

PWFA Final Regulations Are Past Their Due Date

By: Ellen A. Adams and Brooks A. Richardson

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As we alerted clients last year in an [employment update](#), Congress passed the Pregnant Workers Fairness Act (“PWFA”), which took effect on June 27, 2023, and applies to all employers with 15 or more employees. The EEOC issued proposed regulations in August 2023 and allowed public comment through October 11, 2023, with final regulations anticipated in late December 2023. As of the date of this alert, no final regulations have been published.

The PWFA expands on existing rights and leave laws for pregnant workers. Specifically, the PWFA requires employers to provide “reasonable accommodations” to all “qualified” employees and applicants who have a “known limitation” related to, affected by, or arising out of pregnancy, childbirth or related medical conditions. Under the EEOC’s proposed rules, this has been interpreted to expansively cover a broad range of issues, such as infertility treatment, menstrual cycles, changes in hormone levels, and lactation.

Further, under the PWFA, “qualified” includes:

- an employee or applicant who is capable of performing essential job functions, with or without accommodation; and
- an employee or applicant who cannot perform one or more essential functions of the job for a “temporary” period if the worker can perform the essential function(s) “in the near future”.

The EEOC’s proposed regulation defined “in the near future” as “generally forty (40) weeks from the start of the temporary suspension of an essential function.” The proposed rule also contemplated a restarting of the clock, from one limitation to another.

While the final regulations will add some clarity to what employers are required to do under the PWFA, employers should take these practical steps now:

Utilize the Interactive Process. Because the PWFA is modeled after the ADA, employers can rely on their experience with the interactive process and understanding of what constitutes an “undue hardship” in analyzing requests for accommodation under the PWFA.

Review and Update Policies and Employee Handbooks. Ensure your company’s policies are updated to reflect the requirements of the PWFA, including a review of essential job functions in your job descriptions, policies related to accommodations, leave, and anti-discrimination and retaliation.

Employee Training. Train your HR team and managers on the breadth of the PWFA and where it differs from the ADA.

Develop a Process for Accommodation Requests. Establish a clear, consistent process for employees to request PWFA accommodations. This should include a point of contact, steps for submitting and evaluating requests, and a timeline for response. Ensure that this process is well communicated to all employees and limited to what is reasonable for an employer to request under the circumstances.

Be Prepared to Address a Broad Range of Conditions. Understand that the PWFA covers a wide range of conditions related to pregnancy, childbirth, and related medical conditions. Be prepared to address requests that may not have been commonly considered under previous laws.

Ensure Privacy and Sensitivity. Ensure that any information related to an employee's pregnancy, medical condition, or accommodation request is kept confidential.

Flexible Approach to Accommodations. Be open and flexible in considering accommodations for workers impacted by pregnancy, childbirth and related conditions. This might include temporary modifications to job duties, flexible scheduling, providing additional breaks, allowing access to closer parking, allowing water and/or food in areas where typically restricted.

Documentation and Communication. Keep thorough documentation of all requests and actions taken regarding accommodations. Clear communication with the employee requesting an accommodation is crucial to ensure mutual understanding and compliance.

Monitor Regulatory Updates. Stay informed about the final regulations to be issued by the EEOC and any subsequent legal interpretations or guidelines.

Legal Consultation. Given the complexities and evolving nature of this law, and the lack of current regulations, it remains advisable to consult with legal experts specializing in employment law to ensure full compliance.

For information regarding GableGotwals Employment & Labor practice, [click here](#).



[Ellen A. Adams](#)
405-235-5520
eadams@gablelaw.com



[Brooks A. Richardson](#)
405-568-3310
brichardson@gablelaw.com

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