

Workplace Discrimination

New Protections for Pregnant, Nursing Workers

IN THE WANING days of 2022, Congress passed a bipartisan \$1.7-trillion spending bill that includes legislation that expands rights for pregnant and nursing employees.

The budget bill, which President Biden has signed into law, included the Pregnant Workers Fair Act (PWFA) and the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act). Employers will need to adjust their policies to comply with these two measures.

The PWFA

This measure is modeled after the Americans with Disabilities Act and includes many of the same protections and steps employers must take if a pregnant employee asks for accommodations.

The law requires employers with 15 or more workers to make reasonable accommodations to limitations the worker conveys related to pregnancy, childbirth or a related medical condition.

Like under the ADA, employers are required to enter into an interactive process with an employee covered by the PWFA to determine what kinds of reasonable accommodations they need and the employer can provide (as long as it does not create an undue hardship on the employer).

The law also bars employers from requiring an employee covered by the PWFA to take paid or unpaid leave if another reasonable accommodation is available. Employers may also not retaliate, coerce, intimidate, threaten or interfere if any worker requests or is provided with a reasonable accommodation.

Relief Available under the PWFA

- Reinstatement
- Back pay
- Front pay
- Compensatory damages
- Punitive damages
- Recovering attorneys' fees

PUMP Act

This new law requires employers to provide employees who are nursing “reasonable time” and a private space to express milk.

The law expands on the Fair Labor Standards Act, which requires employers to provide nursing employees who are non-exempt under the FLSA with break time and a private space to express milk for one year after they give birth.

This new law expands the right to both exempt and non-exempt employees.

Firms with fewer than 50 workers can qualify for an exemption from the law if they can establish that complying would create an undue hardship (defined as creating significant difficulty or expense in relation to the business’s size or financial resources).

Employees who are denied a private place and time to express milk must first notify their employer of its alleged failure.

If the employer doesn’t remedy the situation within 10 days, the employee may commence an action against them and seek damages, including:

- Unpaid wages,
- Reinstatement,
- Back pay,
- Front pay, and
- Liquidated damages.

Your next step

You should update your company policies to ensure they are in compliance with the new laws.

Even though smaller employers can claim an exemption, it’s smart business to try to accommodate pregnant workers, new mothers and lactating employees if possible.

You should also avoid taking adverse action against this new protected class. ❖



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