Patterson Belknap

Employment Law Alert
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The EEOC Issues Notice of Proposed Rulemaking Under the Pregnant Workers Fairness Act

As noted in our May 3, 2023 client alert, Congress enacted the Pregnant Workers Fairness Act ("PWFA") in late 2022, expanding protections for pregnant workers. This statute, which went into effect on June 27, 2023, requires employers to provide reasonable accommodations to an employee's known limitation related to pregnancy, childbirth, or related medical conditions. The PWFA directed the Equal Employment Opportunity Commission ("EEOC") to make rules to implement the statute and provide examples of reasonable accommodations. On August 7, 2023, the EEOC issued a notice of proposed rulemaking that discusses various elements of the PWFA. We provide some of the key takeaways below.

1. The EEOC proposes to interpret the element of "reasonable accommodation" broadly consistent with the meaning of the same term under the Americans with Disabilities Act ("ADA"). The EEOC's examples of such reasonable accommodations include changing an employee's schedule, permitting employees to take more frequent breaks, allowing for sitting or standing on the job, permitting part-time work, allowing employees to go on paid and unpaid leave, restructuring jobs, temporarily suspending one or more essential functions, decreasing the workload by providing lighter duties, making existing facilities more accessible or modifying the work environment, acquiring or modifying equipment, and modifying employment policies.

2. Of this list of "reasonable accommodations," the EEOC claims that, in most cases, providing meal and water breaks, permitting the employee to sit or stand where necessary, and providing employees with additional restroom breaks would not impose any "undue hardship" on the employer. This means that the employer will be required to provide these accommodations under ordinary circumstances.

3. Coverage: Anyone who satisfies the definition of "employer" and "employee" under Title VII of the Civil Rights Act of 1964 ("Title VII") is covered by the PWFA. This means that the PWFA applies to most employers with 15 or more employees engaged in an industry affecting commerce.

4. The PWFA uses the phrase "pregnancy, childbirth, or related medical conditions," which appears in Title VII's definition of sex. The EEOC interprets the phrase as having the same meaning under both statutes. A non-exhaustive list of these related medical conditions includes using birth control, having or choosing not to have an abortion, menstruation, obtaining fertility treatments, lactation, endometriosis, miscarriage, stillbirth, etc. An employee does not have to use a medical term to describe this related medical condition in order to obtain a reasonable accommodation.

5. Remedies and Enforcement: The PWFA institutes the same basic procedures for filing claims as Title VII. Employers who make good faith attempts to provide reasonable accommodations are protected from large damages awards.

6. Employees may request a reasonable accommodation by identifying a limitation arising from pregnancy, childbirth, or other related medical conditions, and seeking a modification at work. However, there is no prescribed form that employees must follow to make this request. Employers are required to make reasonable accommodations even in response to oral requests by their employees.

7. Employers are not required to provide reasonable accommodations if they involve an "undue hardship." Although the PWFA's definition of this term is similar to the one under the ADA,

the EEOC outlines some important factors in considering whether an employer would be subjected to such "undue hardship." These factors include the length of time that an employee cannot perform an "essential function," the nature of such an "essential function" and its frequency, whether such reasonable accommodations have been provided in the past to similarly situated employees, whether temporary employees can be hired to perform such an essential function, and whether the performance of the essential function can be postponed.

As we noted previously, these protections for pregnant workers already exist under New York State and New York City law. Nonetheless, employers in New York should review their employment policies to ensure they are in accordance with the requirements of the PWFA. Employers should also note that the EEOC has updated its workplace discrimination poster and also published a separate poster, to provide workers with notice of their federal rights under the PWFA.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

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