Engage PEO Client Alert

Two New Federal Laws Expand Protections for Workers with Limitations Due to Pregnancy, Childbirth, Related Conditions; Workers Who Need to Breastfeed or Pump Breast Milk

THE FEDERAL GOVERNMENT EXPANDS PROTECTIONS FOR BREASTFEEDING EMPLOYEES

WHAT'S NEW: The Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP for Nursing Mothers Act) was adopted on December 29, 2022, by President Biden. The PUMP for Nursing Mothers Act expands workplace protections for employees who need to breastfeed their child or pump breast milk.

The extended coverages will take effect immediately and the remedies will take effect on April 28, 2023 — 120 days from the enactment date of the Act.

WHY IT MATTERS: The PUMP for Nursing Mothers Act amends the Fair Labor Standards Act (FLSA) and fills in the gaps of existing law pertaining to breastfeeding employees. The FLSA already requires employers to provide, for non-exempt employees, reasonable break time to express breast milk for a nursing child for one year from the child's birth.

Employers are also required to provide "a place, other than a bathroom, that is shielded from view and free from intrusions from co-workers and public, which may be used by an employee to express breast milk."

The PUMP for Nursing Mothers Act extends the same coverage to exempt employees. The PUMP for Nursing Mothers Act further makes clear that time a worker is breastfeeding must be compensated if the employee is not completely relieved of duty.

Notably, with some exceptions, before an employee may recover damages for an employer's failure to provide an appropriate place for expressing breast milk, the employee shall first inform the employer of any failure and provide the employer 10 calendar days to come into compliance.

Certain employees of air carriers, rail carriers and motorcoach service operators are exempt from the nursing employee protections under the FLSA.

Employers with fewer than 50 employees are exempt from the requirements of the PUMP for Nursing Mothers Act if the requirements would impose an undue hardship on the employer.

WHAT EMPLOYERS SHOULD DO: Employers should review their lactation break policies and ensure that they are not limited to non-exempt employees.

THE FEDERAL GOVERNMENT EXPANDS PROTECTIONS FOR EMPLOYEES WHO HAVE LIMITATIONS RELATED TO PREGNANCY, CHILDBIRTH OR RELATED MEDICAL CONDITIONS

WHAT'S NEW: The Pregnant Workers Fairness Act (PWFA) was adopted on December 29, 2022, by President Biden. The law applies to private and public sector employers with at least 15 employees. The law goes into effect on June 27, 2023.

WHAT IT MEANS: The PWFA makes it unlawful for employers to:

1) Fail to make reasonable accommodations for known limitations related to pregnancy, childbirth, or related medical conditions of a qualified employee, unless an employer can show that providing a reasonable accommodation would create an undue hardship.
2) Require a qualified employee to accept any reasonable accommodation other than one reached through the interactive process.
3) Deny employment opportunities to a qualified employee because of known limitations and a need for reasonable accommodation.
4) Require a qualified employee to take paid or unpaid leave if the employee can still perform work with an accommodation.
5) Take adverse action against a qualified employee for requesting or using a reasonable accommodation.

The PWFA provides that the terms "reasonable accommodation" and "undue hardship" have the same meaning and are construed the same as they are under the ADA. The same interactive process is required.

The Act protects "qualified employees." A qualified employee is an employee (or applicant) who can perform the essential functions of the job with or without reasonable accommodation. Notably, a qualified employee is still qualified even if they cannot perform the essential functions of the job, as long as any inability is temporary, the essential function can be performed in the near future, and the inability can be reasonably accommodated.

An employer shall not retaliate against an employee for opposing an unlawful act or practice under the PWFA.

WHAT EMPLOYERS SHOULD DO: Employers should review their accommodation policies and include provisions pertaining to pregnancy, childbirth and related medical conditions. Please reach out to your Engage Human Resources Consultant for a sample policy.

If you have any questions about this alert or any other HR-related matters, please reach out to your Engage Human Resources Consultant.