What to Expect When You're Expecting (and After the Birth of Your Child) . . . at Work

*Updated in 2024 to include information on the Pregnant Workers Fairness Act (PWFA)

Pregnancy Related Discrimination

The Pregnancy Discrimination Act of 1978, which amended Title VII of the Civil Rights Act of 1964, prohibits discrimination on the basis of sex including past, current, or potential pregnancy, childbirth, breastfeeding/lactation, abortion, contraception, and related medical conditions and procedures.

Pregnancy (or related) discrimination involves treating an individual — an applicant or employee — unfavorably in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits (such as leave and health insurance), and any other terms or conditions of employment. The protection from pregnancy discrimination applies to all DOL employees and applicants for DOL employment.

General Guidance

- An agency may not maintain a written or unwritten employment policy or practice that excludes applicants from employment or denies employees any terms, conditions, or privileges of employment because of pregnancy, childbirth, breastfeeding/lactation, abortion, contraception, and related medical conditions and procedures.
- An agency must permit a pregnant employee to do their job for as long as they are capable of performing the job, which may include providing reasonable accommodations to facilitate job performance.
- An agency may not make an employment decision about an employee's work performance based on a stereotype or assumption concerning the employee's pregnancy or related conditions.
- An agency may not single out pregnancy or related conditions for special procedures to determine an employee's ability to work.
- While an agency has a duty to protect employees' health and safety, it has no extra duty to protect pregnant or potentially pregnant employees from dangerous work conditions. Therefore, sex-specific job restrictions with the purpose of protecting a pregnant employee or fetus cannot be justified under Title VII.
- An agency may not terminate, deny assignments to, or deny promotions to an employee because of pregnancy, childbirth, breastfeeding/lactation, abortion, contraception, and related medical conditions and procedures.

Guidance on Leave

- When an employee goes on leave due to pregnancy, childbirth, breastfeeding/lactation, abortion, and related medical conditions and procedures, the agency must keep the employee's job open for the same period of time that it keeps jobs open for employees who go on disability or sick leave.
- An agency may not have a rule that requires an employee to take leave until childbirth or that prohibits an employee from returning to work for a predetermined length of time after childbirth.

- If an employee has been absent from work as a result of a pregnancy-related condition and recovers, the agency may not require the employee to remain on leave until they have given birth.
- Employees and agencies may have additional rights and obligations under the **Family Medical Leave Act of 1993 (FMLA)**, which permits an employee to take up to 12 weeks of leave (unpaid or paid if the employee has earned or accrued it) that may be used for the birth and care of a new child, or for related medical reasons, if the employee has worked for the agency for at least 12 months prior to taking the leave.
- For employees who qualify, the **Federal Employee Paid Leave Act (FEPLA)** provides up to 12 weeks of paid parental leave to covered Federal employees in connection with the birth or placement (for adoption or foster care) of a child occurring on or after October 1, 2020, if the employee agrees in writing to work for the agency for at least 12 weeks after the leave concludes. Paid leave under FEPLA is a substitution for, not in addition to, unpaid leave granted under the FLMA.

Prohibition Against Retaliation

- It is unlawful to retaliate against an individual for opposing employment practices that allegedly discriminate based on pregnancy, childbirth, breastfeeding/lactation, abortion, contraception, and related medical conditions and procedures or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII.

What If an Employee Needs Accommodations for Pregnancy, Childbirth, Breastfeeding/Lactation, Abortion, and Related Medical Conditions and Procedures**?**

Effective June 27, 2023, the **Pregnant Workers Fairness Act (PWFA**)[1] is a new law that requires employers such as DOL to provide "reasonable accommodations" to qualified employees' known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an "undue hardship." The following briefly describes some of the key provisions of the PWFA.

- "Known Limitation" is defined in the PWFA as a "physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or the employee's representative has communicated to the covered entity, whether or not such condition meets the definition of disability" under the ADA. The physical or mental condition that is the limitation may be a modest, minor, and/or episodic impediment or problem. The physical or mental condition also may be that a worker affected by pregnancy, childbirth, or related medical conditions has a need or problem related to maintaining their health or the health of their pregnancy. The definition also includes when a worker is seeking health care related to pregnancy, childbirth, or a related medical condition itself.

- "Reasonable accommodations" are changes to the work environment or the way things are usually done at work. To request an accommodation, first, the employee or applicant (or their

[1] For more information, see Summary of Key Provisions of EEOC's Final Rule to Implement the Pregnant Workers Fairness Act (PWFA) | U.S. Equal Employment Opportunity Commission

representative) must identify the limitation that is the physical or mental condition and that it is is the physical or mental condition and that it is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions. Second, the employee or applicant (or their representative) must indicate that they need an adjustment or change at work. A request for a reasonable accommodation under the PWFA does not need to be in writing or use any specific words or phrases. Instead, employees or applicants may request accommodations in conversation or may use another mode of communication to inform the employer. Employers must conduct an individualized assessment when determining whether a modification is a reasonable accommodation that will impose an undue hardship.

- DOL is not required to seek supporting documentation from an employee who seeks an accommodation under the PWFA. If DOL decides to require supporting documentation, it is only permitted to do so if it is reasonable to require documentation under the circumstances for the employer to determine whether to grant the accommodation. When requiring documentation is reasonable, the employer is limited also to requiring documentation that itself is reasonable. "Reasonable documentation" is defined as documentation that describes or confirms (1) the physical or mental condition; (2) that it is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions; and (3) that a change or adjustment at work is needed for that reason.

- Possible reasonable accommodations under the PWFA include:
    i. Frequent breaks;
    ii. Sitting/Standing;
    iii. Schedule changes, part-time work, and paid and unpaid leave;
    iv. Telework;
    v. Parking;
    vi. Light duty;
    vii. Making existing facilities accessible or modifying the work environment;
    viii. Job restructuring;
    ix. Temporarily suspending one or more essential function;
    x. Acquiring or modifying equipment, uniforms, or devices; and
    xi. Adjusting or modifying examinations or policies.
- A limited number of simple modifications will, in virtually all cases, be found to be reasonable accommodations that do not impose an undue hardship when requested by an employee due to pregnancy. These modifications are: (1) allowing an employee to carry water and drink, as needed, in the employee's work area; (2) allowing an employee additional restroom breaks; (3) allowing an employee whose work requires standing to sit and whose work requires sitting to stand, and (4) allowing an employee breaks, as needed, to eat and drink.

- The PWFA allows an employee or applicant to be considered "qualified" even if they cannot perform one or more essential functions of the job if the inability to perform the essential function(s) is "temporary," the employee or applicant could perform the essential function(s) "in the near future," and the inability to perform the essential function(s) can be reasonably accommodated.

Under the PWFA DOL also cannot:

- Require an employee to accept an accommodation without a discussion about the accommodation between the employee and management;
- Deny a job or other employment opportunities to a qualified employee or applicant based on the person's need for a reasonable accommodation;
- Require an employee to take leave if another reasonable accommodation can be provided that would let the employee keep working;
- Retaliate against an individual for reporting or opposing unlawful discrimination under the PWFA or participating in a PWFA proceeding (such as an investigation); or
- Interfere with any individual's rights under the PWFA.

If there is more than one effective accommodation, the employee's or applicant's preference should be given primary consideration. However, the employer providing the accommodation has the ultimate discretion to choose between potential reasonable accommodations. An "undue hardship" is considered a significant difficulty or expense for DOL.

For more information on the PWFA, please see What You Should Know about the Pregnant Workers Fairness Act | U.S. Equal Employment Opportunity Commission and Summary of Key Provisions of EEOC's Final Rule to Implement the Pregnant Workers Fairness Act (PWFA) | U.S. Equal Employment Opportunity Commission.

What Are Some Agency Best Practices with Respect to Employees with Caregiving Responsibilities?

Title VII prohibits employment decisions that discriminate against employees with caregiving responsibilities, which includes child care, if the decisions are based on or motivated by sex or another protected characteristic.

Agencies should avoid reliance on common stereotypes or biases about caregivers that may result in unlawful conduct, including:

• Assuming that female employees have responsibilities that will interfere with their ability to succeed in a fast-paced environment;

• Assuming that male employees who work part-time or take advantage of flexible work arrangements are less committed to their jobs than other employees who do the same; and

• Assuming that female employees prefer, or should prefer, to spend time with their families rather than time at work.

Examples of prohibited conduct related to employees' caregiving responsibilities include:

• Asking female applicants and employees, but not male applicants and employees, about their child care responsibilities;

• Steering women with caregiving responsibilities toward less prestigious or lower-paid positions than men with caregiving responsibilities;

- Denying job opportunities to female employees, but not male employees, with young children;
- Reassigning employees who recently returned from pregnancy-related leave to less desirable work based on the assumption that they will be less committed to their jobs;
- Harassing or demeaning male employees who take leave to care for their children or who otherwise engage in care giving activities; and
- Treating employees who have caregiving responsibilities differently than other employees with caregiving responsibilities due to stereotypes based on sex, race, religion, and/or national origin.

To learn more, go to EEOC's Enforcement Guidance Number 915.002: Unlawful Disparate Treatment of Workers with Caregiving Responsibilities (May 23, 2007), available at http://www.eeoc.gov/policy/docs/caregiving.html.

Do DOL Employees Who Are Breastfeeding Also Have Employment Protections?

Yes, under DOL's application of the Patient Protection and Affordable Care Act of 2010, which amended the Fair Labor Standards Act, DOL must provide breastfeeding employees with:

• a reasonable break time to express breast milk for up to one year after the child's birth; and

• a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, to express breast milk.

The Office of the Assistant Secretary for Administration and Management's Office of Human Resources, Division of Worklife and Engagement is responsible for enforcing these requirements for employees of the U.S. Department of Labor. To learn more, visit http://labornet.dol.gov/me/leave/nursingMothers.htm.

Do DOL Employees Have Rights Based on Their Status as Parents?

In addition to the rights discussed above for employees with caregiving responsibilities, Executive Order 11478, as amended, prohibits discrimination against Federal employees and applicants for employment on the basis of parental status. "Status as a parent" refers to the status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is a biological parent, an adoptive parent, a foster parent, a stepparent, a custodian of a legal ward, in loco parentis over such an individual, or actively seeking legal custody or adoption of such an individual.

For More Information

Any questions on this guidance should be addressed to the Department of Labor's Civil Rights Center. If at any time, you think that you have been subjected to pregnancy (or related) discrimination, contact the Civil Rights Center at 202-693-6500 or 7-1-1 (relay) within 45 days of the alleged discriminatory event in order to preserve your right to file an EEO complaint.