

What do employers need to do to comply with the PUMP Act and the Pregnant Workers Fairness Act?

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In recent years, the United States has faced an epidemic of maternal mortality and worsening maternal health disparities and ranks well beyond its industrialized peers on these metrics. In response, many employers have taken steps to promote maternal and child health during the critical period of infancy and new parenthood. These steps include more generous paid parental leave, better access to quality lactation spaces, and more flexible work options. At the end of the 2023 legislative session, Congress continued this momentum on a national scale and passed changes to the Providing Urgent Maternal Protections for Nursing Mothers Act (“PUMP Act”) and the Pregnant Workers Fairness Act (“PWFA”). The PUMP Act and the PWFA join other federal laws, such as the Affordable Care Act (“ACA”), the Americans with Disabilities Act (“ADA”), the Fair Labor Standards Act (“FLSA”), the Family and Medical Leave Act (“FMLA”), and Title VII of the Civil Rights Act, as amended by the Pregnancy Discrimination Act (“PDA”)—all of which provide protections for pregnant and nursing employees.

Employers will want to understand how these new pieces of legislation fit in with existing laws to provide protections for pregnant and nursing employees in order to comply adequately with their heightened requirements.

The Providing Urgent Maternal Protections for Nursing Mothers (“PUMP”) Act

Under the FLSA, employers must provide nonexempt employees with reasonable break time to express breast milk for up to one year after a child’s birth. The PUMP Act expands existing accommodations for breastfeeding employees under the FLSA by granting employees control over when breastfeeding breaks are necessary. In this vein, employers must provide reasonable break time to nursing employees *each time the employee needs to pump* while at work for one year following a child’s birth. The frequency, duration, and timing of breaks will vary depending on factors related to the nursing employee and child. Accordingly, the employer and employee may agree to a certain schedule based on the employee’s need to pump. Should the employee’s pumping needs change, the agreed-upon schedule may need to be adjusted over time.

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The time a nursing employee takes as a break to pump is compensable if it would be compensable under the FLSA; that is, if it is a break lasting 20 or fewer minutes. These specifications extend to remote workers; remote workers are entitled to lactation breaks on the same basis as if they were working onsite.

The PUMP Act also expands the ACA, which required employers to provide employees “reasonable break time” and a private space to pump “other than a bathroom” for one year after a child’s birth. Under the PUMP Act, a space for an employee to pump must be (1) shielded from view; (2) free from intrusion from coworkers and the public; (3) available each time the employee needs it; and (4) not a bathroom.

The PUMP Act largely took effect on December 29, 2022, but enforcement of the PUMP Act, including additional changes and protection from the 2023 legislative session, took effect on April 28, 2023.

The PUMP Act covers all employers. Employers with fewer than 50 employees may seek an exemption from the PUMP Act if compliance with its provisions would impose “undue hardship” on the employer. “Undue hardship” is determined by evaluating the burdens of compliance against “the size, financial resources, nature, or structure of the employer’s business.” Certain airline, railroad, and motorcoach industry employees are exempt from the protections provided by the PUMP Act.

Employees who believe an employer has violated the PUMP Act may either file a complaint against the employer with the U.S. Department of Labor (“DOL”) or file a lawsuit against the employer in federal court. Generally, an employee must inform an employer of its failure to comply with the PUMP Act and provide the employer 10 calendar days to reach compliance prior to taking action with the DOL or in federal court.

The Pregnant Workers Fairness Act (“PWFA”)

The PWFA expands federal protections for pregnant and nursing workers. It requires covered employers to provide “reasonable accommodations” to a worker’s known limitations related to pregnancy, childbirth, or related medical conditions—regardless of whether the condition amounts to a “disability.” In this vein, the PWFA does not apply more stringent standards than the ADA in terms of what constitutes a “disability” or a “reasonable accommodation.” Instead, the PWFA adds one more category that requires reasonable accommodations. Pregnancy-related conditions contemplated under the PWFA include complications of pregnancy and childbirth, such as diabetes, depression, and preeclampsia; medical conditions and other related events including lactation, miscarriage and pregnancy loss, fertility treatment, and menstruation; and the standard physical changes that occur during and after pregnancy and childbirth.

A non-comprehensive list of reasonable accommodations under the PWFA includes flexible work hours, the ability to sit or drink water, closer parking to work locations, exemption from strenuous activities, and appropriately sized uniforms and safety apparel.

Under the PWFA, employers may not:

- Require an employee to accept an accommodation without engaging in an interactive dialogue with the employee about the accommodation;
- Deny job or other employment opportunities to a qualified employee or applicant based on that person's need for reasonable accommodation;
- Require an employee to take leave if another reasonable accommodation may be provided that would allow the employee to continue working; or
- Retaliate against an individual or interfere with an individual's rights under the PWFA.

Public and private sector employers with 15 or more employees must comply with the PWFA. But an employer need not provide a reasonable accommodation if doing so would cause the employer an "undue hardship."

The PWFA became effective on June 27, 2023. The U.S. Equal Employment Opportunity Commission ("EEOC") began accepting charges on June 27, 2023 for violations occurring on or after that date. The EEOC has also stated that it will issue further PWFA regulations by December 27, 2023.

In addition to the PUMP Act and the PWFA, states and localities are increasingly instituting similar and more employee-protective laws, which are not preempted by these new federal laws.

Employers would be well-served by revisiting and revising their applicable policies and procedures to account for these greater protections for their pregnant and nursing employees. Please contact your local Dorsey labor and employment attorney for assistance with questions related to legal developments in this area.