

Key Clarifications in the EEOC's Final Rule on Pregnancy Accommodations

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Authors: [Margo Wolf O'Donnell](#), [Hannah J. Kraus](#)

On April 15, 2024, the U.S. Equal Employment Opportunity Commission (EEOC) issued its final rule to implement the Pregnant Workers Fairness Act (PWFA). The PWFA, which took effect on June 27, 2023, requires covered employers to provide reasonable accommodations to the known limitations of a qualified employee related to pregnancy, childbirth or related medical conditions, unless the employer can demonstrate that the accommodation would impose an undue hardship. The PWFA builds on existing pregnancy-related protections and employer obligations under Title VII, the Americans with Disabilities Act and several state and local laws.

The 400-page [final rule](#) provides an expansive, employee-friendly interpretation of the PWFA and clarifies who is covered, the types of limitations and medical conditions covered, and how to request reasonable accommodations. Below are some key points of clarification in the final rule:

- **Reasonable Accommodations.** The final rule outlines several examples of reasonable accommodations under the PWFA, including, without limitation, frequent breaks to eat, drink water and use the restroom, a stool or chair to sit on while working, parking adjustments, light duty, time off for medical appointments, temporary reassignment, temporary suspension of certain job duties, telework, and time off to recover from childbirth or a miscarriage.
- **Limitations and Medical Conditions.** The EEOC adopts a broad interpretation of the terms “limitations” and “pregnancy, childbirth or related medical conditions.” The final rule includes examples of limitations and medical conditions for which employees can seek reasonable accommodations, including, without limitation, miscarriages, stillbirths, abortions, chronic migraines, lactation, anxiety, endometriosis, gestational diabetes and morning sickness.
- **Communicating Accommodation Requests.** The final rule emphasizes that informing employers of limitations and requesting reasonable accommodations should not be complicated or difficult. Employees should be able to request accommodations by communicating with someone whom they normally go to for questions or concerns about work-related matters. The EEOC also encourages frequent communication between employers and employees regarding reasonable accommodations. The interactive process routinely used for requests under the Americans with Disabilities Act (ADA) is different from the process outlined in the EEOC's final rule for the PWFA.

- **Interactive Process.** The EEOC’s interpretation of the interactive process under the PWFA is slightly different than the interactive process routinely used for reasonable accommodation requests under the Americans with Disabilities Act (ADA). For example, the EEOC notes that “most requests for accommodations under the PWFA can be provided quickly and typically will consist of nothing more than brief conversations or email exchanges.” The EEOC also emphasizes the importance of expediency when engaging in the interactive process due to the temporary nature of pregnancy.
- **Supporting Documentation.** The final rule clarifies that employers are not required to seek supporting documentation when employees request reasonable accommodations. In fact, the EEOC advises that employers should only do so if such documentation is reasonably required for the employer to determine whether the employee has a limitation that is related to pregnancy, childbirth or related medical conditions.
- **Undue Hardship.** The final rule outlines several factors to be considered when determining whether a reasonable accommodation imposes an undue hardship on the employer, which are the same factors as the ADA. The final rule provides additional factors to be considered when determining whether a “temporary suspension of an essential function” imposes an undue hardship, including, without limitation, the length of time the employee will be unable to perform the essential function, the nature of the essential function and whether there is other work for the employee to perform. The final rule also identifies the “predictable assessments” contained in the proposed regulations that will almost always be deemed reasonable accommodations that do not impose an undue hardship.

The final rule will be published in the Federal Register on April 19, 2024, and becomes effective 60 days later on June 18, 2024. Employers should review the final rule and continue working with counsel to ensure their pregnancy accommodation policies are in line with the EEOC’s guidance, given that the PWFA itself is already in effect. Benesch’s experienced employment lawyers are available to help.

Yelena G. Katz at ykatz@beneschlaw.com or 216.363.4405.

Margo Wolf O’Donnell at modonnell@beneschlaw.com or 312.212.4982.

Hannah J. Kraus at hkraus@beneschlaw.com or 216.363.6109.