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Client Alert

Employment

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Pregnant Workers Glowing Over New Pregnancy Related Rights and Benefits

By Julie Levinson Werner and Lauren M. Hollender

Pregnant workers will soon have the right to an expanded range of accommodations under the final regulations interpreting the federal Pregnant Workers Fairness Act (PWFA). Those regulations, issued by the Equal Employment Opportunity Commission (EEOC), take effect June 18, 2024.

New York also has expanded benefits for pregnant workers, becoming the first state to require employers to provide paid, as opposed to unpaid, lactation breaks as of June 19, 2024, and paid leave to pregnant employees for prenatal care (in addition to state-required sick leave) as of January 1, 2025.

Expanded Accommodations

The PWFA requires most employers with 15 or more employees to provide "reasonable accommodations" to qualified employees for their known limitations due to "pregnancy, childbirth, or related medical conditions," unless an accommodation would create an undue hardship for the employer. Highlights from the final regulation include:

- Numerous examples of reasonable accommodations, such as additional breaks to drink water, eat, or use the restroom; a stool to sit on while working; time off for health care appointments; temporary reassignment; temporary suspension of certain job duties; telework; or time off to recover from childbirth or a miscarriage, among others
- Guidance regarding limitations and medical conditions for which employees or applicants may seek reasonable accommodation, including miscarriage or stillbirth; migraines; lactation; and pregnancy-related conditions that are episodic, such as morning sickness
- Guidance encouraging early and frequent communication between employers and workers to raise and resolve requests for reasonable accommodation in a timely manner
- Explanation of when an accommodation would impose an undue hardship on an employer and its business

The conditions that qualify for accommodation under the PFWA are more expansive than typical pregnancy-related disabilities that the Americans with Disabilities Act (ADA) protects. The EEOC has interpreted conditions related to pregnancy and childbirth to include "current pregnancy, past pregnancy, potential or intended pregnancy (which can include infertility, fertility treatments, and the use of contraception) and labor and childbirth (including vaginal delivery and cesarean section.)" Significantly, pregnancy-related limitations also include "a need or a problem related to maintaining a pregnant employee's health or the health of the pregnancy." For example, the regulations provide that an employer may be required to accommodate an employee who asks to limit exposure to secondhand smoke to protect the health of her pregnancy.

Further, in its final regulations, the EEOC included "having or choosing not to have an abortion" as medical conditions related to pregnancy or childbirth. Although the effects of accommodations for abortion are likely limited to unpaid leave from work and do not obligate employers or employer-sponsored health plans to cover abortion-related costs, 17 state attorneys general have now sued the EEOC challenging that aspect of the PWFA.

While the ADA requires an employer to accommodate an employee disabled by pregnancy so long as the employee, with accommodation, can perform the essential functions of her job, the PWFA may require employers ***to temporarily suspend*** the essential functions of an employee's job to accommodate a pregnancy-related condition. Under the PWFA, an employee who is unable to perform the essential functions of her job can still be "qualified" if her inability to perform the essential job function is "for a temporary period" and her inability to perform the essential job function can be reasonably accommodated. In addition, the EEOC's position on whether an employer can require supporting documentation for accommodation requests under the PWFA differs significantly from its position under the ADA. In

certain circumstances, when the physical condition of pregnancy is "obvious," the regulations provide that the employee may not be required to provide supporting documentation from her health care provider for certain accommodations.

Paid Lactation Breaks

New York Senate Bill (S) 8306C requires covered employers to provide paid 30-minute lactation breaks to employees who need to express breast milk for a newborn child for up to three years following the child's birth. The law takes effect June 19, 2024. Previously, the New York law only required employers to provide unpaid break time.

Paid Leave for Prenatal Care

Starting January 1, 2025, New York workers who are pregnant are entitled to up to 20 hours of paid time off "for the health care services received by an employee during their pregnancy or related to such pregnancy, including physical examinations, medical procedures, monitoring and testing, and discussions with a health care provider related to the pregnancy." Under Senate Bill (S) 8305C, this paid prenatal personal leave is in addition to the sick leave available under New York's paid sick leave program and the time off available under New York's Paid Family Leave law.

Conclusion

If you have any questions or would like more information on the legal developments discussed above, please contact a member of Lowenstein Sandler's Executive Compensation, Employment, and Benefits Group.

Contacts

Please contact the listed attorneys for further information on the matters discussed herein.

JULIE LEVINSON WERNER
Partner
Vice Chair, Employment
T: 212.419.5864 / 973.597.2550
jwerner@lowenstein.com

LAUREN M. HOLLENDER
Counsel
T: 973.597.2530
lhollender@lowenstein.com