

## Updates

January 10, 2023

### Federal Government Expands Protections for Employees With Pregnancy-Related Conditions

U.S. President Joe Biden signed the Pregnant Workers Fairness Act (PWFA) and the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act) into law on December 29, 2022. This combined legislation aims to bridge the gap in federal legal protections for employees who are affected by pregnancy or related conditions or who are breastfeeding.

The PWFA expands protections for pregnant employees beyond those required by the federal Pregnancy Discrimination Act (PDA) and the Americans with Disabilities Act (ADA). The PDA prohibits discrimination because of pregnancy-related conditions but requires accommodations for pregnant employees only to the extent the employer provided those accommodations to other employees with similar abilities or inabilities to work. The ADA requires employers to provide pregnant employees with reasonable accommodations only if the employee has a covered pregnancy-related disability.

The PWFA, which goes into effect June 27, 2023, requires employers with 15 or more employees to make reasonable accommodations for the known limitations associated with pregnancy, childbirth, or related medical conditions of a qualified employee, unless the accommodation would impose an undue hardship on the employer. A qualified employee is an employee or applicant who can perform the essential functions of the employment position, with or without a reasonable accommodation. It is unlawful under the PWFA for an employer to require a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process or to require a qualified employee to take leave if another reasonable accommodation can be provided. The PWFA also prohibits denying employment opportunities to a qualified employee if the denial is based on the employee's need for a reasonable accommodation and bans taking an adverse employment action on account of the employee's requesting or using a reasonable accommodation.

The U.S. Equal Employment Opportunity Commission (EEOC) is required to issue regulations to carry out the PWFA within two years after the enactment. The regulations must provide examples of reasonable accommodations addressing known limitations related to pregnancy, childbirth, or related medical conditions.

The PUMP Act expands the Fair Labor Standards Act's (FLSA) workplace protections for employees who need to express breast milk to cover all employees, not just those who are nonexempt. The PUMP Act requires employers to provide all employees with a reasonable break period to express breast milk each time such employees need to do so during the first year after the child's birth. The employer must provide a place, other than a restroom, that is shielded from view and free from intrusion from coworkers and the public, which the employee may use to express breast milk. Unless the employee is not completely relieved from duty during the entirety of the break, the employer is not required to compensate the employee receiving the reasonable break time (unless otherwise required by federal or state law or by municipal ordinance). Employers with fewer than 50 workers are not subject to the PUMP Act's mandates regarding breastfeeding accommodations if such requirements would impose an undue hardship on the employer.

## **Takeaway**

Many states already require accommodations for pregnant or lactating workers. The PWFA and the PUMP Act do not invalidate or limit any federal or state law that provides greater or equal protection for employees affected by pregnancy, childbirth, or related medical conditions or who need to express breast milk, such as Washington

state, which requires covered employers to provide reasonable break time for an employee to express breast milk for two years after the child's birth. Businesses and individuals with questions regarding the PWFA or PUMP Act should contact experienced counsel for guidance on related policies and practices.

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