
Pregnancy Protections

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Newly passed federal legislation is ushering in a new era in protections for pregnant and nursing mothers in the workplace—and businesses should take notice and update their policies to ensure they stay on the right side of the law. The Pregnant Workers Fairness Act (PWFA) and Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act both expand previous protections for pregnant and nursing mothers and provide guidance in areas not covered by existing law.

Does the New Legislation Affect My Business?

Most businesses will be affected by one or both pieces of the new legislation.

Any business covered by the Americans with Disabilities Act (ADA) is subject to the newly passed PWFA, which expands the ADA's protections to pregnant workers. The ADA applies to employers with fifteen (15) or more employees. Any employer with fifteen or more employees must provide a reasonable accommodation for an employee with a qualifying disability unless the requested accommodation would provide an undue hardship on the employer. An undue hardship exists where providing an accommodation would create significant expense or difficulty.

While the ADA has always provided protection to workers with short-term illnesses caused by pregnancy, considering them qualifying disabilities, the passage of the PWFA means that pregnancy itself qualifies workers for a reasonable accommodation.

The PUMP Act has a broader reach and applies to all workers, except members of a flight crew, whether or not their employers have fifteen or more employees. The PUMP Act replaces previous legislation that applied only to a class of workers known as exempt, or salaried, employees. Employers with fewer than fifty employees can be excused from complying with the PUMP Act if compliance would create an undue hardship.

Because of the broad reach of this legislation, all employers, regardless of whether their current policies address pregnant or nursing mothers, should review and revamp their guidelines to ensure compliance.

How Should I Update My Policies?

The PWFA doesn't require employers to implement a particular set of policies. Instead, employers subject to the ADA should be prepared to apply to pregnant and nursing mothers the same reasonable accommodation test they use to evaluate accommodations for other employees with qualifying conditions. This means that, among other things, a pregnant or nursing mother cannot be required to take leave (paid or unpaid) if her employer can provide another reasonable accommodation. Mothers might also request reasonable accommodations such as more frequent breaks, the ability to sit instead of stand, and limits on heavy lifting.

The employer's role is to evaluate whether the requested accommodation poses an undue hardship on the business, a heavily fact-specific inquiry. If the pregnant or nursing employee can fulfill her essential job functions, with or without reasonable accommodations, her employer must make sure that she is not denied job opportunities, including in the hiring process, or advancement.

In contrast, businesses will need to draft policies that incorporate the specific guidelines outlined in the PUMP Act. The PUMP Act requires

all employers to provide a clean, private space for lactating mothers to pump breast milk. If an employee is not completely relieved from her duties, the time she spends pumping milk must be paid and must count towards calculation of her overtime and minimum wage hours. Employers should take note that the PUMP Act also provides a cause of action for employees to sue employers for monetary damages if employers do not comply with the law.

What Next?

The PWFA and the PUMP Act require employers to implement more specific and comprehensive policies than past legislation pertaining to pregnant and nursing mothers. Every business owner should protect their business by conducting a thorough review their employment policies and staying aware of changes in legislation. Our employment law team at Tuggle Duggins can help ensure your policies are up-to-date and comply with state and federal guidelines.

For more information, please contact Ross Hamilton at RHamilton@tuggleduggins.com or 336-271-5279 or Shauna Baker-Karl at SBaker-Karl@tuggleduggins.com or 336-271-5249.

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