

Scope of Accommodations Required Under PWFA Narrowed in Louisiana and Mississippi

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On the eve of the effective date of the Equal Employment Opportunity Commission's (EEOC's) final Pregnant Workers Fairness Act (PWFA) regulations (Final Rule), a federal court in Louisiana postponed the effective date of what the court describes as the "Final Rule's requirement that covered entities provide accommodation for the elective abortions of employees that are not necessary to treat a medical condition related to pregnancy" until final judgment is entered in pending litigation. *State of Louisiana v. EEOC, et al.*, No 2:24-cv-00629 (W.D. La. June 17, 2024), and *U.S. Conference of Catholic Bishops v. EEOC, et al.*, No. 2:24-cv-00691 (W.D. La. June 17, 2024). The order may impact employers with employees in Louisiana and Mississippi.

PWFA

The PWFA was permanent legislation included in the Consolidated Appropriations Act of 2023 signed by President Joe Biden on Dec. 29, 2022, and [went into effect on June 27, 2023.](#)

The law requires employers (including state government employers) with at least 15 employees to provide reasonable accommodations to employees and applicants with known limitations related to pregnancy, childbirth, or related medical conditions.

The EEOC [published the text of the Final Rule](#) and interpretative guidance implementing the PWFA in the April 19, 2024, Federal Register, effective June 18, 2024.

Louisiana Federal Court Decision

Two lawsuits were filed in the Western District of Louisiana challenging the Final Rule. The States of Louisiana and Mississippi were first to file their suit on May 13, 2024. Shortly thereafter, a group of Catholic organizations led by the United States Conference of Catholic Bishops filed a second suit. The court consolidated the motions for preliminary injunction in both cases.

The Western District of Louisiana's decision is limited to the provisions of the EEOC's Final Rule regarding accommodations for what the court describes as "elective abortions." The court explains in a footnote:

To avoid any uncertainty, terminations of pregnancy or abortions stemming from the underlying treatment of a medical condition related to pregnancy are not affected by this preliminary injunction. Such procedures are clearly "related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions." 42 U.S.C. § 2000gg(4). Covered employers are therefore required to provide accommodation to the extent set forth in the PWFA.

The scope of the preliminary injunction applies to: (1) the two states who are the plaintiffs in this case – Louisiana and Mississippi – and their agencies; (2) "[a]ny covered entity

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Act

under the Final Rule with respect to all employees whose primary duty station is located in Louisiana or Mississippi”; and (3) the plaintiffs in the Bishops case — the United States Conference of Catholic Bishops, Society of the Roman Catholic Church of the Diocese of Lake Charles, Society of the Roman Catholic Church of the Diocese of Lafayette, and Catholic University of America.

The EEOC is also preliminarily enjoined:

with respect to the above-listed parties from: (i) initiating any investigation into claims that a covered employer has failed to accommodate an elective abortion that is not necessary to treat a medical condition related to pregnancy; and (ii) issuing any Notice of Right to Sue with respect to the same.

Other Suits Challenging the PWFA Final Rule

A group of 17 states led by Tennessee filed a similar lawsuit in the Eastern District of Arkansas. That court ruled on June 14, 2024, that the plaintiff states lacked standing — the required level of injury to proceed with a lawsuit — and dismissed that case without prejudice. *State of Tennessee, et al. v. EEOC*, No. 2:24-cv-00084 (E.D. Ark.). The Eastern District of Arkansas also explained that even if the court were to consider the merits of the case, the plaintiff states were not entitled to an order enjoining the Final Rule because they had not shown a likelihood of irreparable harm.

Previously, a federal court in [Texas permanently enjoined the EEOC and Department of Justice from enforcing the PWFA against the State of Texas](#) in February 2024, when it found that Congress improperly passed the Consolidated Appropriations Act of 2023. That case is currently on appeal to the U.S. Court of Appeals for the Fifth Circuit.

Implications for Employers

The PWFA remains in effect for private employers with at least 15 employees across the country. The EEOC’s Final Rule is also in effect as of June 18, 2024. Litigation will continue to work its way through the courts. For now, the only private employers, (other than the Bishops and related plaintiffs), impacted by the Western District of Louisiana’s decision pausing the effective date of the Final Rule’s requirement that covered employers provide accommodation for “elective abortions” are employers with employees in Louisiana and Mississippi.

Jackson Lewis attorneys will continue to monitor these developments. In the meantime, if you have questions about the PWFA or what these court rulings mean to your workplace, please contact a Jackson Lewis attorney.

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