

Pregnant Workers Fairness Act ("PWFA")

PAA Meeting

4/19/2023



Hot off the Press

Pregnant Workers Fairness Act (“PWFA”)

- Federal Law – Enforced by the EEOC
- Goes into effect on June 27, 2023
- Applies to Accommodations for pregnancy.
- (“ADA” for Pregnancy)

Hot off the Press - PWFA

- Regulations do not exist – Rulemaking will begin – no date stated.
- Stay tuned – Proposed regulations will be available for a public comment period.

EEOC Claims - PWFA

- The EEOC will start accepting charges under the PWFA on June 27, 2023. For the PWFA to apply, the situation complained about in the charge must have happened on June 27, 2023, or later. A pregnant worker who needs an accommodation before June 27th may, however, have a right to receive an accommodation under another federal or state law.

Pregnant Workers Fairness Act

- Covered Employees (any employer with more than 15 persons)
- Reasonable Accommodation “to a workers’ known limitations related to pregnancy, childbirth or related medical conditions. ADA may also still apply based on the circumstances. Pregnancy is generally not a disability under the ADA but related illness might be
- Unless – the accommodation will cause the employer an undue hardship (money, time, resources). ADA and NJLAD analysis??
- Only extends to accommodations....other laws already protect job discrimination based on the above. (Title VII) (FMLA)

Examples of Accommodations -PWFA

- Ability to sit
- Ability to drink water
- Closer parking spots
- Flexible hours
- Appropriately sized uniforms and safety apparel
- Additional time to use the restroom
- Avoidance of exposure of compounds not safe for pregnancy

Prohibitions - PWFA

Covered employers cannot:

- Require an employee to accept an accommodation without a discussion about the accommodation between the worker and the employer;
- Deny a job or other employment opportunities to a qualified employee or applicant based on the person's need for a reasonable accommodation;

Prohibitions - PWFA

- Require an employee to take leave if another reasonable accommodation can be provided that would let the employee keep working;
- Retaliate against an individual for reporting or opposing unlawful discrimination under the PWFA or participating in a PWFA proceeding (such as an investigation); or
- Interfere with any individual's rights under the PWFA.

PWRA - Dialogue

- The main requirement of the law is for management and the employee to have a conversation.
- Management may not have to provide the best accommodation but the discussion must occur

Title VII - Pregnancy Protections

Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act, which is called “Title VII.” It prohibits sex discrimination, including pregnancy discrimination. “Pregnancy” discrimination under **Title VII** can be based on:

- [Current pregnancy](#);
- [Past pregnancy](#);
- [Potential pregnancy](#);
- [Medical condition related to pregnancy or childbirth](#) including [breastfeeding/lactation](#);

New Jersey Pregnancy NJLAD

- NJ Law Against Discrimination requires employers to grant you a reasonable accommodation for pregnancy, childbirth and related medical conditions, and breastfeeding.
- LAD is more protective than the Federal Pregnancy Discrimination Act – Title VII

NJLAD Breastfeeding

- Employers must grant reasonable break time each day and a suitable private place (other than a toilet stall) in which to express breast milk.
- Unless employer could show that to do so would be an unreasonable hardship.

What is an Undue Hardship under LAD

- Overall Size of the Employer
- Facilities
- Budget
- Nature and cost of the accommodation
- Extent to which the accommodation would involve waiver of an essential requirement of your job

Retaliation - NJLAD

Employer cannot in any penalize you or retaliate against you for requesting or using an accommodation for pregnancy or breastfeeding.

Job Protection....FLA

- The New Jersey Family Leave Act requires employers to allow employees to take up to twelve weeks of unpaid leave in a twenty-four month period for, among other things, the birth or adoption of a child.
- This leave may commence at any time within a year after the date of the birth or placement for adoption.
- This law applies to all public employers and to private employers with fifty or more employees. N.J. Stat. Ann. § 34:11B-4.

Job Protection... FMLA

- Leave to bond with a newborn child or for a newly placed adopted or foster child must conclude within 12 months after the birth or placement. The use of intermittent FMLA leave for these purposes is subject to the employer's approval. If the newly born or newly placed child has a serious health condition, the employee has the right to take FMLA leave to care for the child intermittently, if medically necessary and such leave is not subject to the 12-month limitation.

Job Protection...FMLA

- Mothers and fathers have the same right to take FMLA leave to bond with a newborn child. A mother can also take FMLA leave for prenatal care, incapacity related to pregnancy, and for her own serious health condition following the birth of a child. A father can also use FMLA leave to care for his spouse who is incapacitated due to pregnancy or child birth.

Takeaways

- Discuss issues with Board Attorney and Stakeholders.
- Watch for regulation comment period and release
- Engage in a dialogue

Resources

[fact_BRST.pdf \(nj.gov\)](#)[File a Civil Rights Complaint with DCR - New Jersey Office of Attorney General \(njoag.gov\)](#)

[Pregnancy Discrimination and Pregnancy-Related Disability Discrimination | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#)

[What You Should Know About the Pregnant Workers Fairness Act | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#)