



## TWO FEDERAL LAWS PROVIDE ADDITIONAL RIGHTS FOR PREGNANT WORKERS

June 02, 2023

**Effective later this month (June 27), employers should be aware that two federal laws taking effect that provide additional protections for pregnant workers. These new laws specifically codify and expand already existing rights under the Fair Labor Standards Act (FLSA) and the Americans with Disabilities Act (ADA).**

### **Anti-Discrimination and Retaliation Provisions Emphasized in the Pregnant Workers Fairness Act**

On June 27, the Pregnant Workers Fairness Act (PWFA) takes effect. The PWFA builds upon existing protections for pregnant workers by mandating employers make reasonable accommodations to the known limitations related to pregnancy, childbirth and related medical conditions, unless the sought-after accommodations impose an undue hardship on the business. The law prohibits discrimination against qualified applicants and employees because of their need for a pregnancy-related accommodation. The PWFA also forbids retaliation against a person seeking such accommodations or requiring employees covered by the act to take paid or unpaid leave if another reasonable accommodation is available. The law applies to public and private employers with 15 or more employees. Successful plaintiff employees can recover lost pay, compensatory damages and attorneys' fees.

### **Employer and Employee Requirements under the PWFA**

As previously [mentioned](#), the PWFA is similar to the Americans with Disabilities Act in that it requires qualified employees to inform their employers of limitations relating to pregnancy. When an employer has knowledge of a limitation related to the employee's pregnancy, the employer must then engage with the employee to determine whether there exists a reasonable accommodation to address such limitation and allow the employee to continue or return to work. This does not require an employer to agree to any accommodation request that would require the employer to endure an undue hardship.

### **Examples of Reasonable Accommodations under the PWFA**

The U.S. Equal Opportunity Employment Commission (EEOC) is expected to issue regulations regarding the PWFA by December. The U.S. House Committee on Education and Labor provided the following possible examples:

- (1) The ability to sit;
- (2) The ability to drink water;
- (3) Receive closer parking;
- (4) Flexible hours;
- (5) Appropriately sized uniforms and safety apparel;
- (6) Additional break time for eating, rest and use of the restroom; and
- (7) Light duty work.

### **The Providing Urgent Material Protections for Nursing Mothers Act**

The FLSA's corollary amendment, the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act), will likewise take effect on June 27. The PUMP Act requires employers to provide breaks for employees to express breast milk for nursing children. Employers must provide these employees a reasonable time and place for these breaks in a room other than a restroom that is shielded from view. These breaks are required for up to one year after a child's birth.

### **Who is Covered?**

All employees covered by the FLSA – meaning exempt and non-exempt – are covered by the PUMP Act. However, if an employer with less than 50 employees can show that the Act will impose undue hardship, they may be excluded from compliance.

### **Notice Requirement of Pump Act Violations**

If an employee feels the employee's employer failed to provide a private place to express milk in violation of the PUMP Act, then the employee must notify the employer and allow the employer 10 days to remedy the violation. If an employer terminates an employee during this period, then the notification period is waived.

### **Effect of the Pump Act on an Employee's Timekeeping**

An employee may use the employee's paid break time to express milk or the employee must be completely relieved from duty and the break can be unpaid.

### **What this Means for You?**



The PWFA and PUMP acts may impact employer's hiring, accommodation, leave, discrimination and timekeeping policies. Employers with questions or concerns about existing policies and practices are welcome to contact Bell Nunnally for further guidance.

## Related Practices

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Labor and Employment

## Practice Area Contact

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