Employment Update

Delivered: EEOC Publishes Final Rules Implementing Pregnant Workers Fairness Act

By: Ellen A. Adams
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On June 18, 2024, the final regulations implementing the Pregnant Workers Fairness Act will become effective. The EEOC published its proposed rules last year, and until yesterday, we were waiting for the Equal Employment Opportunity Commission ("EEOC") to publish the final regulations. The final rules do not differ substantially from the proposed rules, and as expected, provide expansive and broad rights to individuals far beyond those who are pregnant. To refresh your memory on the steps we recommended employers take to prepare for the final rules, see our prior Alert. And, if you have not started preparing yet, you should act now.

While some of the guidance is simple and will take minimal effort for employers to comply, such as allowing an employee to drink water and take restroom breaks, as needed, other obligations in the final rules will require careful consideration. Employers may not be expecting and need to be on alert for:

- **Requests because of physical or mental conditions that are related to pregnancy.** These may include:
    - menstruation;
    - the use of contraception;
    - infertility and fertility treatment;
    - pregnancy-related illness, ranging from nausea to more severe pregnancy-related conditions;
    - current, past, and potential pregnancy;
    - lactation and related issues; and
    - termination of pregnancy – including via miscarriage, stillbirth, or abortion.
- **Requests from employees who will be unable to perform essential job functions for up to 40 weeks.** These employees will likely remain qualified under the Act and final rules, creating obligations for an employer to accommodate.

Given the breadth of the final rules, we anticipate more legal challenges to the Act. As you may have read, the PWFA is not currently enforceable against the State of Texas and its agencies based on a court's order in *State of Texas v. Merrick Garland, et al.*, Case No. 5:23-cv-00034-H, in the United States District Court Northern District of Texas. In that case, Judge Hendrix determined the PWFA was passed by the House of Representatives in violation of the Quorum Clause of the Constitution. It is yet to be seen whether private employers in Texas, or elsewhere, will have similar success challenging the law and the EEOC's implementing regulations.

In the interim, employers can mitigate legal risk by:

- Updating policies and procedures to ensure that individuals with covered limitations have a process to request accommodations.
- Educating your Human Resource departments, supervisors and managers on the breadth of the PWFA.
- Ensuring that documentation of each step taken by employers to engage in an interactive process with covered employees and applicants.
- Consulting legal counsel before denying any accommodations.

The GableGotwals Employment & Labor practice group is equipped to assist employers in navigating the complexities of the PWFA, how it interacts with other federal and state laws, and potential defenses for employers who are accused of violating the law.

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