Quick Reminder of the Upcoming Effective Date of the New Pregnant Workers Fairness Act (PWFA)

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As reported in our January 10 alert, the federal Pregnant Workers Fairness Act (PWFA) goes into effect on **June 27**.

While our prior alert contained the details of this new law, here are a few practical steps to consider/questions to ask yourself as the PWFA goes into effect:

1. **Do you need to update the "pregnancy/maternity leave" section of your employee handbook in light of this new law?**

   The answer to this question is YES if you currently offer a set amount of "pregnancy/maternity leave." Like the federal Americans with Disabilities Act (ADA), the new PWFA requires that "leave" be considered as a "reasonable accommodation." This means merely offering a set amount of "pregnancy/maternity leave" per a uniform – i.e., "everyone gets the same amount of leave" — policy may actually *violate* this new law if that is *all* you are offering pregnant employees per your handbook.

2. **Are your front-line supervisors aware that "pregnancy" under the PWFA soon will be treated the same as a "disability" under the ADA? Supervisors need to understand that your company will need to offer accommodations to pregnant employees, such as light duty, *which previously may have only been offered to those injured on the job and/or who had serious, long-term medical conditions* such as cancer, PTSD and diabetes.**
3. **Your employee handbook should be updated to list "pregnancy" as its own protected class in both your "Equal Employment Opportunity" and your "Accommodation Request" sections.**
4. **The "Accommodation Request" section also should include a statement that "Employees will not be subject to retaliation for requesting accommodations due to pregnancy, other medical conditions or religion."**
5. **A final practical note is that, in both your policies and in practice, putting a pregnant employee "out on leave" should not be your initial, only, or otherwise "go to" move when it comes to "accommodation."**

As with a disability under the federal ADA, your "first move" when an employee brings in a medical note describing restrictions should be to evaluate whether you have any work available that they otherwise are qualified to perform safely within those restrictions – even if this work is in another department or at another location within a reasonable proximity to the one where the employee usually works (including their home, if you have remote work available).

As mentioned in our January alert, arguing that at-work accommodations (rather than "only leave") for a pregnant employee do not exist or are not "reasonable" to provide can be challenging because, unlike a disability, pregnancy has a built-in end date. So, an accommodation you could not offer someone who has a permanent or long-term/unknown end-date respiratory, mental or physical condition you could still consider for a pregnant worker. For example, working temporarily in another department or from home, because by its very nature such an accommodation usually will only need to be offered for a few months at most. You can communicate to the employee that the accommodation "will only be offered on a temporary basis" in order to avoid the misperception that it can be offered on a permanent or long-term basis if this is not the case from an operational/undue hardship perspective.

Starting in a couple of weeks, the federal PWFA requires that employers treat pregnancy and related medical conditions as they would a disability under the federal ADA by engaging in the interactive process in order to determine whether a temporary reasonable accommodation can be offered. This includes pregnancy, childbirth and related medical conditions such as post-partum depression (which depending on their length and severity also may rise to the level of a disability under the ADA, requiring a longer-term accommodation on that basis as well).

Another related reminder regarding a new law, the PUMP for Nursing Mothers Act, which was effective in December of 2022, is that the entitlement to workplace lactation breaks for a period of one year after the date of a child's birth has been expanded to cover all employees, including salaried employees. Formerly, only hourly employees were entitled to lactation breaks under the Fair Labor Standards Act. Salaried employees also have to be paid for these breaks. Some state laws such as in Georgia and Illinois require that lactation breaks be paid for all employees. Federal law also requires hourly employees to be paid if the break is shorter than 20 minutes or the employee continues to work during the break. Be sure you have a way of knowing when this is the case (simply asking employees to report this is an easy one!) to avoid wage and hour law violation claims that employees have not been properly paid while taking these breaks.

We’re Here to Help!

As always, we’re here to help you navigate both these new and ever-challenging employee accommodation waters. Please feel free to contact Stacie Caraway or any other member of our Labor & Employment Law Practice Group if you have questions regarding these recent pregnant worker rights and protections laws or other reasonable accommodation policy drafting or practice/training issues or questions.