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An Expansion of Federal Protections For Pregnant and Nursing Workers

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On December 29, 2022, President Biden signed the Pregnant Workers Fairness Act (“PWFA”) and the Providing Urgent Maternal Protections for Nursing Mothers Act (“PUMP Act”) as part of the Fiscal Year 2023 Omnibus Spending Bill. The PWFA will require employers to provide reasonable accommodations to pregnant workers. The PUMP Act requires employers to provide a private lactation space and break times during work for nursing mothers.

The Pregnant Workers Fairness Act

The PWFA will require employers with 15 or more workers to provide reasonable accommodations for employees and job applicants with conditions related to pregnancy and childbirth, such as allowing light duty from heavy lifting or more frequent bathroom breaks. Employers will need to engage in the same interactive process with pregnant employees as they do with employees with disabilities, under the Americans with Disabilities Act, in order to determine a reasonable accommodation. The PWFA also prohibits employers from discriminating against employees and job applicants because of their need for a pregnancy-related accommodation.

This expands upon the federal protections provided by the Pregnancy Discrimination Act, which prohibits employers from discriminating against employees and making adverse employment decisions based on pregnancy or related conditions. However, the Pregnancy Discrimination Act does not require employers to accommodate pregnant workers.

The PWFA will take effect on June 27, 2023, and at that time, employers will need to provide reasonable accommodations to pregnant workers. In order to comply with this new federal law, employers should review their policies to make sure that a well-defined procedure exists for employees to request an accommodation. The policy should provide clear instructions to employees regarding when, where, and how to report their need for accommodation.

The PUMP for Nursing Mothers Act

The PUMP Act requires covered employers to provide two different protections for nursing mothers for the first year of their child's life: (1) a reasonable break time to express breast milk for a nursing child each time the employee has a need to express the milk, and (2) a place, other than a bathroom, for the expression of milk that is shielded from view and free from intrusion by coworkers and the public. An employer is not required to pay an employee for the nursing break time, unless the employee is not completely relieved from duty during the nursing break or required under another applicable law.

These protections expand upon current requirements of the Fair Labor Standards Act ("FLSA"), and close a loophole, which allowed employers to not provide nursing break time and private lactation spaces to workers who were exempt from the FLSA's overtime provision, such as teachers and nurses.

There are some employer exceptions to the PUMP Act. Employers with fewer than 50 employees are exempt if compliance with the law would cause undue hardship because of significant difficulty or expense. Crewmembers of air carriers are exempt. Rail carriers and motor coach services operators are not exempt, but there are limitations with the scope of coverage.

The PUMP Act requirements to provide nursing break time and protected space for expressing breast milk became effective on the date of enactment (December 29, 2022). The provisions of the law allowing employees to seek legal relief and remedies under the FLSA for violations take effect on April 28, 2023. In order to avoid liability, employers should review their policies and procedures regarding lactation breaks and provide corresponding training to human resources and managerial employees.

Please contact any member of **Bodman's Workplace Law Group** if you need assistance with review/drafting of your accommodation and non-discrimination policies, or for advice on investigating/responding to complaints. Bodman cannot respond to your questions or receive information from you without establishing an attorney-client relationship and clearing potential conflicts with other clients. Thank you for your patience and understanding.

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