The PWFA is set to go into effect on June 27, 2023.

Who is a Covered Employer?

The PWFA applies to all public and private sector employers with fifteen or more employees. The PWFA's protections extend to "qualified employees," which are defined as (a) those who can perform the essential functions of the role with or without reasonable accommodation, or (b) those whose inability to perform an essential function of the role is temporary and can be reasonably accommodated. "Qualified employees," for purposes of the PWFA, includes job applicants.

What Does the PWFA Require?

First, the PWFA requires covered employers to provide reasonable accommodations for limitations related to pregnancy, childbirth, or related medical conditions as long as the accommodations do not impose an undue hardship on the employer. Although the Americans with Disabilities Act ("ADA") already requires employers to accommodate pregnant employees' medical conditions to the extent such conditions rise to the level of a "disability" within the meaning of the ADA, the PWFA requires employers to provide reasonable accommodations for pregnancy-related medical conditions regardless of whether the condition constitutes a "disability." The PWFA also prohibits an employer from denying a job or other employment opportunity to a qualified employee or applicant based on the person's need for a reasonable accommodation. The definition of "reasonable accommodation" and "undue hardship" under the PWFA are the same as under the ADA.

Second, the PWFA prohibits employers from requiring employees to take paid or unpaid leave if another reasonable accommodation can be provided that would allow the employee to continue working. Employers may still offer leave as an accommodation to the extent the employee would prefer to take leave.

Finally, the PWFA requires employers to accommodate pregnant employees even if they cannot perform all essential functions of their position, so long as their inability to do so is temporary, the essential job function can be performed in the "near future," and the inability to perform the essential function can be reasonably accommodated.

What Constitutes a Reasonable Accommodation?

The Equal Employment Opportunity Commission ("EEOC") has given several examples of what might constitute a "reasonable accommodation" for pregnant workers, including but not limited to, more time to sit or drink water, closer parking, flexible hours, longer bathroom breaks, and less strenuous work. The PWFA prohibits employers from requiring employees to accept an accommodation without engaging in the familiar interactive dialogue process used under the ADA.

Enforcement and Remedies

The PWFA directs the EEOC to make rules implementing the law, including providing more examples of reasonable accommodations that address known limitations related to pregnancy, childbirth and related medical conditions.

Employees may bring a private lawsuit against their employer for violation of the PWFA after exhausting all administrative remedies. Relief for private-sector employees is the same as provided under Title VII, and may include reinstatement, back pay, front pay, compensatory damages, punitive damages, and attorneys' fees. The EEOC and the Attorney General have the same investigatory and enforcement powers under the PWFA as they have under Title VII.

Employers who can prove that they have provided some reasonable accommodation or engaged in good faith efforts to identify and provide a reasonable accommodation may have a defense to a damages claim brought under the PWFA.

Takeaways

As New York State and New York City already require employers to provide reasonable accommodations to pregnant employees, the PWFA is expected to have little practical impact on New York employers who already comply with New York law regarding pregnancy accommodations. Nevertheless, employers in New York should review their accommodation policies to ensure they are up-to-date with respect to the rights of pregnant workers, and out-of-state employers should familiarize themselves with the requirements of the PWFA and ensure their policies comply with the new law.

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