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EEOC PUBLISHES FINAL RULE REGARDING PREGNANT WORKERS FAIRNESS ACT

On April 15, 2024, the U.S. Equal Employment Opportunity Commission (“EEOC”) published its final rule to carry out the Pregnant Workers Fairness Act (“PWFA”). This final rule goes into effect on June 18, 2024.

What is the PWFA?

By way of background, under the PWFA, employers with at least 15 employees are required to provide reasonable accommodations to qualified employees with known limitations related to, affected by, or arising out of pregnancy, childbirth, or other related medical conditions. Such reasonable accommodations are not required if the accommodation causes “undue hardship” on the operation of the business.

What Does the New Rule Say?

Amongst other things, the final regulation explains that the PWFA maintains a broad definition of pregnancy, childbirth, or related medical conditions, which includes infertility, menstruation, endometriosis, fertility treatments, miscarriages, and abortions. Importantly, under the PWFA, employers would be required to provide reasonable accommodations regardless of the levels of severity of the condition(s), and the conditions need not rise to the level of disability applied under the Americans with Disabilities Act (“ADA”). The regulation clarifies that nothing in the PWFA “requires that the pregnancy, childbirth, or related medical conditions be the sole or original cause of the limitation.” In other words, medical conditions that are not necessarily unique to pregnancy or childbirth, such as headaches, vomiting, or even asthma, may still be covered by the PWFA so long as they relate to or are exacerbated by pregnancy or childbirth.

The rule also provides several examples of reasonable accommodation types that may be appropriately made to employees under the PWFA. These include frequent breaks, schedule changes, remote work, reserved parking, light duty, and work environment modifications. The final rule states that an employer may only ask for documentation to support an accommodation request when such documentation is sufficient to (1) confirm the physical or mental condition; (2) confirm that the physical or mental condition is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions; and (3) describe the adjustment or change at work that is needed due to the limitation. Where the condition is known and obvious, or the requested accommodation is available to employees under other provisions or policies, requesting documentation from the employee is not reasonable.

In many instances, the new rule tracks its ADA counterpart. For example, the new rule confirms that “undue hardship” generally means significant difficulty or expense for the employer and lists examples of undue hardship. The new rule departs from the ADA, however, in its approach to temporary relief of an essential job function. Specifically, the regulation states that an employee or applicant is still “qualified” for the job even if 1) the inability to perform an essential job function is for a “temporary” period, 2) the employee could perform the essential function(s) “in the near future” and 3) the inability to perform the essential functions could be reasonably accommodated. The rule generally defines “in the near future” as 40 weeks from the start of the temporary suspension of the essential function, at least for current pregnancies.

A Legal Challenge

As of the date of this article, seventeen states have filed a federal lawsuit to delay the new rule’s implementation, pointing to things such as the rule’s inclusion of abortion as a covered condition and how the rule will cause irreparable harm in the form of “lost productivity, shift covering, and provision of additional leave days” as examples of unlawfulness. More challenges are expected to come in the coming weeks. Nonetheless, employers should familiarize themselves with the new rule and its requirements.

JAH Can Help

Our labor and **employment attorneys** at JAH are here to help you plan and navigate the new rule and any application of such. **[Click here to contact a member of our Employment Practice Group if you require assistance.](#)**

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