

The Federal Government Passes Two New Statutory Acts Further Protecting Pregnant and Nursing Mothers

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Snuck into the federal government's \$1.7 billion government funding bill were the Pregnant Workers Fairness Act ("PWFA") and the Providing Urgent Maternal Protections for Nursing Mothers Act ("PUMP Act"). President Biden signed the bills in late December 2022.

PWFA

Employers with 15 or more employees must comply.

The focal point of the PWFA is reasonable accommodations for employees experiencing pregnancy, childbirth, or related medical conditions. It requires reasonable accommodations for employees and applicants who can perform the essential functions of the job with or without a reasonable accommodation. Essentially, this requires employers to treat pregnancy no different than a disabled employee needing a reasonable accommodation. In fact, the definition of "reasonable accommodation" mirrors the Americans with Disabilities Act.

These reasonable accommodations could include light duty, more access to water, increased bathroom breaks, a stool to sit on, restrictions on lifting heavy objectives or more. As with the Americans with Disabilities Act, what is a reasonable accommodation is a highly fact-specific inquiry considering the employee's condition and the essential functions of the job. Regardless, the employee must still be able to perform the essential functions of his/her job with the accommodation.

The undue hardship analysis still exists which allows employers to decline a reasonable accommodation where significant difficulty or expense would be incurred.

Employers are not allowed to require that pregnant employees take leave, whether paid or unpaid if another reasonable accommodation can be provided which would keep the employee actively employed and performing the essential job functions.

The PWFA becomes effective June 27, 2023.

PUMP Act

All employers are bound by the PUMP Act, but those with less than 50 employees do not need to comply if it would cause an undue hardship on the business due to significant difficulty or expense. The only employers entirely exempt are airline services; small exceptions exist for rail carriers and motorcoach services.

The focal point of the PUMP Act for new protections of nursing mothers (beyond the already existing requirements) is an extension on lactation breaks and a required violation notice period. The PUMP Act extends the same lactation break rights, that were previously offered to non-exempt employees, to all employees. Employers have an obligation

to provide a place to express milk shielded from view and intrusion. The PUMP Act extends that requirement from one-year post-childbirth to two years.

The PUMP Act also now requires that employees provide notice of alleged violations, with a 10-day cure period, before filing suit for non-compliance.

The PUMP Act also clarified pay practices. The break time may be unpaid unless required by state or local laws. Of course, if the employee is working (even if checking emails or answering a call) while expressing milk, that time spent must be compensated and treated as hours worked.

The PUMP Act becomes effective April 28, 2023.

If you have any questions regarding the PWFA, PUMP Act or employment-related inquiries at large, please contact [Caleb P. Setlock](#), [Jennifer Craighead Carey](#), or any member of the [Barley Snyder Employment Practice Group](#).

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