

CLIENT ALERTS & PUBLICATIONS

NEW LAWS EXPAND WORKPLACE PROTECTIONS FOR PREGNANT AND NURSING WORKERS

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At the close of 2022, the U.S Congress passed The Pregnant Workers Fairness Act (PWFA) and the Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act. Both laws will take effect on June 27, 2023, and provide additional protections for pregnant and nursing workers.

Pregnant Workers Fairness Act

Mirroring the Americans with Disabilities Act (ADA), the PWFA requires employers to provide reasonable accommodations to pregnant workers, as long as doing so does not create an undue hardship for the employer. Under the PWFA, pregnant employees and applicants with temporary limitations to their ability to perform essential job functions due to a physical or cognitive condition related to pregnancy, childbirth, or a related medical condition are entitled to reasonable accommodations. The Act applies to employers with more than 15 employees.

The PWFA utilizes the same definitions as the ADA for “reasonable accommodation” and “undue hardship.” Thus, under the PWFA, a “reasonable accommodation” may include “making existing facilities used by employees readily accessible to and usable by individuals with disabilities,” as well as “job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies...and other similar accommodations...” Furthermore, “undue hardship” is defined as “an action requiring significant difficulty or expense,” taking into account the nature and cost of the accommodation; the overall size and financial resources of the employer; and the type of operation of the business.

Accordingly, employers with workers or applicants with temporary limitations to their ability to perform the essential functions of their job due to pregnancy-related conditions may find it advantageous to look to the ADA for guidance regarding what accommodations it must provide.

Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act

The PUMP act requires employers, regardless of size, to provide break time and dedicated space for nursing employees to express breast milk throughout the workday. The time allocated for such breaks must be “reasonable,” and the employer-provided space cannot be a bathroom.

Employers with fewer than 50 employees may be able to avoid complying with the Act if they can demonstrate that providing the required break and space would impose an undue hardship.

The PUMP Act builds upon the protections already in place under the Fair Labor Standards Act (FLSA). The FLSA requires employers to provide break time – paid or unpaid – to nursing non-exempt employees for one year following the birth of a child. Under the PUMP Act, employers are still required to provide lactation breaks to non-exempt employees for the first year after a mother gives birth. Employers are not required to pay non-exempt employees for breaks taken to express breast milk. Notably, however, the time taken to express breast milk counts for calculating minimum wage and overtime if the employee is not completely relieved of work duties during the break. Moreover, under the PUMP Act, employers are now required to provide breaks to exempt employees to express breast milk for the first year after giving birth. Employers must pay exempt employees who chose to take lactation breaks their regular salary.

While nothing in the Act expressly prohibits employers from requesting information about the child's date of birth (in order to track the year during which lactation breaks must be permitted), employers should be cautious about denying such breaks because an employee has yet to provide that documentation. The FLSA and the PUMP Act both require employers to permit nursing employees to take breaks "each time the employee has a need to express the milk." During a recent investigation, the Department of Labor reasoned that requiring a doctor's note or the child's date of birth *before* permitting an employee to take breaks could interfere with the employee's right to take a break "each time the employee has a need to express breast milk." Consequently, employers should take care when limiting an employee's ability to take breaks due to the employee's failure to provide requested documents regarding the child's date of birth.

Finally, the PUMP Act requires nursing employees to provide employers notice of an alleged violation. Employers then have 10 days to cure any alleged violation.

Nemeth Bonnette Brouwer PC will continue to monitor changes in the law pertaining to pregnant and nursing employees. Feel free to contact any of the attorneys at the firm with your questions.