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EEOC Finalizes Rule for the Pregnant Workers Fairness Act

Law and the Workplace on **April 29, 2024**

On April 19, 2024, the EEOC published its final rule regarding the Pregnant Workers Fairness Act ("PWFA"). The PWFA requires covered employers to provide reasonable accommodations to qualified employees or candidates with a known limitation related to pregnancy, childbirth or related medical conditions absent undue hardship.

The final rule effectively tracks the proposed rule, which we previously covered here. Some key provisions of the final rule are as follows:

- The Commission broadly defines "related to, affected by, or arising out of" pregnancy, childbirth, or related medical conditions as including lactation, miscarriage, stillbirth, and "having or choosing not to have an abortion." The Commission noted that "a pregnancy, childbirth, or related medical condition does not need to be the sole, the original, or a substantial cause of the physical or mental condition at issue for the physical or mental condition" to fall under PWFA.
- An employee's limitations do not need to rise to the level of a disability under the Americans with Disabilities Act ("ADA") to be eligible for accommodation under the PWFA. Instead, the limitations can arise from a modest, minor, and/or episodic problem that is impacting an employee's ability to maintain their health or the health of the pregnancy.
- The rule provides examples of potential reasonable accommodations such as food, water, and restroom breaks. Importantly, however, under the PWFA, reasonable accommodation may also include a temporary reassignment or – in a provision that differs from the ADA – temporary suspension of an essential function of the job. Adopting the language of the ADA, the final rule defines the essential functions of a job as those affecting the time, manner, or location in which a task is performed.
- Covered employers are limited in seeking documentation to support a request for accommodation to only circumstances where it is reasonable and necessary to determine if an employee is entitled to a reasonable accommodation under the PWFA. The documentation is "necessary" only when it: (1) confirm the physical or mental limitation, (2) confirm that the condition is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, and (3) describe the adjustment or change needed at work that is due to the limitation.

- Examples of situations where documentation would not be reasonable include: (i) when both the condition at issue and the need are obvious and the employee provides self-confirmation of same; (ii) when the employee is seeking accommodation to carry/keep water with them, take additional restroom breaks and/or breaks to eat or drink, or to sit (if the job requires standing) or stand (if the job requires sitting); (iii) when the accommodation is related to a time and/or place to pump at work, other modifications related to pumping at work, or a time to nurse during work hours (where the regular location of the employee's workplace makes nursing during work hours a possibility because the child is in close proximity), and the employee provides self-confirmation; and (iv) When the requested accommodation is available to employees without known limitations under the PWFA pursuant to the employer's policies or practices without submitting supporting documentation. Further, and importantly, employers may not require that supporting documentation be submitted on a specific form and may not require that an employee seeking accommodation be examined by a health care provider selected by the employer.

It is noted that, shortly following publication of the final rule, state attorneys general in 17 states, led by Tennessee and Arkansas, filed a challenge to the final rule in the Eastern District of Arkansas. They argue that the EEOC's inclusion of abortion-related accommodations to be "unconstitutional federal overreach."

Barring a successful challenge, the final rule is set to go into effect on June 18, 2024, sixty days after publication in the Federal Register. For more information regarding EEOC enforcement of the PWFA, including potential violations, please visit our previous blog post.

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