

Ready for the Recent Arrival? Pregnant Workers Fairness Act is Here and Kicking

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As everyone in Human Resources knows by now, the Pregnant Workers Fairness Act (PWFA) requires employers to reasonably accommodate employees because of pregnancy and conditions related to pregnancy. In case you missed it, we blogged about this [here](#). The EEOC has filed [lawsuits](#) to enforce employee rights under the PWFA and has [settled cases for pregnant workers](#). While these were all filed under the prior administration, the PWFA is the law of the land and employers need to be ready.

Make Sure Your Leadership Knows Pregnant Workers Have a Legal Right to Accommodations

The standard for a reasonable accommodation under the PWFA is different than the standard under the ADA. Make sure your front-line supervisors and managers know that you have a heightened responsibility to pregnant workers who need accommodations. While your supervisors do not need to be PWFA experts, they do need to understand that if a pregnant worker is having trouble fulfilling her job duties, they should call Human Resources.

Human Resources professionals need to be ready as well. Unlike the ADA, reasonable accommodations under the PWFA:

- Could require that you remove an essential function of a job temporarily. If you have light-duty positions, you may need to make those available to your pregnant employees.
- Are temporary, which would be up to the 40 weeks of the pregnancy.

Like the ADA, if an employee is not eligible for FMLA leave (or any other leave under company policy or state law), you likely have an obligation to provide unpaid leave under the PWFA. However, leave to accommodate pregnancy is a last resort.

Check Your Policies and Procedures

In defending an EEOC charge of discrimination, you will want to tell the EEOC that you have a policy

that shows your good faith. With that in mind:

- Be sure your EEOC policy mentions that you prohibit discrimination based on pregnancy. Saying that you prohibit discrimination based on sex probably covers it, but it may be helpful to add pregnancy to your policy.
- Consider having a separate policy addressing the PWFA. A policy that clearly outlines how an employee can request a PWFA accommodation can be great evidence if an employee claims she did not know she could request one.
- Given the differences between the PWFA and the ADA, you may want to consider having separate forms to document the PWFA process.

Takeaways

This is a new law and it is complicated. Make sure your front-line supervisors are staying in touch with Human Resources. There is no one size fits all approach, so Human Resources should seek legal advice when necessary.

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