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Elevated Protections for Pregnant Workers Now in Effect

By Lauren Smith

The Pregnant Workers Fairness Act ("Act"), now in effect, requires covered employers—private and public sector employers with at least fifteen employees, Congress, federal agencies, employment agencies, and labor organizations—to provide reasonable accommodations to known limitations pertaining to pregnancy, childbirth, or related medical conditions. The Act will be enforced by the Equal Employment Opportunity Commission ("EEOC"), with the entity currently accepting charges.

Specifically, in accordance with the Act, employers may not (1) require an employee to accept an accommodation without discussion between the employer and worker; (2) deny a job or other employment opportunity to a qualified employee based on that employee's need for a reasonable accommodation; (3) require an employee to take leave if other reasonable accommodations exist; (4) retaliate against an individual for reporting or opposing unlawful discrimination pursuant to the Act; or (5) interfere with an employee's rights under the Act.

The House Committee on Education and Labor Report has provided several examples of what may constitute a "reasonable accommodation" under the Act. These include the ability to sit or drink water, a closer parking spot, flexible hours, appropriately sized uniforms and safety apparel, additional time to use the bathroom, eat, and rest, and the ability to abstain from strenuous activity that involves exposure to compounds that are not safe while pregnant. Leave for medical appointments and to recover from childbirth may additionally be considered "reasonable accommodation[s]" under the Act. The Act provides an exception to employers where the accommodation would cause the employer an "undue hardship."

Importantly, the Act applies only to accommodations, not pregnancy related discrimination that is covered by existing laws. The Act does not replace existing laws, either federal, state or local, that are more protective of workers affected by pregnancy, childbirth, or related medical conditions, and is not retroactive. Thus, any charge brought under the Act as of June 27, 2023 must include an incident that occurred on that date or later to be considered. After that date, the EEOC will analyze charges for accommodations regarding pregnancy, childbirth, and related medical conditions under the Act and other applicable laws, such as the American with Disabilities Act and/or Title VII.

What does this mean for employers? To ensure compliance with the Act, employers should work alongside any affected employee to discuss and provide accommodations that are reasonable and would not cause the employer undue hardship. This includes training supervisors on the Act to ensure they are prepared to address any reasonable accommodation requests. The Employer should consult with an attorney when appropriate to determine what is "reasonable" and what would constitute "undue hardship" under the Act.

If you have any questions regarding the Pregnant Workers Fairness Act or any other employment related matters, please contact any Roetzel attorney.

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