

EEOC Provides Guidance on Implementing the Pregnant Workers Fairness Act

August 10, 2023

On August 7, 2023, the Equal Employment Opportunity Commission (EEOC) posted a Notice of Proposed Rulemaking (NPRM) for the Pregnant Workers Fairness Act (PWFA), which went into effect in June 2023.

The PWFA strengthens pregnancy-related workplace protections by requiring employers with at least 15 employees to consider employee and applicant accommodation requests related to pregnancy, childbirth, or related medical conditions the same as requests for accommodations related to disabilities under the ADA.

The NPRM provides guidance on elements of the new law, including:

- The definition of a “qualified” employee or applicant to include those who can perform the essential functions of a job, with or without reasonable accommodation, and those who cannot perform an essential function of the job for a temporary period
- The definition of “known limitations related to pregnancy, childbirth or related medical conditions”
- Reasonable accommodations, which may include:
 - Longer or more frequent breaks
 - Remote work
 - Reduced hours or flexible work schedules
 - Unpaid medical leave
 - Shifting to light duty
 - Provision of modified equipment and/or uniforms
- Remedies and enforcement of the new law, including procedures for filing a charge
- Available remedies, including the ability to obtain damages
- Clarification that an employer may, but is not required to, request supporting documentation to determine whether the condition relates to or arises out of pregnancy or childbirth
- Affirmation that the PWFA incorporates the definitions of reasonable accommodation and undue hardship in the ADA, but the NRPM proposes some changes to these concepts given the aim of the PWFA and the wide range of conditions covered by the PWFA

Next Actions for Employers

Once the NPRM is published in the Federal Register, employers will be able to provide comments electronically by accessing the Federal eRulemaking Portal at <http://www.regulations.gov>. In its section-by-section analysis, the EEOC specifically seeks comment on the following topics :

- The Definition of “Communicated to the Employer” (Section 1636.3(d))
- The Definitions of “Temporary,” “In the Near Future,” and “The Inability to Perform the Essential Function Can be Reasonably Accommodated” (Section 1636.3(f)(2)(i) - (iii))

Continued

- The Definition of “Essential Functions” (Section 1636.3(g))
- Ensuring that Workers are not Penalized for Using Reasonable Accommodations (Section 1636.3(h))
- Reasonable Accommodation Examples (Section 1636.3(i))
- Predictable Assessments of Undue Hardship (Section 1636.3(j)(4))
- Requesting Supporting Documentation (Section 1636.3(l))
- Choosing Between Accommodations (Section 1636.4(1))
- Requiring Employee to Accept an Accommodation (Section 1636.4(b))
- Adverse Action on Account of Requesting or Using a Reasonable Accommodation (Section 1636.4(e))
- Rules of Construction and How Certain Accommodations May Impact a Religious Organization’s Employment of Individuals (Section 1636.7(b))

However, comments are permitted on any part of the proposed regulation, the section-by-section analysis, and the appendix. Comments on the NPRM are due 60 days after official publication in the Federal Register, which is scheduled to be Friday, August 11, 2023. The EEOC then has until December 29, 2023, to issue final regulations.

As a best practice, employers may want to review the proposed regulations to better understand their obligations under the PWFA and how the EEOC intends to enforce the law. Employers also may want to review and perhaps update any pregnancy accommodation policies and related forms, or implement policies if none exist, for compliance with the PWFA.

If you have questions about how this development will impact your workplace, please contact your Miller Canfield attorney or one of the authors of this alert.