



Apr 25, 2024

EEOC Issues Final Regulations to the Pregnant Workers Fairness Act (PWFA): Key Takeaways

Topics: [Discrimination, Harassment & Retaliation](#), [Employee Leave](#), [New Laws & Legislation](#), [Personnel Policies and Procedures](#)

By: [Holly C. F. Soliman](#)

Last week, the U.S. Equal Employment Opportunity Commission (“EEOC”) released its 408-page final rule to implement the Pregnant Workers Fairness Act (PWFA), which provides key provisions for employers as to their duties to pregnant workers under the law.

The final rule, which goes into effect on June 18, 2024, considered over 100,000 public comments the EEOC received in response to its proposed rule issued in August 2023.

KEY HIGHLIGHTS FROM THE FINAL RULE INCLUDE:

- Expansive Scope of Covered Conditions
 - Conditions that qualify for a “request for accommodation” under the PWFA include current pregnancy, past pregnancy, potential pregnancy, lactation (including breastfeeding and pumping), use of birth control, menstruation, migraines, pregnancy-related conditions that are episodic-like morning sickness, postpartum depression, gestational diabetes, infertility and fertility treatments, preeclampsia, endometriosis, miscarriage, stillbirth, and having or choosing to have an abortion, among other conditions.
- Limitations on Supporting Documentation Employer Can Request
 - Under the final rule, as in the proposed rule, employers are limited to reasonable documentation, which includes:
 - Minimum documentation sufficient to confirm the employee’s physical or mental condition;
 - Documentation that confirms that the physical or mental condition is related to, affected by, or arises out of pregnancy, childbirth, or related medical conditions; and
 - Documentation that describes the change or adjustment needed at work due to the limitation.
- Employees May Be Excused From “Essential Functions” for Longer
 - The PWFA allows an employee to be qualified for an accommodation, *even if they cannot perform one or more essential functions of the job*, if the inability to perform the essential function(s) is “temporary,” the employee could perform the essential function(s) “in the near future,” and the inability to perform the essential function(s) could be reasonably accommodated.
 - The final rule does not define “in the near future” for childbirth or related medical conditions. It is presumed to mean generally 40 weeks for a current pregnancy, but the rule provides that this would otherwise be determined “on a case-by-case basis.”
- Broad Guidance as to Possible Reasonable Accommodations
 - The final rule provides specific examples of possible reasonable accommodations under the PWFA, including frequent breaks, sitting/standing, schedule changes, part-time work, and paid and unpaid leave to recover, remote work, closer parking, light duty, making existing facilities accessible or modifying the work environment, job restructuring, temporarily suspending one or more essential functions, acquiring or modifying equipment, uniforms, or device, and adjusting or modifying examinations or policies.
- Modifications Considered That Don’t Impose Undue Hardship “Virtually in All Cases”
 - The final rule identified four reasonable accommodations that would be found to be a reasonable accommodation when requested by a pregnant employee “in virtually all cases,” including:
 - Allowing an employee to keep or carry water near and drink, as needed;
 - Allowing an employee to take additional restroom breaks, as needed;
 - Allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
 - Allowing an employee to take breaks to eat and drink, as needed.

- Prohibited Practices
 - The final rule provides that the PWFA prohibits employers from:
 - Failing to provide a qualified employee or applicant with reasonable accommodations, including an unnecessary delay in providing reasonable accommodations;
 - Requiring a qualified employee or applicant to accept an accommodation other than one arrived at through the interactive process. ;
 - Denying employment opportunities to a qualified employee or applicant if the denial is based on the employer's need to make a reasonable accommodation for the known limitation of the employee or applicant;
 - Requiring a qualified employee or applicant to take paid or unpaid leave if another reasonable accommodation exists; and
 - Taking adverse action against a qualified employee or applicant for requesting or using a reasonable accommodation.
- EEOC Summary of Key Provisions
 - The EEOC has published a Summary of Key Provisions of EEOC's Final Rule to Implement the Pregnant Workers Fairness Act. You can review it by clicking [here](#).

TIPS FOR EMPLOYERS

- Train your first-level supervisors, who are likely to receive accommodation requests, about how to respond to such requests.
- Use the interactive process once an employee requests an accommodation.
- Employees may need different accommodations as their pregnancy progresses, they recover from childbirth, or related medical conditions improve or worsen.
- Review your current pregnancy accommodation policies and current processes to ensure compliance with the EEOC's final regulations.

If you have questions or need further guidance on how the PWFA's final regulations could impact your business or organization, please contact a [CDF attorney](#).