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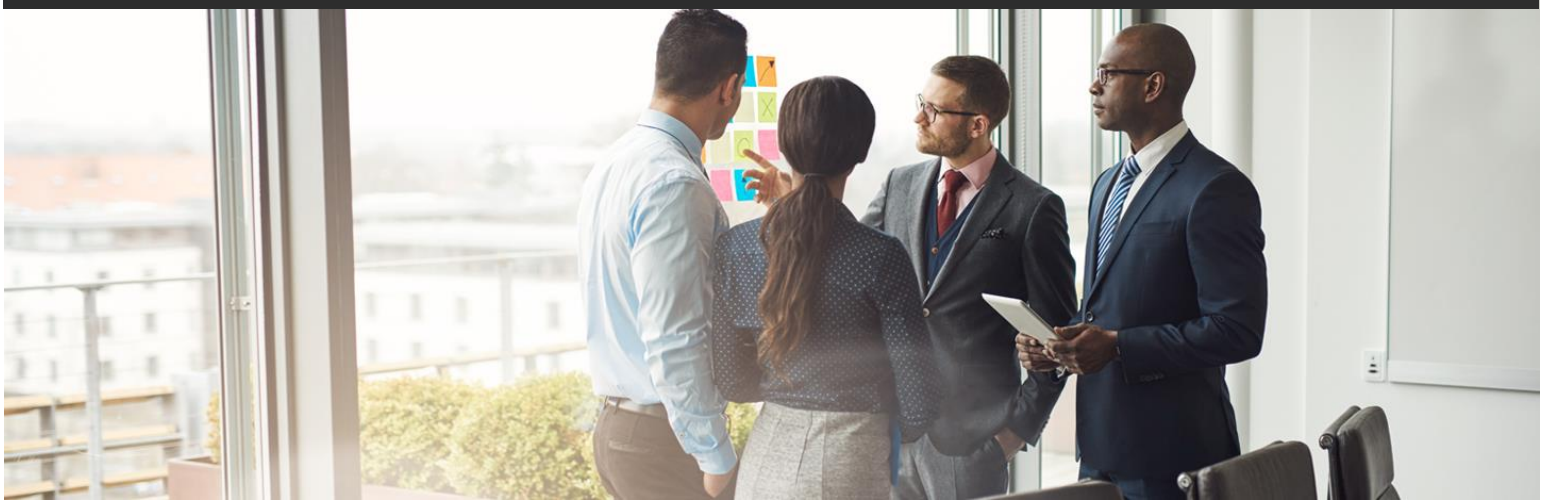

June 2024

EEOC Unveils Final Rule Implementing Pregnant Workers Fairness Act

Go-To Guide:

- Effective June 18, employers covered by the Pregnancy Workers Fairness Act (PWFA) are required to offer reasonable workplace accommodations to workers who are pregnant or have a condition related to pregnancy or childbirth.
- PWFA applies to covered entities, which include public and private employers with 15 or more employees, unions, employment agencies, and the federal government.
- A preliminary injunction was entered on June 17, which "postpones the effective date of the Final Rule's requirement that covered entities provide accommodation for purely elective abortions of employees that are not necessary to treat a medical condition related to pregnancy" for the states of Louisiana and Mississippi.
- Covered employers should review the requirements of the PWFA to ensure that their workplace policies and procedures allow for the requisite accommodations under the Act and follow current challenges to accommodations regarding elective abortions under the law.

The U.S. Equal Employment Opportunity Commission (EEOC) final rule implementing the Pregnant Workers Fairness Act (PWFA) went into effect June 18, 2024, but not without legal challenge.

The final rule, covered in a previous GT Alert, requires employers to offer reasonable workplace accommodations to workers who are pregnant or have a condition related to pregnancy or childbirth. The rule includes an exception for employers if the requested accommodation would cause the business an undue hardship.

However, the requirement of a workplace accommodation for "purely elective abortions" has been enjoined from implementation and enforcement in the states of Louisiana and Mississippi and against four Catholic organizations. On June 17, 2024, Judge David C. Joseph in the U.S. District Court for the Western District of Louisiana ruled that the EEOC overstepped its authority by requiring workplace accommodations for "purely elective abortions."

The motions for preliminary injunction, filed by the states of Louisiana and Mississippi, as well as four entities affiliated with the Catholic Church, sought injunctive relief to the extent that the PWFA requires employers to accommodate purely elective abortions of employees. The court rejected the EEOC argument "that Congress could reasonably be understood to have granted [it] the authority to interpret the scope of the PWFA in a way that imposes a nationwide mandate on both public and private employers – irrespective of applicable abortion-related state laws enacted in the wake of *Dobbs* – to provide workplace accommodation for the elective abortions of employees."

Based on its analysis, the court entered a preliminary injunction which "postpones the effective date of the Final Rule's requirement that covered entities provide accommodation for the elective abortions of employees that are not necessary to treat a medical condition related to pregnancy" for the states of Louisiana and Mississippi and any agency thereof, any covered entity under the final rule with respect to all employees whose primary duty station is located in Louisiana or Mississippi, and the entities affiliated with the Catholic Church that sought the court's involvement.[1]

What should employers know to ensure compliance with the PWFA, given the limited injunctive relief issued? Below is a summary of the law and considerations for implementing the rule, which is now effective.

Application

- The PWFA applies to employees, which include applicants and former employees where relevant based on Title VII of the Civil Rights Act of 1964 (Title VII), as amended by the Pregnancy Discrimination Act of 1978.
- The PWFA applies to covered entities, which include public and private employers with 15 or more employees, unions, employment agencies, and the federal government.
- The states of Louisiana and Mississippi; employers located in Louisiana and Mississippi and with employees whose primary duty station is located within the states; and the U.S. Conference of Catholic Bishops, the Society of the Roman Catholic Church of the Diocese of Lake Charles, the Society of the Roman Catholic Church of the Diocese of Lafayette, and the Catholic University of America are not required to provide accommodations for the elective abortions of employees that are not necessary to treat a medical condition related to the pregnancy.

[1] Further efforts to enjoin the implementation of the Rule were thwarted when the U.S. District Court for the District of Arkansas denied a motion for injunctive relief filed by a group of Republican state attorneys general on the grounds that the plaintiffs lacked standing to challenge the rule.

What Is Considered a 'Known Limitation'?

- A limitation is "known" to a covered entity if the employee, or the employee's representative, has communicated the limitation to the covered entity.
- The physical or mental condition may be a modest or minor and/or episodic impediment or problem.
- An employee affected by pregnancy, childbirth, or related medical conditions that had a need or a problem related to maintaining their health or the health of the pregnancy. "Pregnancy, childbirth, or related medical conditions" includes uncomplicated pregnancies, vaginal deliveries or cesarian sections, miscarriage, postpartum depression, edema, placenta previa, and lactation.
- An employee affected by pregnancy, childbirth, or related medical conditions who sought health care related to pregnancy, childbirth, or a related medical condition itself.
- There is possible overlap between the PWFA and the Americans with Disabilities Act (ADA) because in these situations, the qualified employee may be entitled to an accommodation under either statute, as the protections of both may apply.

What Is an 'Undue Hardship'?

- An employer or covered entity does not need to provide a reasonable accommodation if it causes an undue hardship, meaning significant difficulty or expense, to the employer.

The PWFA Prohibits the Following Conduct by Covered Employers

- Failure to make a reasonable accommodation for the known limitations of an employee or applicant, unless the accommodation would cause an undue hardship;
- Requiring an employee to accept an accommodation other than a reasonable accommodation arrived at through the interactive process;
- 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;
- Punishing or retaliating against an employee or applicant for requesting or using a reasonable accommodation for a known limitation under the PWFA, reporting or opposing unlawful discrimination under the PWFA, or participating in a PWFA proceeding (such as an investigation); and/or
- Coercing individuals who are exercising their rights or helping others exercise their rights under the PWFA.

Non-Exhaustive List Of Examples of 'Reasonable Accommodations'

- Additional, longer, or more flexible breaks to drink water, eat, rest, or use the restroom;
- Changing food or drink policies to allow for a water bottle or food;
- Changing equipment, devices, or workstations, such as providing a stool to sit on, or a way to do work while standing;

- Changing a uniform or dress code or providing safety equipment that fits;
- Changing a work schedule, such as having shorter hours, part-time work, or a later start time;
- Telework;
- Temporary reassignment;
- Temporary suspension of one or more essential functions of a job;
- Leave for health care appointments;
- Light duty or help with lifting or other manual labor; or
- Leave to recover from childbirth or other medical conditions related to pregnancy or childbirth.

Employer Training

- Employers should consider training supervisors on how to respond to requests for accommodation.
- Unlike requests for accommodation under the ADA, an accommodation pursuant to the PWFA may include a temporary suspension of essential job functions for qualified individuals (barring undue hardship to the employer).
- Employees do not need to use specific words to request an accommodation to begin the interactive process.
- Employers may not require that the employee seeking an accommodation be examined by a health care provider selected by the employer.

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