

Pregnant Workers Fairness Act Proposed Regulations: Takeaways for Manufacturing Industry

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The Pregnant Workers Fairness Act (PWFA) went into effect on June 27, 2023. The Equal Employment Opportunity Commission (EEOC) must issue final regulations to implement the PWFA by Dec. 29, 2023. This article summarizes key provisions of the EEOC's proposed regulations for the manufacturing industry and offers guidance on compliance.

Expanded Pregnancy Protections

Historically, there have been many federal and state protections for pregnancy and pregnancy-related disabilities. The PWFA expands those protections in several significant ways. For instance, the employer must grant reasonable accommodations to any job applicant or employee who has a "known limitation" due to pregnancy, childbirth, or related medical condition, unless doing so imposes an undue hardship. This standard is much lower than what was required before the PWFA and will require many more accommodations, even for minor, modest, or episodic impediments or problems. According to the EEOC, an applicant or employee also can request accommodation to reduce increased pain or increased risk to the employee's health related to pregnancy, childbirth, or a related medical condition. The proposed regulations also require employers to excuse essential job functions for, generally, up to 40 weeks for each accommodation request, unless it would impose an undue hardship on the employer. In the manufacturing environment, that may include consideration of modifications to work areas, removal of exposure to potentially dangerous materials, light duty work, or elimination of potentially harmful job duties, even if essential.

The proposed regulations include four specific accommodations the EEOC believes, "in virtually all cases," will be reasonable accommodations that do not impose undue hardship when requested by a pregnant employee or applicant and do not require medical documentation to support the request. The EEOC refers to these as "predictable assessments." The four accommodations are:

1. Allowing an employee to carry water and drink, as needed, in the employee's work area;
2. Allowing an employee additional restroom breaks;
3. Allowing an employee whose work requires standing to sit and whose work requires sitting to stand; and
4. Allowing an employee breaks, as needed, to eat and drink.

In many instances, these accommodations depart from safety requirements established in the manufacturing environment. The proposed regulations also indicate that accommodation requests related to lactation will need to be treated in the same fashion.

Manufacturers will need to be prepared to grant these requests absent proof to overcome the EEOC's presumption of reasonableness. Manufacturers should also keep in mind that, even if the PWFA does not prevent the employer from obtaining medical documentation to support the request, if the request is for reduced schedule, intermittent, or block leave, then other laws (such as the Family and Medical Leave Act and paid sick leave laws) will need to be coordinated. In addition, for non-time-off work requests, 13 state and local jurisdictions arguably limit an employer's ability to require medical documentation to support a request for accommodation due to pregnancy, childbirth, or related medical condition.

Review, Revise Policies

Employers who have structured their pregnancy-related accommodations policies around the Americans With Disabilities Act should revisit those policies and forms to ensure the language is consistent with the PWFA. New policies should address providing accommodations for employees who are limited in their ability to perform their jobs and providing accommodations due to pregnancy, childbirth, and related medical conditions.

Examples in Manufacturing Setting

Example #1

The proposed regulations give an example of an employee who is a quality inspector for a manufacturing company. She experiences painful swelling in her legs, ankles, and feet during the final three months of pregnancy. Although her job requires standing for long periods, she asks her supervisor for a stool so that she can sit while she works. In the scenario, the employer states it has never granted this request before.

The proposed regulations state that a request to do seated work will virtually always be a reasonable accommodation that does not impose an undue hardship and, therefore, should almost always be granted.

Manufacturing positions particularly in a production line environment could be affected significantly.

Example #2

Another example in the proposed regulations discusses a worker in a paint manufacturing plant. One month into her pregnancy, her healthcare provider instructs that she should avoid certain chemicals for the rest of her pregnancy. One of the essential functions of her job involves regular exposure to those chemicals. The employee informs her supervisor of her limitation and asks that she be allowed to switch duties with another worker whose job does not require the same chemical exposure but otherwise involves the same functions. The example implies that there are numerous other tasks in the paint manufacturing process that do not involve chemical exposure.

The EEOC instructs that, although working with paint chemicals is an essential function of her job, the employee is entitled to a reasonable accommodation. Since her limitation is due to her pregnancy, is a temporary limitation, and she has communicated that limitation to her employer, she is a qualified employee under the

PWFA. The proposed regulations state the employer can suspend the essential function that requires her to work with the chemicals and allow her to do the remainder of her job. Alternatively, the employee can perform other tasks necessary to manufacturing paint that do not involve the chemicals or switch duties with another worker. Ultimately, the employer must grant the accommodation (or another reasonable accommodation), absent undue hardship.

Takeaways

Manufacturers should begin educating their HR, management, and safety communities on these expanded obligations for pregnant applicants and employees, update policies and forms to comply with the PWFA and be prepared to handle a broader array of requests that depart from typical manufacturing practices. If you have questions or need assistance, please reach out to a Jackson Lewis attorney.

For a more in-depth discussion of the EEOC's proposed PWFA regulations, see [A Deep Dive Into the EEOC's Proposed Pregnant Workers Fairness Act Regulations](#).

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