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12 Days Of Handbook Updates: Pregnancy Accommodations

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This is the fifth of our 12 Days of Handbook Updates that take you through 12 important topics for employers as we round out the year.

Another important pregnancy-related law we saw this year was the [Pregnant Workers Fairness Act](#) (PWFA). The PWFA requires covered employers to provide “‘reasonable accommodations’ to a worker’s known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an ‘undue hardship.’”

While both the Americans with Disabilities Act (ADA) and the PWFA provide employees with reasonable accommodations and are administered by the Equal Employment Opportunity Commission (EEOC), there are important distinctions between the two laws. Pregnancy is not itself a disability under the ADA; however, under the PWFA, pregnancy (and all medical conditions related to pregnancy) automatically qualify an employee for reasonable accommodations. Therefore, employers are encouraged to include a handbook policy that specifically mentions the PWFA, and not assume it’s covered by their ADA policy.

The PWFA went into effect on June 27, 2023. This summer, the EEOC issued [notice of a proposed rulemaking](#); it is likely to finalize PWFA regulations in

early 2024. The proposed rulemaking provides examples of what may be considered a “reasonable accommodation” under the PWFA. Many of the examples are intuitive, such as breaks and allowing employees to sit more frequently, but some are more creative, such as:

1. **Modifying the work environment.** This could include moving an employee’s workspace closer to the bathroom or providing a fan to regulate temperature.
2. **Telework.** Could be used to accommodate a period of bed rest or a mobility impairment.
3. **Parking.** Providing reserved parking if the employee is experiencing fatigue or limited mobility due to pregnancy.
4. **Uniforms.** Providing uniforms that account for changes in body size during and after pregnancy, including during lactation.

Importantly, the proposed regulations suggest that an employee may not need to be pregnant or have given birth to be protected by the PWFA. For example, the proposed regulations say that an employee “who requests leave for IVF treatment for the worker to get pregnant has a related medical condition (difficulty in becoming pregnant or infertility)” and is protected by the PWFA as they seek medical care.

So this holiday season, think about how you can help an employee experiencing a known limitation related to pregnancy, childbirth, or a related medical condition. Maybe consider getting ahead of the game and ordering uniforms for employees that can accommodate pregnancy. Ensure your handbooks are up to date and include the PWFA, and look for the EEOC’s final PWFA regulations.