

President Biden Signs Expanded Protections for Pregnant and Nursing Employees Into Law

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On December 29, 2022, President Biden signed into law two measures included in the Consolidated Appropriations Act of 2023 that expand protections for pregnant and nursing employees: the Pregnant Workers Fairness Act (PWFA) and the Providing Urgent Maternal Protection for Nursing Mothers Act (PUMP Act). The new protections require employers to provide: (1) reasonable accommodations for pregnant employees, effective 180 days after the law's enactment, or on June 27, 2023; and (2) compensation to breastfeeding employees for "hours worked" during certain lactation breaks, effective 120 days after the law's enactment, or on April 28, 2023.

Pregnant Workers Fairness Act

The PWFA expands the already-existing federal protections for pregnant employees under the Americans with Disabilities Act (ADA) and Pregnancy Discrimination Act of 2010 (PDA), requiring employers with 15 or more employees to provide reasonable accommodations to "qualified employees" with known physical or mental conditions related to, or arising out of pregnancy, childbirth, and related medical conditions. The PWFA defines "qualified employee" as an employee or applicant who, with or without reasonable accommodation, can perform the essential functions of the position.

Similar to the ADA, under the PWFA, employers must engage in an interactive process with a qualified employee or applicant to determine a reasonable accommodation, provided that the accommodation would not impose an undue hardship to the employer. The PWFA prohibits employers from requiring qualified employees to take paid or unpaid leave if another reasonable accommodation can be provided. The PWFA also prohibits retaliation regarding the conditions, terms, and privileges of employment against a qualified employee for requesting or taking a reasonable accommodation.

The PWFA does not address what accommodations are considered "reasonable" for qualified employees. Reasonable accommodations under the PWFA will likely resemble accommodations for qualified employees under the ADA, which are those that do not eliminate an essential function of the job, create a new job for the employee, or provide indefinite leave. Employers can expect future clarity on this issue, as the PWFA requires the Equal Employment Opportunity Commission (EEOC) to issue regulations for the Act within one year that provide examples of reasonable accommodations addressing known limitations related to pregnancy, childbirth, or related medical conditions. The PWFA directs employees who believe their rights have been violated under the Act to file a complaint with the EEOC.

Providing Urgent Maternal Protections for Nursing Mothers Act

The PUMP Act expands already-existing federal protections for breastfeeding employees. The PUMP Act amends a 2010 amendment to the Fair Labor Standards Act (FLSA), which required employers to provide accommodations for breastfeeding employees who are non-exempt under the FLSA with reasonable break time and private space – other than a bathroom – to express milk for one year following the birth of a child. Under the PUMP Act, exempt employees under the FLSA who were not previously entitled to such accommodations under the 2010 amendment, such as salaried employees, are now covered.

The PUMP Act does not entitle employees to compensation during lactation breaks if no work is performed during the break. However, if an employee is not completely relieved from their job duties during the entirety of their lactation breaks, the breaks will be considered “hours worked,” entitling the employee to compensation.

Like the 2010 amendment, an employer with fewer than 50 employees may be exempt from complying with the PUMP Act if they can establish that doing so would impose an undue hardship that would cause them significant difficulty or expense due to the size, financial resources, nature, or structure of their business.

Employees who believe their rights have been violated under the PUMP Act can file a complaint with the Department of Labor’s Wage and Hour Division. However, the PUMP Act requires employees to notify their employer of any alleged non-compliance and give the employer 10 days to come into compliance before commencing any action against them.

What This Means for Employers

To ensure compliance with the PWFA and PUMP Act, employers may need to develop or amend their existing workplace policies to expand reasonable accommodations offered for pregnancy, childbirth and related medical conditions, and breastfeeding employees. If you have any questions concerning the PWFA and PUMP Act, please do not hesitate to contact the Seigfreid Bingham employment attorneys. We will continue to monitor the latest developments on any forthcoming regulations and guidance issued for the laws.

This article is general in nature and does not constitute legal advice. If you have legal questions, please consult the authors, Katie Conklin (kconklin@sb-kc.com) 816.265.4114 and John Vering (jvering@sb-kc.com) 816.265.4109, or other shareholders in Seigfreid Bingham’s Employment Law Group, including: John Neyens (johnn@sb-kc.com) 816.265.4152, Mark Opara (mopara@sb-kc.com) 816.265.4140, Shannon Johnson (sjohnson@sb-kc.com) 816.265.4139, Brenda Hamilton (bhamilton@sb-kc.com) 816.265.4103, Julie Parisi (jparisi@sb-kc.com) 816.265.4159, Christopher Tillery (ctillery@sb-kc.com) 816.265.4157, or your regular contact at Seigfreid Bingham at 816.421.4460.