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Understanding the Pregnant Workers Fairness Act: What Employers Need to Know

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The Pregnant Workers Fairness Act (PWFA) is growing up very quickly, and the EEOC has been working fervently, through a combination of guidance and enforcement measures, to ensure it thrives. Specifically, just shy of the PWFA's first birthday, the EEOC's final rule and interpretive guidance has taken effect, amplifying employer obligations regarding pregnancy-related accommodations in the workplace. Of late, the EEOC has initiated a string of lawsuits against employers under the PWFA. Given these recent developments, employers should review their pregnancy-related accommodations policies and procedures to make sure they comport with the latest agency guidance.

Overview of the PWFA

The PWFA requires employers with 15 or more employees to provide reasonable accommodations to qualified job applicants and employees with known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless doing so would create an undue hardship for the employer. Under certain circumstances, accommodations may include the temporary suspension of essential job functions, and employers should not force a qualified employee to take paid or unpaid leave if a reasonable

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accommodation that would let the employee keep working is available. Most importantly, an employer should have an interactive discussion with the employee before imposing a specific accommodation.

The PWFA also contains anti-retaliation and anti-coercion protections for individuals requesting or using reasonable accommodations, or otherwise engaging in other protected activity, under the PWFA.

Since becoming law, the PWFA has been a vital part of the EEOC's overall strategic enforcement plan, including through the agency's acceptance and investigation of charges, the implementation of interpretative guidance, and the hard launch of a litigation campaign, from which employers can take cues to avoid any missteps.

EEOC's First Settlement Under the PWFA

Perhaps one of the most notable developments regarding the EEOC's enforcement of the PWFA is a recent settlement involving a pest control company, which was alleged to have terminated a pregnant employee after she requested a reasonable accommodation to attend monthly medical appointments. As publicly announced by the EEOC in a press release, the company agreed to pay the terminated employee monetary damages, revise its policies, appoint an EEO coordinator, and provide training to its staff on pregnancy accommodations. In that press release, the EEOC Field Office Director emphasized the importance of the PWFA to help pregnant workers "stay healthy and attached to the workforce" and that it was "imperative that all employers look at their policies and implement changes to ensure pregnant employees are protected." This case certainly serves as a wake-up call for employers to ensure they are up to speed on the PWFA.

A Surge in Legal Action

The EEOC is not resting on that one case. Instead, it is actively targeting companies in a variety of industries who are alleged to have fallen short of their obligations under the PWFA. Just last month, the EEOC rounded out the end of its fiscal year by filing five lawsuits against employers involving the alleged infringement of PWFA rights. These cases serve as a clear warning for employers to stand up and pay attention to this first federal law expressly aimed at preventing discrimination against pregnant workers in over four decades. They further underscore the multitude of challenges individuals may face in securing pregnancy-related accommodations in the workplace.

For example, one of the cases brought by the EEOC involved an employee of a diversified industrial manufacturing company who sought light duty during her pregnancy due to concerns about physical strain. The company allegedly denied her request and only offered unpaid leave, despite accommodating non-pregnant employees with temporary disabilities. This failure to engage in discussions about reasonable accommodations was considered by the EEOC to be a violation of the PWFA.

In another case, the EEOC alleges that a recreational off-road vehicle manufacturer failed to accommodate an employee's pregnancy-related restrictions, including by not excusing absences for prenatal care and by further requiring mandatory overtime despite her physician's restriction to a 40-hour workweek. The pressure from attendance penalties led the employee to resign to protect her pregnancy, prompting the EEOC's legal action.

Similarly, in yet another case, a specialty medical practice is accused of denying a pregnant medical assistant critical accommodations, such as the ability to sit, take breaks, or work part-time during the final trimester of a high risk pregnancy, or to allow time off for prenatal care. In that case, the company is alleged to have placed the pregnant worker on

unpaid leave and then ultimately terminated her employment after she refused to return from leave without the promise of guaranteed lactation breaks.

These cases, alone, are enough to cause employers sleepless nights if they don't heed the warning to review and refine their pregnancy accommodation practices and procedures. All indications are clear that the EEOC will continue to file lawsuits under the PWFA as an additional enforcement tool, on the heels of the publication of its final rule and interpretative guidance regarding the PWFA. While a lawsuit by the EEOC may be a fairly remote possibility, employers should be mindful of the ability of private litigants to bring actions under the PWFA.

Tips to Avoid PWFA Litigation

Here are some essential tips for employers seeking to avoid or minimize potential liability under the PWFA:

1. Ditch Old ADA Procedures for Pregnancy-Related Accommodations

One employer made the mistake of sending extensive documentation requests to a pregnant employee's physician, which may not be appropriate under the PWFA. Remember, the information employers can request for pregnancy-related accommodations is much more limited compared to requests under the Americans with Disabilities Act (ADA). An employer's request for documentation from an individual's healthcare provider should only be made when reasonably necessary to confirm the physical or mental conditions and/or the nature or extent of any adjustment or change that is needed, where not otherwise obvious or already supported by sufficient information, including the individual's self-confirmation. So, basically, it is very much the exception and not the rule.

2. Don't Require Leave of Absence Instead of On-the-Job Accommodations

Generally, mandating a leave of absence violates the PWFA. The only exceptions are if the employer has engaged in an interactive process with the employee to explore other alternatives unsuccessfully, and it is the accommodation of "last resort," or if the employee expresses a preference to take leave.

3. Understand That Employer Obligations Go Beyond Pregnancy

An employer's responsibilities don't necessarily end after the pregnancy period. Employers also need to consider accommodations during the pre-pregnancy phase, maternity leave, and when the employee returns, including support for lactation.

4. Educate Managers and HR

Conduct training sessions specifically focused on the PWFA to ensure all relevant staff understand their responsibilities in supporting pregnant employees and the accommodations process.

5. Don't Let the FMLA Mislead You

The Family and Medical Leave Act (FMLA) provides for up to 12 weeks of unpaid leave for qualifying reasons, but this doesn't exempt employers from offering reasonable accommodations under the PWFA. Just because an employer is meeting its FMLA obligations doesn't mean it is in the clear as to other pregnancy-related needs.

By being proactive and informed about the PWFA, employers can better navigate their responsibilities and avoid costly legal troubles. It's all about creating a supportive environment for pregnant employees while ensuring your company stays compliant. For questions, concerns, or other assistance regarding the employer's obligations under the PWFA, reach out to your Akerman Labor & Employment attorney.