Pregnant Workers Fairness Act Under Fire: What Employers Need to Know About the Latest Legal Challenges

Insights
3.10.25

The Pregnant Workers Fairness Act (PWFA) rules mandating that employers provide abortion-related accommodations are facing intensifying legal challenges now that a federal appeals court allowed a group of states to challenge the law. Seventeen Republican-led states filed a lawsuit arguing that the Equal Employment Opportunity Commission (EEOC) unlawfully expanded the act to mandate such abortion-related accommodations. In a significant move, the 8th Circuit recently allowed the lawsuit to proceed, reversing a trial court's ruling that the states didn't have a legal right to sue. At the same time, the newly appointed Acting EEOC Chair, Andrea Lucas, has publicly opposed her agency's own abortion-related accommodation rules. Despite these developments, the PWFA and its rules remain in effect, and the EEOC's Strategic Enforcement Plan remains unchanged for now. Here's what employers need to know about the lawsuit and EEOC leadership changes, as well as the key compliance steps you should consider taking as we track these developments.

Quick Overview

Before diving into the lawsuit, here's a brief overview of the PWFA. The law mandates that covered employers provide reasonable accommodations for a qualified employee's known limitations due to pregnancy, childbirth, or related medical conditions, unless it causes the employer undue hardship. The terms "pregnancy" and "childbirth" under the PWFA extend beyond just a current pregnancy or childbirth – they also cover past, intended, or potential pregnancies. If you would like a comprehensive recap, you can read our detailed FAQs about the PWFA here or a more in-depth discussion of the act here.

The Impact of Leadership Changes

As the legal landscape surrounding the PWFA evolves, the future of the EEOC's Strategic Enforcement Plan (SEP) will now likely face scrutiny. The SEP for Fiscal Years 2024-2028 emphasizes enforcement protections for workers impacted by pregnancy, childbirth, and related medical conditions. It signals the EEOC's intent to take an aggressive stance on these issues, while also highlighting its commitment to combatting systemic harassment related to pregnancy.

Yet, with new leadership under Acting Chair Andrea Lucas, the EEOC's direction is uncertain. Lucas has publicly voiced concerns over the EEOC's final rule implementing the PWFA, criticizing it for conflating pregnancy and childbirth accommodations with broader accommodations related to female biology and reproduction. You can read more about her priorities as the new EEOC Acting Chair here.

Can Lucas realistically roll out her plans for the agency? The answer lies in the EEOC's quorum situation. With just two active commissioners — Andrea Lucas and Kalpana Kotagal — the Commission currently lacks the **required three members** to make decisions or enforce policies. Following President Trump's unexpected move firing Commissioners Charlotte Burrows and Jocelyn Samuels, no further action to limit the PWFA can be taken until the EEOC restores its quorum.

Lawsuit Overview

With all this in mind, let's dive into the lawsuit currently making waves that could ultimately reshape the future of the PWFA. Seventeen Republican-led states filed a lawsuit against the EEOC in April 2024, arguing that the agency unlawfully expanded the law by requiring employers to accommodate workers' abortion-related needs. The lawsuit was filed after the EEOC issued its final rule interpreting the PWFA to expand the definition of "pregnancy, childbirth, or related medical conditions" to include abortion, and mandating that employers provide abortion-related accommodations.

Now that the 8th Circuit has said the states have standing to challenge the lawsuit, the U.S. District Court for the Eastern District of Arkansas will hear the states' arguments. **Here's what they claim:**

- **Unlawful Expansion of the PWFA:** The states contend that the EEOC exceeded its authority, as the PWFA does not explicitly address abortion, and lawmakers have made it clear that abortion was not intended to be included. They argue that the EEOC's abortion-accommodation mandate requires explicit congressional approval.
- **Conflict with State Sovereignty:** The final rule allegedly forces states to accommodate abortions even where state law prohibits them, overriding state sovereignty and Tenth Amendment rights to regulate workplace policies and abortion laws.
- **Religious Violations:** The states argue the final rule unlawfully forces religious employers to accommodate abortion, violating the First Amendment and the Religious Freedom Restoration Act (RFRA).
- **Irreparable Harm**: The states claim they will suffer immediate harm from enforcement actions, lawsuits, and financial penalties if they don't comply.
- **Requested Relief:** The states seek a court order blocking enforcement of the EEOC's abortion accommodation mandate, a preliminary and permanent injunction preventing the EEOC from enforcing the mandate, and a declaration that the mandate is unlawful and should be vacated.

In a related development, in June, a federal judge in Louisiana blocked enforcement of the EEOC's final rule implementing the PWFA in Louisiana and Mississippi as applied to abortions that were "purely elective." The Louisiana court held that the EEOC had "exceeded its statutory authority to implement the PWFA … unlawfully expropriated the authority of Congress and encroached upon [state] sovereignty." We will continue to monitor whether this court aligns with the Louisiana court or reaches a different conclusion, which could ultimately pave the way for a Supreme Court battle.

What Steps Should You Take to Ensure Compliance with the PWFA?

While the future of the PWFA remains uncertain, there are still steps you should take to maintain compliance with the act for now:

1. Train your managers and HR department on the nuances of the PWFA and suggested accommodations to ensure compliance. Remember, unlike under the ADA, employers may be required to temporarily suspend an essential function of the job for a qualified employee. Further, and also unlike the ADA, the PWFA prohibits employers from placing qualified employees on a leave of absence when a different reasonable accommodation is available.

2. Recognize requests for an accommodation under the PWFA and remember the EEOC has made clear that the request does not have to be in writing, on a particular form, or include special words such as "reasonable accommodation," "Pregnant Workers Fairness Act," or "limitation."

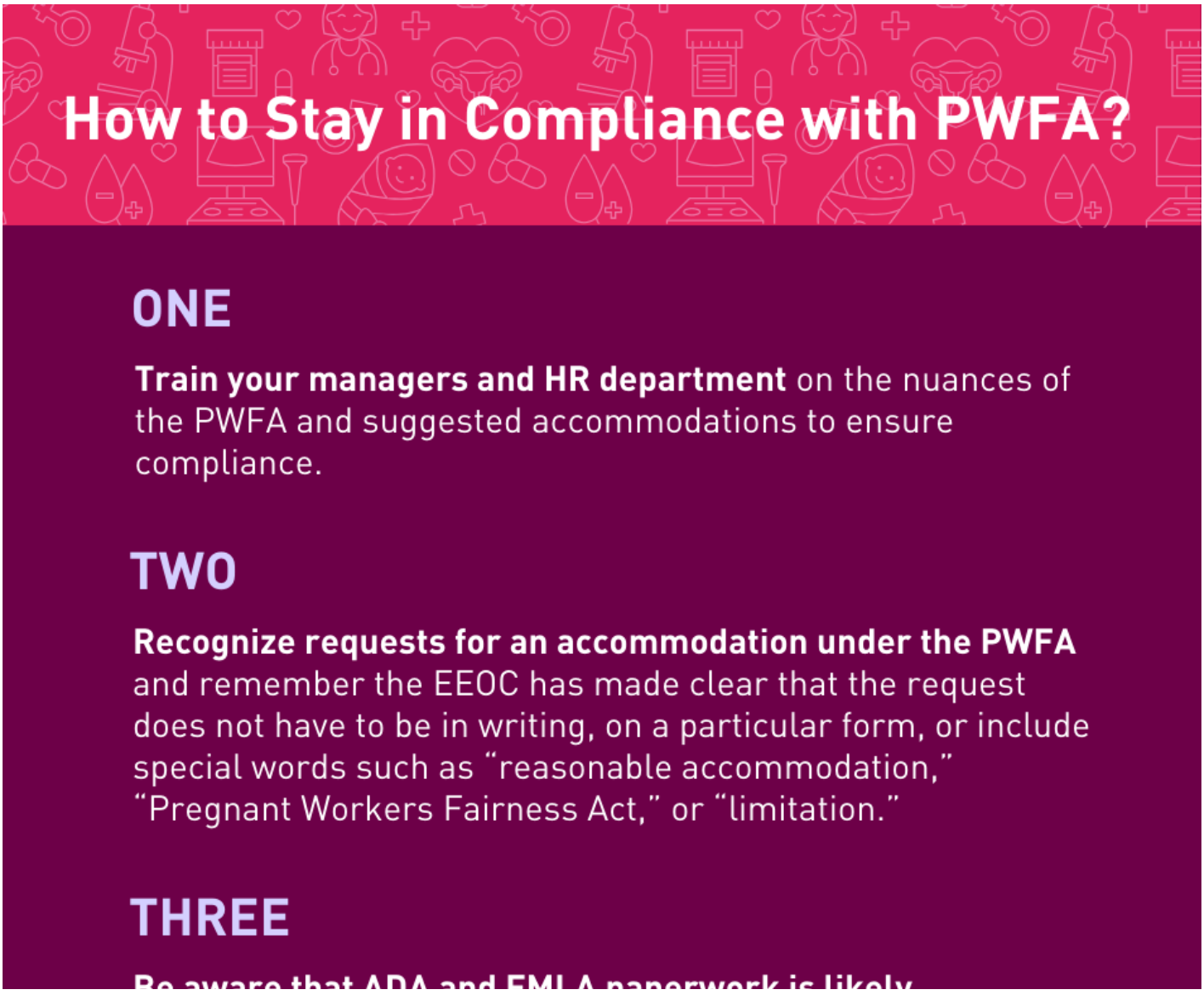
3. Be aware that ADA and FMLA paperwork is likely unnecessary and inappropriate under the minimum documentation standard. Under the PWFA, employers can request medical documentation only when it is both reasonable and necessary. ADA and FMLA forms may not be applicable or required for accommodation requests under the PWFA. Employers must act promptly to obtain reasonable documentation, as delays in providing accommodations could result in violations. Furthermore, employers must give employees ample time to secure the required documentation. Here are examples of what constitutes reasonable or unreasonable documentation requests, according to the EEOC:

- **Reasonable documentation requests:**
  - Confirm the limitation;
  - Confirm the limitation is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions; and
  - Confirm and describe the adjustment or change at work that is needed because of the limitation.

- **Documentation requests are unreasonable if:**
  - The limitation and need for an adjustment or change is obvious and the employee self-confirms;
  - The employer already has sufficient information about the limitation and the adjustment or change needed due to the limitation;
  - The employee is currently pregnant and needs breaks for the bathroom, to eat, or to drink; needs to carry water; or needs to stand if their job requires sitting or sit if their job requires standing;
  - The employee is lactating and needs modifications to pump at work or nurse during work hours;
  - The accommodation requested is one provided to other employees; or
  - The employer requires that the healthcare provider submitting the documentation be the provider treating the condition at issue.

4. Consult your legal counsel before denying a PWFA accommodation request under the undue hardship theory. When an employee requests an accommodation under the PWFA, the employer must carefully assess the request, check whether the EEOC has already approved it as a reasonable accommodation, and decide if granting the request would create an undue hardship. An accommodation may be considered an undue hardship if it imposes significant difficulty or expense on the employer's operations. Given the high stakes involved, employers should consult with their legal counsel before denying any accommodation request under the undue hardship theory to ensure full compliance with the PWFA and avoid potential legal consequences.

5. Be aware of additional protections for pregnant workers. The PWFA does not replace other federal, state, or local laws offering greater protections for pregnant workers. For example, the federal Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act requires employers to provide time and space for breastfeeding employees for up to one year after childbirth, including salaried employees. For hourly workers, breastfeeding time counts as hours worked if the employee is on duty. The act also mandates that employers provide a clean, private, and functional space for breastfeeding or pumping.



Be aware that ADA and FMLA paperwork is likely unnecessary and inappropriate under the minimum documentation standard. Under the PWFA, employers can request medical documentation only when it is both reasonable and necessary. ADA and FMLA forms may not be applicable or required for accommodation requests under the PWFA.

FOUR

Consult your legal counsel before denying a PWFA accommodation request under the undue hardship theory. When an employee requests an accommodation under the PWFA, the employer must carefully assess the request, check whether the EEOC has already approved it as a reasonable accommodation, and decide if granting the request would create an undue hardship.

FIVE

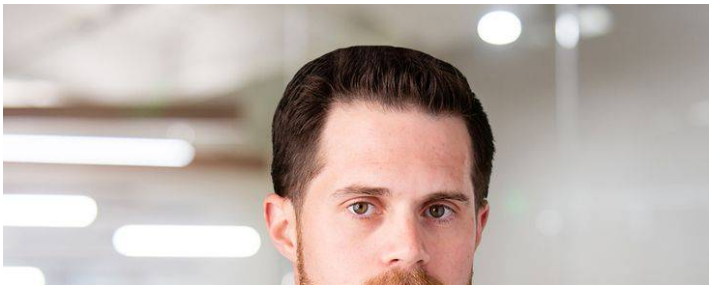
Be aware of additional protections for pregnant workers. The PWFA does not replace other federal, state, or local laws offering greater protections for pregnant workers.

Fisher Phillips

Conclusion

We will monitor developments related this law, 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.

Related People



R. Bryan Holbrook
Partner
704.778.4173
Email

Daniella C. Infantino
Associate
704.778.4162
Email

Service Focus

Counseling and Advice

Employee Leaves and Accommodations

Employment Discrimination and Harassment

Litigation and Trials