EEOC Publishes Final Pregnant Workers Fairness Act Regulations

BY TRACY THOMAS BOLAND AND CHELSIE A. VOKES • APRIL 19, 2024

On April 19, 2024, the EEOC published its final rule Implementation of the Pregnant Workers Fairness Act ("PWFA"), which will take effect on June 18, 2024 (the "Final Rule"). The Final Rule details how employers are required to accommodate applicants and employees who have work-related limitations due to pregnancy or a related condition.

As we anticipated in our prior Client Alert announcing the proposed rule, the Final Rule establishes a framework for compliance that should largely be familiar to employers, as it generally tracks Title VII and the Americans with Disabilities Act. Namely, it prohibits discrimination and retaliation, and requires employers to make reasonable accommodations. The class of individuals that the Final Rule protects includes workers and applicants who are pregnant, or who have a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions. The employer does not have to provide an accommodation if it would cause an undue hardship on the operation of the employer's business.

While many of the topics in the Final Rule mirror the Title VII and the ADA, there are several new topics and notable deviations. This alert is intended to highlight some of the new areas of guidance that may be of interest to employers.

NEW & NOTEWORTHY

The Final Rule covers a broad swath of conditions, including abortion

"Conditions related to pregnancy" is interpreted broadly: it includes not only childbirth, breastfeeding, miscarriages, and abortions, but also includes limitations due to menstruation, infertility and fertility treatments, and endometriosis.

The Final Rule covers an expansive group of individuals

- An individual may be considered a "qualified" applicant or employee even if they cannot perform the essential functions of their job, if their inability to perform essential functions is temporary, could be resolved in the "near future", and the person could be reasonably accommodated during the period of time that they cannot perform the essential functions. The final rule suggests that, for an actively pregnant individual, it is assumed that they can perform the essential function(s) "in the near future" because they generally can resume these functions within 40

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weeks. Whether an individual can perform essential functions "in the near future" is determined on a case-by-case basis when related to conditions other than active pregnancy.

- The condition necessitating an accommodation does not need to meet any severity threshold and does not need to rise to the level of a disability under the ADA.

The Final Rule compels many employees to act

Employers are only required to provide accommodations if the individual has communicated to a supervisor/manager, human resources personnel, or any person "who directs the employee's tasks" that they have a limitation arising out of pregnancy or a related condition.

The Final Rule adds limitations to the accommodations process

- Employers may not require individuals who have experienced pregnancy, childbirth, or related conditions to take leave – even if that individual's ability to do their job is limited – if they can reasonably accommodate the individual in another way.
- Medical documentation for pregnancy accommodations may only be required by an employer when it is reasonable under the circumstances. Medical documentation is not necessary for accommodations including: (1) carrying water and drinking, as needed; (2) taking additional restroom breaks; (3) sitting, for those whose work requires standing, and standing, for those whose work requires sitting; and (4) breaks, as needed, to eat and drink. These accommodations are expected to be provided in virtually all circumstances.

The Final Rule requires timely accommodation

Employers may not unnecessarily delay the process for considering and providing accommodations under the PWFA.

The Final Rule prohibits retaliation

Employers are prohibited from retaliating against individuals for exercising rights under the PWFA, and from coercing individuals to forgo rights under the PWFA.

CLIENT TIP

The Final Rule becomes effective on June 18, 2024. Employers in Massachusetts have been required, since 2018, to comply with the Massachusetts Pregnant Workers Fairness Act, which has many similar provisions. However, Massachusetts employers should review the federal requirements in full to ensure that they make the necessary adjustments to their policies and training programs as required by federal regulations.

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