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Electronic Alert

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EEOC Issues Final Rule Implementing the Pregnant Workers Fairness Act

By Amy Angel & Natalie Pattison

The Equal Employment Opportunity Commission (EEOC) issued its final rule and interpretive guidance implementing the Pregnant Workers Fairness Act (PWFA), which requires employers with 15 or more employees to provide reasonable accommodations to a qualified employee's or applicant's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause an undue hardship on the operation of the business of the covered entity.

Here are some key takeaways for employers to note:

Definitions

Pregnancy, Childbirth, or Related Medical Conditions

"Pregnancy" and "childbirth" include current pregnancy; past pregnancy; potential or intended pregnancy (which can include infertility, fertility treatment, and the use of contraception); labor; and childbirth (including vaginal and cesarean delivery).

"Related medical conditions" are medical conditions relating to pregnancy or childbirth. The final rule sets out a long list of examples that are, or may be, "related medical conditions" and the following are just a few of those examples: termination of pregnancy, including via miscarriage, stillbirth, or abortion; chronic migraines; nausea or vomiting; postpartum depression; and lactation and conditions related to lactation.

"Qualified" Employee

Like the Americans with Disabilities Act (ADA), an individual is "qualified" if they can perform the essential functions of the job, with or without reasonable accommodation. However, unlike the ADA, if an employee cannot perform the essential functions of the job, with or without a reasonable accommodation, an employee can still be qualified as long as:

- The inability is "temporary" (i.e., lasting for a limited time, not permanent, and may extend beyond "in the near future");
- The essential functions could be performed in the near future. This determination is made on a case by-by-case basis, and if the employee is pregnant, it is presumed that the employee could perform the essential functions in the near future because they typically could perform the essential functions within 40 weeks; and
- The inability to perform the essential functions can be reasonably accommodated.

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Therefore, an employee who is temporarily unable to perform one or more essential functions of their job may be able to get light duty or a change in their work assignments as a reasonable accommodation.

Limits on Supporting Documentation

An employer may only seek supporting documents when it is reasonable to do so, and the final rule sets out examples of when it would not be reasonable to require documentation.

Even when requiring documentation is reasonable, employers may only request "reasonable documentation," which means the minimum documentation that is sufficient to (1) confirm the physical or mental condition; (2) confirm the physical or mental condition is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions; and (3) describe the change or adjustment at work needed due to the limitation. Employers also may not require supporting documentation to be submitted on a specific form.

The final rule also prohibits employers from requesting any documentation relating to certain requests for accommodation. These "predictable assessments" include (1) allowing an employee to carry or keep water near and drink, as needed; (2) allowing an employee to take additional restroom breaks, as needed; (3) allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and (4) allowing an employee to take breaks to eat and drink, as needed.

Retaliation & Coercion

The PWFA contains prohibitions against retaliation and coercion. In the final rule, the prohibition against coercion makes it unlawful to "coerce, intimidate, threaten, harass, or interfere" with an any individual in the exercise or enjoyment of rights under the PWFA or with any individual aiding or encouraging any other individual in the exercise or enjoyment of rights under the PWFA.

Next Steps

The final rule goes into effect on June 18, 2024.

Although Oregon law already provides similar protections to workers, employers should review their policies and consult counsel with questions to ensure compliance under Oregon law and under the federal PWFA.

For questions about the Pregnant Workers Fairness Act or for any other workplace compliance matters, contact Amy Angel at 503-276-2195 or aangel@barran.com, or Natalie Pattison at 503-276-2104 or npattison@barran.com.

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