

PWFA and PUMP Act: What You Need to Know

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The Consolidated Appropriations Act for 2023 (CAA) was signed into law on December 29, 2022, while many Americans were visiting family or sleeping off a month of sugary treats. Despite its timing, there's nothing "sleepy" about the CAA's introduction of additional protections for pregnant and/or nursing employees.

The Pregnant Workers Fairness Act (PWFA) will take effect in June 2023 and requires employers to provide new workplace accommodations for employees dealing with pregnancy, childbirth, or a related condition. The Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act) builds on prior protections for the expression of breastmilk during working hours. Both the PWFA and PUMP Act, which can be accessed as part of the CAA [here](#), create new legal rights and remedies for thousands of employees.

Pregnant Workers Fairness Act

Even though many pregnancies are accompanied at some point by conditions such as nausea, swelling, and/or fatigue, prior federal laws generally did not require that employers provide accommodations for pregnant employees.

Pregnancy—and its most common symptoms—are generally not considered “disabilities” under the Americans with Disabilities Act (ADA) in the absence of significant medical complications. Accordingly, the requirement that employers provide reasonable accommodations under the ADA typically does not apply to pregnant employees. Discrimination against pregnant employees is prohibited by the Pregnancy Discrimination Act (PDA), but the PDA does not impose separate accommodation requirements. It only prohibits employers from refusing to provide an accommodation for a pregnant employee that the employer would have provided to a non-pregnant employee with a temporary medical condition.

That's where the newly-enacted Pregnant Workers Fairness Act (PWFA) steps in. Similar to the ADA, the PWFA applies to employers of 15 or more employees and requires “reasonable accommodations” for pregnancy, childbirth, or a related medical condition unless such accommodations would result in “undue hardship.” The PWFA further prohibits employers from discriminating or retaliating against employees and job applicants based on their need for a reasonable accommodation for limitations regarding pregnancy, childbirth, or other related medical conditions.

As with the ADA, employers will be expected to engage in the interactive process with the affected employee. And as with the ADA, the devil will be in the details: what is “reasonable” under the circumstances, and what might constitute an “undue hardship” such that granting the accommodation is not legally required, will be heavily fact-dependent.

PUMP Act

Similar to the PWFA, the PUMP Act expands on protections included in pre-existing laws. Prior laws enacted through the Affordable Care Act required employers to provide certain protections for employees who needed time at work to express breast milk, including unpaid break time to express milk and a sanitary, private area other than a bathroom in which to do so. However, that legislation was limited to employees in positions not specifically exempted from minimum wage and overtime protections. Thus, prior protections did not apply to employees such as teachers, certain agricultural workers, and “white collar” salaried employees.

With the passage of the PUMP Act, those legal protections will be expanded to most lactating employees who require time to express milk at work. The PUMP Act also specifies that, while the breaks are still presumptively unpaid, time spent expressing milk will be considered hours worked if the employee is not completely relieved of their job responsibilities during that period. Finally, the PUMP Act provides for an employee’s ability to seek legal remedies if their employer violates the law.

With the exception of a few positions not covered by the new legislation, including airline flight crewmembers and certain select railroad and motorcoach employees, employers of fewer than 50 employees may only be excused from compliance with the PUMP Act if they can demonstrate that doing so would constitute an undue hardship.

What’s next?

Enforcement guidance on both the PWFA and the PUMP Act is expected in the coming months. In the meantime, employers should take note of new protections and engage with employees seeking accommodations related to pregnancy or the expression of breast milk. As always, employers should consult legal counsel for advice on complying with legal requirements or responding to employee requests for accommodations.

For assistance on any of these issues, please contact a member of our Labor & Employment Team.

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