

# New federal pregnancy accommodation law

By Dan Eaton

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On June 27, the Pregnant Workers Fairness Act (PWFA) went into effect obligating employers with 15 or more employees to provide accommodations to their pregnant employees. Here's what the PWFA provides, and similar obligations California law imposes on employers with five or more employees.

## PWFA

The PWFA added a new right to Title VII, the federal workplace discrimination law. Federal law already prohibited employment discrimination based on pregnancy, childbirth, or related medical conditions. (For simplicity, I refer to these collectively as pregnancy.) The new law:



(San Diego Union-Tribune)

- (1) Requires covered employers to make reasonable accommodations for the “known limitations” of an employee’s pregnancy unless the employer “can demonstrate that the accommodation would impose an undue hardship” on the employer’s business;
- (2) Prohibits an employer from requiring an employee to accept an accommodation other than one resulting from an interactive process with the employee;
- (3) Prohibits an employer from denying a qualified employee employment opportunities based on the employee’s need for a pregnancy-related accommodation;
- (4) Prohibits an employer from requiring a pregnant employee to take paid or unpaid leave if another reasonable accommodation is available for her known pregnancy-related limitations; and
- (5) Prohibits an employer from taking any adverse action against an employee for “requesting or using” a pregnancy-related reasonable accommodation.

The PWFA further prohibits an employer from retaliating against an employee for challenging an employer’s noncompliance with the law or in any way interfering with the exercise, or support of the exercise of, an employee’s PWFA rights.

A “known limitation” of pregnancy means one “the employee or employee’s representative has communicated to the employer whether or not such condition meets the definition of disability” under the Americans with Disabilities Act (ADA). The law defines “undue hardship” as a “significant difficulty or expense” for the employer, just as the term is defined under the ADA.

The Equal Employment Opportunity Commission (EEOC), citing a Congressional report, provided guidance about possible reasonable accommodations for pregnancy-related conditions, including allowing the employee to: sit or drink water; receive closer parking; work flexible hours; wear appropriately-sized, employer-provided uniforms and safety apparel; receive additional break time to use the bathroom, eat, and rest; take leave or time off to recover from childbirth; and be excused from strenuous activities or activities that involve exposure to compounds not safe for pregnancy.

The EEOC is accepting charges from those who believe their PWFA rights may have been violated since the law went into effect.

The EEOC's guidance underscores that the PWFA does not replace federal, state, or local laws that are more protective of workers affected by pregnancy. California is one of 30 states that provide accommodations for pregnant workers.

### **California Pregnancy Accommodation Law**

Since 1999, California has required employers with five or more employees to accommodate pregnant employees. Under Government Code section 12945(a)(3) of the California Fair Employment & Housing Act:

(A) an employer must provide a pregnant employee with a reasonable accommodation upon the employee's request upon the advice of her health care provider;

(B) an employer with a policy or practice or collective bargaining agreement requiring or authorizing the transfer of temporarily disabled employees to less strenuous or hazardous work must transfer a pregnant employee to such work upon request; and

(C) an employer must temporarily transfer an employee to a less strenuous or hazardous position for the duration of her pregnancy upon the employee's request, with the advice of the employee's physician, if the transfer may be reasonably accommodated. An employer need not create a new job for the pregnant employee, displace another employee with more seniority, or promote an unqualified pregnant employee to a different job.

Like the new federal law, California's pregnancy accommodation law makes it illegal for an employer to "interfere with, restrain, or deny the exercise of, or the attempt to exercise" an employee's rights under the pregnancy accommodation law.

The PWFA narrows a gap between federal and California workplace rights. The PWFA gives pregnant women nationwide who work for employers of a certain size the right to accommodations to which California pregnant employees have been entitled for nearly a quarter of a century.

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