

# THE JOURNAL RECORD

## Gavel to Gavel: Congress Acts to Protect Pregnant, Nursing Workers

By: Chris S. Thrutchley Guest Columnist February 22, 2023



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In a move to support working mothers, Congress recently passed two new acts aimed at providing greater protection for pregnant and breastfeeding workers. The Pregnant Workers Fairness Act (which takes effect this summer) and the Providing Urgent Maternal Protections for Nursing Mothers Act (which is currently in effect) are set to have a significant impact on the policies and practices of employers across the country.

Previously, pregnancy alone wasn't considered a disability that obligated employers to grant reasonable accommodations, unless there was a pregnancy-related complication that amounted to a disability. The PWFA expands the ADA by defining "qualified individuals" as those who are temporarily unable to perform an essential function of their job due to pregnancy, childbirth or a related condition and it requires employers to grant reasonable job accommodations to qualified individuals.

The PWFA makes it an unlawful employment practice for an employer with 15 or more employees to do any of the following:

- Fail to make reasonable accommodations for employees related to pregnancy, childbirth or a related medical condition absent an undue hardship.
- Require an employee seeking a pregnancy-related accommodation to accept an accommodation other than one arrived at through the interactive process.
- Deny employment opportunities to pregnant or recently pregnant employees based on the requirement to make reasonable accommodations.
- Require an employee seeking a pregnancy-related accommodation to take leave, paid or unpaid, if the employer can provide an alternative, reasonable accommodation that allows the employee to continue to work.
- Take adverse action against an employee on account of their request for, or use of, a reasonable accommodation.

Since 2010, the FLSA has required employers to provide non-exempt, breastfeeding employees "reasonable break time" to express breast milk after the birth of their children. The PUMP Act expands to all nursing employees. It also requires the provision of a private space, other than a bathroom, for breastfeeding employees to pump for up to one year after the birth of their child. Although the PUMP Act does not define "reasonable break time," guidance from the DOL says employers must provide breaks "as frequently as needed" by the nursing employee and that "the duration of each break will likely vary." Whether an employer must compensate a nursing employee during a reasonable break time depends on whether the employer provides compensated breaks to employees for other purposes and whether the breastfeeding employee is completely relieved from duty during the break.

The acts are a step forward in creating a more supportive and inclusive work environment for pregnant and nursing employees. Employers who take the necessary steps to comply with these laws will not only be following the law, but will also be able to retain valuable employees and create a more positive work culture.

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