



New Laws Protecting Pregnant and Nursing Workers Lead to New Federal Workplace Posters

Article

06.09.2023

Congress recently enacted two laws expanding workplace legal protections for pregnant and nursing employees: the Pregnant Workers Fairness Act (PWFA) and the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act). To spread awareness about the new protections, the Department of Labor recently amended its “Employee Rights Under the Fair Labor Standards Act” poster, and the Equal Employment Opportunity Commission is expected to release an updated “Know Your Rights: Workplace Discrimination is Illegal” poster on June 27, 2023. Employers should promptly post both of these updated posters to avoid non-compliance penalties.

PUMP Act

The PUMP Act was enacted in December 2022, and new remedies under the law became available after April 28, 2023. The Fair Labor Standards Act already required employers to provide reasonable break time for an employee to express breast milk for their nursing child for one year after the child's birth, and the PUMP Act's enhanced regulations are designed to extend these protections to a greater number of working mothers. The Department of Labor has issued guidance to assist employers in complying with the Act and new posting requirements to aid employee knowledge of the new protections.

The specific accommodations offered to nursing mothers, including the frequency, duration, and timing of breaks, as well as the physical space provided, will vary on a case-by-case basis (and may even vary each time the nursing worker has to pump). At a minimum, the employer must provide an area that is:

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1. Shielded from view;
2. Free from intrusion from coworkers and the public;
3. Available each time it is needed by the employee; and
4. Not a bathroom.

The space must also be functionally adequate to pump. This requirement entails, in part, that there is sufficient space for the nursing worker to sit and a flat, elevated surface to place the pump. The employer must also ensure that the nursing mother is able to safely store milk at work. Finally, whether the break time is compensable will vary based on status of the worker, duration and timing of the break, and other surrounding circumstances. Generally, if the nursing worker is non-exempt and the break is less than twenty minutes, the time must be compensated under the normal minimum wage and overtime regulations.

Pregnant Workers Fairness Act

Although Title VII already makes it illegal to fire or otherwise discriminate against workers on the basis of pregnancy, childbirth, or related medical conditions, effective June 27, 2023, the PWFA extends protections similar to those found in the Americans with Disabilities Act to pregnant workers—even if the worker’s restrictions do not rise to the level of a disability under the ADA. Under the PWFA, like the ADA, employers must participate in the interactive process with pregnant workers to determine an appropriate reasonable accommodation for the employee’s known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an “undue hardship.”

Two key points for employers to keep in mind during the interactive process under the PWFA are: (1) requiring a pregnant worker to utilize leave as an accommodation is not permissible unless no other reasonable accommodation is available, and (2) being unable to perform the essential functions of the job is not a valid reason for denying a reasonable accommodation, as long as that limitation is temporary and the employee will be able to perform their essential functions in the near future. The Equal Opportunity Commission has provided examples of possible reasonable accommodations for pregnant workers, including closer parking; flexible hours; additional break time; temporary transfer to a position that involves less strenuous or hazardous conditions; and leave to recover from childbirth.

Take Action - Posting Requirements

The Department of Labor has released a new version of its mandatory Minimum Wage Poster that includes an updated section discussing rights for nursing mothers under the FLSA. To comply with the FLSA’s posting regulations, covered employers are required to post the April 2023 poster. Employers should also prepare for the EEOC to release an updated Know Your Rights Poster in late June 2023 that includes information regarding the PWFA. In the meantime, employers utilizing an all-in-one poster should separately post the updated April 2023 FLSA Minimum Wage Poster.