

EEOC Issues Proposed Regulations to Implement the Pregnant Workers Fairness Act

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The Equal Employment Opportunity Commission (EEOC) has issued proposed regulations (NPRM) to implement the Pregnant Workers Fairness Act (PWFA). The PWFA requires employers to provide reasonable accommodations to a qualified employee's or applicant's known limitation related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause an undue hardship on the operation of the business of the covered entity.

The NPRM, [posted for public inspection](#) on Aug. 7, will be published for public comment in the Federal Register Aug. 11. Members of the public wishing to comment on the NPRM will have 60 days from the date of publication to do so through www.regulations.gov. The EEOC then has until December 29, 2023, to issue final regulations.

The PWFA recognizes and attempts to fill the gaps in the existing protections available to workers affected by pregnancy, childbirth, and related medical conditions under Title VII of the Civil Rights Act (as amended by the Pregnancy Discrimination Act), the ability to take time off work under the Family and Medical Leave Act, and access to reasonable accommodations under the Americans With Disabilities Act and other state and local laws. While there is certainly overlap in some instances, particularly with requests for time off as a reasonable accommodation, the PWFA provides some notable additional protections.

According to the EEOC's proposed regulations, a variety of reasonable accommodations might potentially be appropriate depending on each worker's individual circumstances and provided the accommodation does not impose an undue hardship on the employer. The proposed regulations provide, by way of example only, the following possible types of accommodations: job restructuring; part-time or modified work schedules; more frequent breaks; acquisition or modification of equipment, uniforms, or devices; allowing seating for jobs that require standing or standing in jobs that require sitting; appropriate adjustment or modification of examinations or policies; permitting the use of paid leave (whether accrued, short-term disability, or another type of employer benefit), or providing unpaid leave, including to attend healthcare-related appointments and to recover from childbirth; assignment to light duty; telework; and accommodating a worker's inability to perform one or more essential functions of a job by temporarily suspending the requirement that the employee perform that function, if the inability to perform the essential function is temporary and the worker could perform the essential function in the near future.

The NPRM explains how the EEOC proposes to interpret the PWFA and certain terms in the statute, such as "related medical conditions," "temporary," "essential functions," and "communicated to the employer." It also addresses circumstances in which employers may (or may not) request medical information, provides numerous examples of possible reasonable accommodations and seeks input on whether there should be

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more examples and for what additional different situations. In addition, the EEOC solicits information and comment on particular issues, including existing data quantifying the proportion of pregnant workers who need workplace accommodations, and existing data on the average cost of pregnancy-related accommodations.

Jackson Lewis attorneys will be analyzing the substance of the proposed regulations and evaluating the potential impact they may have for employers. Subscribe to our [Disability, Leave and Health Management Blog](#) for more information or contact one of the Jackson Lewis attorneys with whom you regularly work.