

The Pregnant Workers Fairness Act:

Section-by-Section

MAY 2017

The Pregnant Workers Fairness Act would promote women's health and economic security by ensuring that workers with limitations related to pregnancy, childbirth or related medical conditions are not forced out of their jobs or denied reasonable workplace accommodations. It would help pregnant workers continue working and supporting their families without risking their health and the health of their pregnancies.

Sec. 1. Short Title.

Pregnant Workers Fairness Act

Sec. 2. Nondiscrimination With Regard to Reasonable Accommodations Related to Pregnancy.

The Pregnant Workers Fairness Act promotes nondiscrimination by specifying that employers with 15 or more employees must abide by the following:

- ▶ Employers must make reasonable accommodations for job applicants or employees affected by a known limitation related to pregnancy, childbirth or a related medical condition, unless the accommodation imposes an undue hardship on an employer's business.
- ▶ Employers cannot deny employment opportunities to employees or applicants based on their need for reasonable accommodations because of pregnancy, childbirth or related medical conditions.
- ▶ Employers are prohibited from requiring employees or applicants to accept an unnecessary accommodation...
- ▶ Employers may not require employees to take paid or unpaid leave if another reasonable accommodation can be provided.

Employers may not take an adverse action in the terms, conditions or privileges of employment against an employee for requesting or using an accommodation.

Sec. 3. Remedies and Enforcement.

The Pregnant Workers Fairness Act provides protections for employees who are already covered by Title VII of the Civil Rights Act of 1964, meaning individuals who work for employers with 15 or more employees. Small businesses with fewer than 15 employees are exempt from the requirements.

The Pregnant Workers Fairness Act establishes that violations of Section 2 constitute unlawful employment practices. For private sector employers, it tracks the enforcement

powers, procedures and remedies established under the Civil Rights Act of 1964. A court may award lost pay, interest, compensatory damages, punitive damages, costs, reasonable attorneys' fees and experts' fees to the extent that such relief is available under the law. Public sector employees have similar protections and relief available through applicable employment statutes (Congressional Accountability Act, Title V of the United States Code, the Government Employee Rights Act of 1991).

The Pregnant Workers Fairness Act prohibits retaliation against individuals who express opposition to acts or practices made unlawful by the law, or who participate in an investigation, proceeding or hearing concerning the law. It also prohibits coercion, intimidation, threats or interference with individuals who are or have exercised, or have aided or encourage another to exercise, their rights under the Act. The same remedies and procedures for violations of Section 2 also apply to claims of retaliation or coercion.

Sec. 4. Rulemaking.

The Equal Employment Opportunity Commission is directed to issue regulations implementing the Pregnant Workers Fairness Act no later than two years after the date of enactment. The regulations should provide examples of specific reasonable accommodations that employers must provide to employees under the law.

Sec. 5. Definitions.

- ▶ **Commission.** Equal Employment Opportunity Commission.
- ▶ **Covered entity.** An employer, employment agency, labor organization, or a joint labor management committee controlling apprenticeship or other training or retraining programs, including on-the-job programs.
- ▶ **Employee.** A person **who works for a public or private employer with 15 or more employees and most federal, state and local government employees**, such as employees of congressional offices, executive agencies and offices, and federal service providers.
- ▶ **Reasonable accommodations.** Defined as it is in the Americans with Disabilities Act (ADA) and involves discrete changes in the work environment or work practices so that individuals may enjoy equal employment opportunities. Also includes that the employer and employee must typically engage in an interactive process to determine the appropriate reasonable accommodation, and a one-size-fits-all solution is not required.
- ▶ **Undue hardship.** Defined as it is in the ADA, as a difficulty or expense that is significant given the resources and circumstances of the particular employer.

Sec. 6. Waiver of State Immunity.

The Act applies when a state is the employer. Relief is available to employees of a state to the same extent remedies are available to employees of other public or private entities if the state is found to have denied a worker a reasonable accommodation.

Sec. 7. Relationship to Other Laws.

The Act does not supersede or invalidate any other law providing greater or equal protections.