

WADLEIGH STARR & PETERS PLLC

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On December 29, 2022, President Biden signed The Consolidated Appropriations Act (“CAA”), 2023 into law. This legislation contains several important sections that affect employers and employees: SECURE 2.0, the Pregnant Workers Fairness Act (“PWFA”) and the Providing Urgent Maternal Protections (“PUMP”) for Nursing Mothers Act. This paper will address the key components of the PWFA and the PUMP Act.

Pregnant Workers’ Fairness Act (“PWFA”)

The PWFA requires employers with 15 or more employees to provide reasonable accommodations for job applicants and employees with known limitations related to pregnancy, childbirth and related medical conditions. The PWFA also protects employees covered by the PWFA from retaliation, coercion, intimidation, threats, or interference if they request or receive a reasonable accommodation. The PWFA also prohibits employers from discriminating against a job candidate or employee because of their need for pregnancy related accommodations.

More specifically, the Act makes it unlawful for employers to:

- fail to provide reasonable accommodations for qualified employees, with qualifying pregnancy related conditions, unless employers can demonstrate that the accommodation would impose an undue hardship on the operation of the employer's business;
- require qualified employees to accept an accommodation other than any reasonable accommodation arrived at through the interactive process;
- deny employment opportunities to qualified employees if the denial is based on the employer’s need to make a reasonable accommodation for such employees;
- require qualified employees to take leave, whether paid or unpaid, if another reasonable accommodation can be provided; and
- take adverse action against a qualified employee on the basis of the employee requesting or using a reasonable accommodation.

Reasonable accommodations could include assigning light duty that does not involve heavy lifting or allowing more frequent bathroom breaks. The legislation essentially mirrors protections for disabled workers under the Americans with Disabilities Act of 1990, but is specific to those limitations related to pregnancy, childbirth, or related medical conditions, which would otherwise not be considered a

disability under the ADA. The obligation to provide accommodations is also limited to the duration of the pregnancy or related condition. The PWFA's definition of reasonable accommodation and the obligation to engage in an interactive process with a qualified employee or applicant mirror the requirements of the ADA.

Relief for private-sector employees is the same as that provided under Title VII, including reinstatement, back pay, front pay, compensatory damages, punitive damages, and the right to recover reasonable attorneys' fees and costs. Public-sector employees are provided similar relief as that offered under the Congressional Accountability Act, Title V of the United States Code, and the Government Employee Rights Act of 1991. The PWFA expressly waives state immunity under the Eleventh Amendment to the Constitution. However, the PWFA provides a defense to damages for employers that, in good faith, work with employees to identify alternative accommodations that are equally effective and do not cause an undue hardship.

The PWFA goes into effect on June 27, 2023, will be enforced by the Equal Employment Opportunity Commission (EEOC). The EEOC must issue regulations which include examples of reasonable accommodations that address known limitations related to pregnancy, childbirth, and related medical conditions.

The Providing Urgent Maternal Protections ("PUMP") for Nursing Mothers Act

The PUMP Act extends the Fair Labor Standards Act's existing protections for nursing mothers to exempt workers. Employers are required to provide an employee with reasonable break time and a location to express breast milk, other than a bathroom, that is shielded from view and intrusion from coworkers and the public. These obligations continue for up to one year after the child's birth. The law does not require that the break time be paid. However, non-exempt workers who use an otherwise paid break or are not completely relieved of duties, must be paid. Exempt workers must be paid their full weekly salary without reduction for time spent expressing milk.

The law applies to all employers subject to the Fair Labor Standards Act. However, there is an exemption for small employers, with fewer than 50 employees, if compliance with the law would cause undue hardship because of significant difficulty or expense. There are also exemptions for crew members of air carriers and delayed effective dates for employees of rail carriers and motor coach operators. However, all other transportation industry employers are covered.

Employees alleging violations of the PUMP Act may file a complaint with the Department of Labor Wage and Hour Division or may file a private cause of action. However, for claims related to an employer's failure to provide adequate space for pumping, the law requires an employee to provide notice of the alleged violation to the employer and give the employer a 10 day cure period before filing a suit. There is no notice or cure period required for filing administrative complaints or for claims related to a failure to provide break time. The PUMP Act also amends the FLSA to clarify that the same damages that are available under other provisions of the FLSA are available for violations of the PUMP Act, including reinstatement, payment of unpaid wages, liquidated damages and compensatory damages.

This amendment to the FLSA took effect immediately, on December 29, 2022, but the expanded enforcement provision, which creates the right to recover monetary remedies, goes into effect on April 28, 2023.

All employers should review their relevant practices and policies to ensure that they are in compliance with both the PWFA and the PUMP Act. If you have questions regarding these new laws or how they impact your business, the attorneys at Wadleigh, Starr & Peters, PLLC are always available assist.

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