

Publications

EEOC Issues Final Rule Regarding Pregnancy Discrimination

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On April 19, 2024, the Equal Employment Opportunity Commission (the “EEOC”) published a [final rule](#) and interpretive guidance (“Final Rule”) to implement the Pregnant Workers Fairness Act (“PWFA”), effective June 18, 2024. The PWFA requires a covered entity to provide reasonable accommodations to a qualified employee for known limitations related to, affected by, or arising out of pregnancy; childbirth; or a related medical condition, with certain exceptions.

GROOM INSIGHT: “Covered entities” (used interchangeably with “employer”) include public and private employers with 15 or more employees, unions, employment agencies, and the Federal Government.

Background

In 1978, Congress passed the Pregnancy Discrimination Act (“PDA”) to codify the EEOC’s interpretation that protection from sex discrimination under Title VII of the Civil Rights Act of 1964 (“Title VII”) includes pregnancy, childbirth, or a related medical condition. Over the years, however, Congress concluded that the PDA had gaps. Congress enacted the PWFA in large part to reconcile those gaps and to improve maternal and infant health outcomes.

Highlights of Final Rule

Thousands of comments to the proposed rule expressed concerns about certain definitional provisions and how those definitions could infringe on the federally-protected rights of the employer providing the accommodation. The Final Rule addresses those comments and expressly relies on the definitions of other federal statutes that have been enacted for years, including Title VII, as amended by the PDA and the Americans with Disabilities Act of 1990 (“ADA”).

GROOM INSIGHT: Note, however, that the definition of “known limitation” under the PWFA and ADA differ, and the physical or mental condition (i.e., the “limitation”) required to trigger the obligation to provide a reasonable accommodation under the PWFA does not need to meet the more stringent definition of a “disability” under the ADA.

The most controversial part of the Final Rule is the EEOC’s decision to include abortion in the definition of “pregnancy, childbirth or related medical conditions.” Nearly all 100,000 comments received in response to the proposed rule were related to the EEOC’s decision to include abortion in its extensive (but not exhaustive) list of potential “related medical conditions.” The EEOC makes clear that the examples in the regulation are illustrative, and the EEOC will assess whether there has been a violation under the PWFA on a case-by-case basis.

In the preamble to the Final Rule, the EEOC defends its position to include abortion by referencing the identical language contained in Title VII, as amended by the PDA. In addition, the EEOC cites to the plain text of the PWFA. Accordingly, the EEOC finalized the regulation using this consistent language and will rely on existing Title VII precedent when interpreting the PWFA.

The EEOC also provided assurances to commenters opposed to including abortion in the definition. The inclusion of the term is for the limited purpose of determining whether an employee qualifies for an accommodation under the PWFA—it does not regulate when an abortion should be permitted or require employers to pay for an abortion or provide health care benefits for abortion in violation of state law.

GROOM INSIGHT: On April 25, 2024, a group of attorney generals filed a lawsuit against the EEOC alleging that the Final Rule is unconstitutional and a “radical interpretation” of Congress’s intent with the PWFA. The complaint also states that this interpretation of the PWFA will cause the states to suffer irreparable harm by way of productivity losses, infringement on state sovereignty, and other costs related to benefits and compliance.

Final Thoughts

The PWFA is just one of a series of recent efforts enacted to support women experiencing pregnancy, childbirth, or a related medical condition. At the state and federal level, we have also seen:

- EEOC enforcement guidance regarding harassment in the workplace to address the numerous claims of unlawful harassment based on race, sex, disability, and other characteristics protected under Title VII. Similar to the Final Rule, harassment involving lactation, use of contraception, or the decision of whether or not to have an abortion is considered sex-based harassment under Title VII if linked to an individual’s sex, including pregnancy, childbirth, or a related medical condition.
- A federal expansion of protections for nursing mothers under the Fair Labor Standards Act by the Providing Urgent Maternal Protections for Nursing Mothers Act (“PUMP Act”);
- The passage of paid leave protections at the state level. For example, New York just adopted two new measures:
 - The Paid Prenatal Personal Leave (effective January 1, 2025), a novel leave-type that will require 20 hours of paid leave within a 52-week calendar period to receive health services during pregnancy; and
 - Paid Lactation Breaks (effective June 19, 2024), which requires employers to provide 30-minute breaks to employees each time the employee has a reasonable need to express milk.

Based on this trend, we expect to see additional state and federal efforts to support employees experiencing pregnancy, childbirth, or a related medical condition.