

EEOC Issues Final Rule For the Pregnant Workers Fairness Act

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On April 15, 2024, the U.S. Equal Employment Opportunity Commission issued the “Final Rule” regulations that interpret and implement the Pregnant Workers Fairness Act (the PWFA). The regulations will be officially published on April 19, 2024, and will become effective 60 days later.

The PWFA applies to employers who have 15 or more employees. The law requires employers to provide “reasonable accommodations” to employees who have known limitations due to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship.

One may ask why Congress enacted the PWFA when there was already the Pregnancy Discrimination Act (PDA) that prohibited employment discrimination based on pregnancy and required employers to provide the same accommodations to pregnant employees that it offered to other employees who had certain restrictions (as the U.S. Supreme Court interpreted the PDA in its 2015 decision in *Young v. UPS*). It is because Congress viewed the PDA (which is an antidiscrimination law) as insufficient to require that employers affirmatively act to reasonably accommodate the needs of pregnant employees and, thus, passed the PWFA.

Moreover, the PWFA “builds upon” (according to the EEOC) the duties to provide reasonable accommodations required under the Americans with Disabilities Act; however, a person who has a “known limitation” due to pregnancy, childbirth, or related medical conditions is entitled to reasonable accommodations under the PWFA even if they do not qualify as disabled under the ADA.

The EEOC’s Final Rule for the PWFA gives examples of reasonable accommodations that include: additional bathroom breaks; time off for healthcare appointments; temporary reassignment or suspension of job duties; and remote work. The Final Rule also lists conditions that come within the PWFA’s protections, including: miscarriage or still birth; migraines; lactation; and episodic conditions that are pregnancy-related such as morning sickness. Employers are expected to engage in an interactive process with employees regarding potential accommodations. Moreover, the Final Rule provides that employers are not required to ask for documentation to support an employee’s request for reasonable accommodation under the PWFA and may do so only when reasonable under the circumstances.