



Feds File First Lawsuit Under Pregnant Workers Fairness Act: 8 Compliance Reminders for Employers

Insights

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The federal agency that enforces workplace anti-discrimination laws is suing an employer for allegedly failing to accommodate an employee's known pregnancy-related limitations, the first-ever lawsuit filed under the new federal pregnancy protection law. The Equal Employment Opportunity Commission claims the employer violated the Pregnant Workers Fairness Act (PWFA), as well as federal civil rights law. Here's what employers need to know about this groundbreaking lawsuit and eight steps you can take now to ensure compliance.

What Happened?

In a lawsuit filed on September 10, the EEOC claims that a national manufacturing company violated the PWFA by failing to make a pregnancy-related accommodation to an assembly line worker in Kentucky, even though the employer allegedly could have provided adjustments that are comparable to those offered to non-pregnant workers with similar limitations.

Here's what the EEOC alleged in the complaint:

- **Relevant tasks:** The employee was a "front plate" assembler who installed wiring in trailers. This required her to bend over the tops of trailers.
- **Concerns about impact:** When the employee was seven-months pregnant, she told human resources representatives that bending over trailers was painful and raised concerns that constant pressure on her stomach would jeopardize her otherwise healthy pregnancy.
- **Accommodation request:** She asked to be moved from the front-plate position to another assembly-line position, to move to a light-duty position for the rest of her pregnancy, or to have her limitation accommodated in some other way.
- **Request denied:** The employer allegedly denied her claim under the Americans with Disabilities Act (ADA) even though she told them the request was being made under the recently enacted PWFA.
- **Accommodations made for other similarly situated employees:** The employer allegedly denied her request, even though it offered light duty to other non-pregnant workers with disabilities, and only gave her the option to take unpaid leave or return to the front-plate position without modification.

- **The employee resigned** due to safety concerns and filed a complaint with the EEOC.

The EEOC filed the lawsuit in the U.S. District Court for the Western District of Kentucky after failing to reach a pre-litigation settlement.

Key Takeaways for Employers

Although this case was just filed earlier this month — and we don't yet know the employer's side of the story or how the court will ultimately rule — there are key points you should keep in mind about the PWFA to avoid a similar claim:

The PWFA, which just took effect in June 2023, is a federal law that requires employers with 15 or more employees to consider employee and job applicant accommodation requests related to pregnancy, childbirth, or related medical conditions the way you consider accommodation requests related to disabilities under the ADA.

You should note, however, that a worker with a healthy and normal pregnancy could seek and receive an accommodation under the PWFA while the ADA has a threshold for the severity of the physical or mental condition for an accommodation request.

The PWFA prohibits employers from placing an employee impacted by pregnancy, childbirth, or related medical conditions on a leave of absence – paid or unpaid – when a different reasonable accommodation option is available. The government has provided some suggestions for potential accommodations in lieu of leave. For instance, depending on the nature of the employee's limitations, you can consider the offering the following accommodations:

- allowing workers to sit or drink water;
- providing closer parking spaces;
- offering flexible working hours;
- providing appropriately sized uniforms and safety apparel;
- allowing workers additional break time to use the bathroom, eat, and rest;
- excusing workers from strenuous activities or activities that involve exposure to compounds not safe for pregnancy; and
- giving leave or time off to recover from childbirth.

If you want a comprehensive recap, [you can read our detailed FAQs about the PWFA here.](#)

Notably, in *EEOC v. Wabash National Corporation*, the employee requested light duty for the duration of her pregnancy. The EEOC is alleging that the company offered only unpaid leave as a pregnancy-based accommodation when light duty was made available to non-pregnant employees, including those with temporary disabilities, who requested similar accommodations under the ADA. Light duty

included administrative work, inventory management, workspace housekeeping, and assembly assistance.

According to the EEOC's complaint, the employee was able to perform administrative tasks like inventory management, order processing, and workspace maintenance supervision. She also could have performed any assembly line tasks that did not require extensive bending or lying on her stomach.

The employer, however, placed her on leave without engaging in the interactive process, which "constituted a forced accommodation in violation of the PWFA," according to the agency.

8 Steps Employers Should Consider Taking Now

To position your organization most effectively, you should consider the following steps:

- 1. Make sure you are already in compliance with the PWFA.** If you haven't reviewed and adjusted your accommodations review process since June 2023, now is the time to do so.
- 2. Be prepared to engage in the interactive process.** The PWFA requires employers to conduct an interactive process with employees or applicants who are seeking accommodations. While you don't have to grant the employee's preferred request and may offer alternatives, you should be able to establish that you engaged in this process both as a best practice and in accordance with the law.
- 3. Train your HR department** on the ins and outs of the related regulations so they are familiar with the new details provided in these regulations. Notably, the PWFA is much broader than the ADA, since it includes terms like "temporary" and "in the near future," a worker may still be qualified for an accommodation even if they cannot perform an essential function of their job for that limited timeframe. Ultimately, these factors may be more challenging for employers to establish that the accommodation imposes an undue hardship on business operations.
- 4. Make sure your HR department has access to **the list of suggested accommodations**** provided in the regulations, which may include a temporary suspension of a job function, as a good starting point for use during the interactive process.
- 5. Update your mandatory employee trainings** to include a discussion of this law and the new regulations as necessary.
- 6. Check state laws.** You should note that some states have their own laws protecting pregnant workers. In fact, 30 states and a few cities require certain employers to provide some form of accommodations to pregnant employees — these laws can vary and may provide more protections.
- 7. Contact your legal counsel before denying any pregnancy or childbirth-related accommodation request.** Just as with the ADA, employers can deny reasonable accommodations

requests under the PWFA if they would impose an undue hardship on their business operations, meaning something that causes “significant difficulty or expense.” You should proceed with caution, however, and check with your FP counsel before denying an accommodation request on this basis given the risks involved.

8. Track new developments. A group of states is seeking to block PWFA regulations — particularly the inclusion of abortion-related accommodations — and is citing to [the new legal standard that diminishes the power of agencies to issue expansive regulations](#). This challenge is ongoing, and we will provide updates as warranted. In the meantime, you should have a compliance plan in place and consult your attorney with any questions.

Conclusion

We will monitor developments related to the PWFA and related lawsuits, so make sure you are subscribed to [Fisher Phillips’ Insight System](#) to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Employee Leaves and Accommodations Practice Group](#).

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