The Work Week

Bassford Remele Employment Practice Group

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Welcome to another edition of *The Work Week with Bassford Remele.* Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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Minnesota's Legislature Has Been Active. What's Going on At the Federal Level?

Jessica L. Kometz

On June 27, 2023, the Pregnant Workers Fairness Act ("PWFA") went into effect. The PWFA provides that it is an unlawful employment practice to: (1) fail to make reasonable accommodations to the known limitations of a qualified employee related to pregnancy, childbirth, or related medical conditions; (2) require that a qualified employee affected by pregnancy, childbirth, or related medical conditions accept an accommodation other than one arrived at through an interactive process; (3) deny employment opportunities to a qualified employee if the denial is based on the need to make reasonable accommodations for known limitations related to pregnancy, childbirth, or other related medical conditions; (4) require a qualified employee to take leave (paid or unpaid) if another reasonable accommodation can be provided for known limitations related to pregnancy, childbirth, or other related medical conditions; and (5) take adverse action in terms, conditions, or privileges of employment against a qualified employee on account of the employee requesting or using a reasonable accommodation to known limitations related to pregnancy, childbirth, or other related medical conditions.

Who is considered a "covered entity" under the PWFA? A "covered entity" is an employer – meaning a person engaged in industry affecting commerce who has fifteen (15) or more employees.

Are all employees "qualified employees" under the PWFA? No. A "qualified employee" is defined under the PWFA to be "an employee or applicant who, with or without reasonable accommodation, can perform the essential functions of the employment position." However, an employee will be considered a "qualified employee" if: (1) his or her inability to perform an essential function is for a temporary period; (2) the essential function could be performed in the near future; and (3) the inability to perform the essential function can be reasonably accommodated.

When is a limitation considered a "known limitation"? A "known limitation" is defined as a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee, or his or her representative, has communicated to the employer. Importantly, the condition is not required to meet the definition of a "disability" under the ADA.

What sorts of accommodations may be considered reasonable? The House Committee on Education and Labor Report on the PWFA gives several examples of possible reasonable accommodations. Some of these examples include, but are not limited to, providing seating to employees that would otherwise be required to stand, providing additional breaks for water, designating a closer parking space for a qualified employee, providing flexible hours, giving employees appropriately sized uniforms and safety equipment, providing additional break time to use the bathroom, excusing a qualified employee from strenuous activities, or excusing a qualified employee from activities that may involve exposure to harmful materials.

This new law may require employers to draft new policies or to amend their existing policies and agreements. If you have any questions relating to the PWFA or how it relates to other laws such as state laws, Title VII, or the ADA, or if you need assistance drafting or amending your policies and agreements, the Bassford Remele Employment Law Practice Group is here to help!

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