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## **The New World of Pregnancy Accommodations**

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## Getting to Know the Pregnant Workers Fairness Act

While the Pregnant Workers Fairness Act (“PWFA”) was largely molded after the regulations laid out in both Title VII and the ADA, it broadened the definition of who is considered a qualified employee and expanded the accommodations available to employees who are not only pregnant, but who have recently given birth or who are experiencing an issue *related* to pregnancy. The PWFA became effective June 27, 2023. After several months, the EEOC finally issued its final rule and interpretive guidance, the Implementation of the Pregnant Workers Fairness Act. 89 Fed. Reg. 29,096 (April 19, 2024) (to be codified at 29 C.F.R. pt. 1636).<sup>1</sup> The EEOC’s final rule consists of its interpretation of the PWFA and acts as guidance for employers as they navigate the new world of accommodations required under the PWFA. For those who were closely tracking the EEOC’s proposed rule during the commentary period, not much has changed.

At its core, the PWFA “requires a covered entity to make reasonable accommodation to the known limitations of a qualified employee related to pregnancy, childbirth, or related medical conditions, absent undue hardship.” *Id.* at 29,183; 42 U.S.C. § 2000gg-1(1). The PWFA relies on the ADA when defining the terms reasonable accommodation and undue hardship. *Id.* at 2000gg(7). While Title VII focuses on discriminatory treatment and ensuring that workers affected by pregnancy, childbirth, or related medical conditions are treated the same as other similarly situated individuals and the ADA focuses on protecting workers from discrimination based on disability, the PWFA fills in a unique gap that now covers pregnancy-related conditions, including those that do not rise to the level of a disability.<sup>2</sup>

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<sup>1</sup> The EEOC includes various examples laid out by the EEOC in Appendix A to Part 1636 – Interpretive Guidance on the Pregnant Workers Fairness Act. When first confronted with more complex issues under the PWFA, employers may choose to look to these examples first as guidance.

<sup>2</sup> While some pregnancy-related conditions may qualify as a disability under the ADA, pregnancy itself does not.

Similar to Title VII and the ADA, the PWFA allows for employees to file a charge of discrimination, provides for limitations on compensatory and punitive damages, limits damages if employers make a good faith effort to reasonably accommodate employees, and requires the provision of reasonable accommodations, which employers should identify via the interactive process. The PWFA also includes several new provisions, such as expanding the definition of a qualified employee to one who temporarily cannot perform the essential functions of the position, allowing leave as an accommodation, and requiring the provision of reasonable accommodations even if the known limitation does not rise to the level of a qualifying disability under the ADA. Because the PWFA and the ADA have a chance of overlapping, for example when either pregnancy or childbirth exacerbates a pre-existing disability or when the limitation qualifies under both the ADA and the PWFA, employees may be entitled to an accommodation under either protection.

## Who Qualifies Under the PWFA?

Regardless of the industry, the PWFA applies to private employers and public sector employers that have fifteen or more employees, and follows the definition of employers, employees, and applicants laid out by Title VII and other relevant statutes.<sup>3</sup> 42 U.S.C. § 2000gg(2); 89 Fed. Reg. 29,096 (April 19, 2024) (to be codified at 29 C.F.R. pt. 1636). Following the definition laid out in Title VII, an employee may include an applicant or even a former employee, where applicable. 42 U.S.C. § 2000gg(3); 89 Fed. Reg. 29,183 (April 19, 2024) (to be codified at 29 C.F.R. pt. 1636).<sup>4</sup> A covered entity includes an employer, employing office, entity employing a State employee, or an entity to which section 717(a) of the Civil Rights Act of 1964 applies. 89 Fed. Reg. 29,183 (April

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<sup>3</sup> Such statutes include the Congressional Accountability Act of 1995, 3 U.S.C. § 411(c), and Government Employee Rights Act of 1991. 42 U.S.C. § 2000gg(2).

<sup>4</sup> Full definitions can be found under 89 Fed. Reg. 29,183 (April 19, 2024) (to be codified at 29 C.F.R. pt. 1636).

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