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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EEOC's New Rule and Guidance on the Pregnant Workers Fairness Act

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On June 18, 2024, the EEOC's final rule regarding the Pregnant Workers Fairness Act goes into effect. The Act requires reasonable accommodations to a qualified employee's known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause an undue hardship on the operation of the business.

Who is Affected by the Pregnant Workers Fairness Act?

Employers are covered by the Act if they have 15 or more employees, regardless of the industry. Notably, the Act's approach to protection follows Title VII, rather than the FMLA. As a result, employees are covered even if they have not worked for the employer for a specific length of time. The Act does not require accommodations to an employee when an employee's partner, spouse, or family member—and not the employee themselves—has a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions.

What Limitations Does the Pregnant Worker's Fairness Act Cover?

The Act covers only known limitations. A "known" limitation under the Act is one which the employee, or the employee's representative, has communicated to the business. The requirement to accommodate is not triggered until this communication occurs.

The Act also includes mental conditions as a related medical condition. The mental condition may be modest or minor and/or an episodic impediment or problem and it could be based on medical treatment or a problem related to maintaining their health or the health of the pregnancy. In other words, the mental condition does not need to arise out of childbirth or pregnancy exclusively. Furthermore, the statute does not require that pregnancy, childbirth, or related medical conditions be the sole, the original, or a substantial reason for the physical or mental condition.

Additionally, the EEOC refused to set a temporal limitation on the basis that "adopting such a bright-line temporal rule would improperly exclude many employees, such as employees with postpartum limitations, who may require pregnancy-related accommodations." The only determination is whether the limitation is related to the pregnancy or childbirth of the specific employee in question. This is a fact-specific determination that will be guided by existing Title VII precedent and prior relevant Commission guidance.

One of the key "related medical conditions" highlighted by the EEOC is lactation. The EEOC specifically found that lactation can be a related medical condition under the Act. This means employers must provide reasonable accommodations for employees who are breastfeeding or have other lactation needs. Another key "related medical condition" defined by the EEOC is abortion. The Commission stated the proposed definition of "pregnancy, childbirth, or related medical conditions" includes abortion for which a qualified employee could receive an accommodation.

The EEOC declined to make a firm determination regarding infertility treatments. Instead finding that whether infertility treatments are covered by the Act will depend upon the facts of the case. The EEOC did state, however, that under the Act "a limitation related to contraception that affects the individual employee's potential pregnancy can be the basis for a request for an accommodation."

With potential major shifts in the accommodations landscape, the employment team at Bassford Remele is available to help employers navigate their requirements under the Pregnant Workers Fairness Act and other state and local legislation.

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