

August 2024

## PREGNANT WORKERS FAIRNESS ACT EEOC FINAL REGULATION KEY TERMS

In June 2023 we sent clients an update regarding the enactment of the federal Pregnant Workers Fairness Act (PWFA) which now requires employers to provide reasonable accommodations to “qualified employees and applicants” with “known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions.” Congress’s objective when it enacted the PWFA was to require employers to provide reasonable accommodations to employees and applicants experiencing pregnancy, childbirth, or related medical conditions so this portion of the American workforce can keep working around pregnancy.

As is evident from this short summary of what the PWFA is intended to do, this federal regulation is packed with a collection of specific terms and phrases that employers will need to learn and understand to ensure they are in proper compliance. Congress tasked the Equal Employment Opportunity Commission (EEOC) with issuing enforcement regulations for the PWFA. The EEOC issued its Final Regulation on the PWFA, at a whopping 125 pages, on April 15, 2024.

California’s Pregnancy Disability Act (PDA) already required California employers, including school districts, to provide pregnant employees with reasonable accommodations for pregnancy and related medical conditions when determined necessary by a healthcare provider and not an undue hardship to the district. The PWFA requirements are in alignment with California’s PDA, but the PWFA uses some specific terminology that districts will need to add to their leave lexicon to ensure compliance with the PWFA. Below is a summary of just a few key PWFA terms that school administrators and human resources professionals should familiarize themselves for the coming 2024-2025 school year.

### PWFA Terms

#### *“Qualified Employee or Applicant”*

Under the PWFA there are two sub-categories in the definition of “qualified.” The first definition of a qualified employee or applicant is the same definition as under the Americans with Disabilities Act (ADA), meaning any employee or applicant, who, with or without reasonable accommodation, can perform the essential functions of the position.

The second definition is new, and states that under the PWFA any employee or applicant who cannot do one or more essential functions will still be considered qualified if:

1. The inability to perform an essential function is for a temporary period;
2. The essential function could be performed in the near future; and
3. The inability to perform the essential function can be reasonably accommodated without an undue hardship.

A temporary period is defined to mean a situation in which the employee or applicant has an inability to perform an essential function for a limited time, not permanently, and may extend beyond “in the near future.” In the near future is required to be determined on a case-by-case basis and is not an indefinite period. The EEOC guidance states that pregnancy is not for an indefinite period, is generally 40 weeks, and that the EEOC enforcement regulations presume the end of pregnancy is “in the near future.” However, the Final Regulation also states that conditions other than pregnancy have different durations, no set length of time is created by the Final Regulation, and that other medical conditions must be reviewed on a case-by-case basis.

#### *“Known Limitation”*

Under the PWFA a “known limitation” is a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that is communicated to the employer. An employee or applicant may communicate this to the employer just verbally. The limitation may include a physical or mental condition that:

- Creates a problem of impediment that is modest or minor and/or episodic (e.g., morning sickness)
- A need or problem related to maintaining the health of the employee or applicant or the health of the pregnancy (e.g., avoiding chemicals, taking breaks)
- Seeking health care related to pregnancy, childbirth, or a related medical condition

#### *“Related to, Affected by, or Arising Out of Pregnancy, Childbirth, and Related Medical Conditions”*

The EEOC’s framework for the Final Regulation for the PWFA focused on providing a straightforward, common-sense approach to how pregnancy, childbirth, and related medical conditions impact workers. From this standpoint, the EEOC provided a non-exhaustive list of medical conditions that are commonly known and associated with pregnancy, childbirth, or related medical conditions.

However, the EEOC also made clear that a known limitation “related to, affected by, or arising out of” is intended to be broad. Therefore, the PWFA does not require an employee’s pregnancy, childbirth, or related medical condition *to be the sole, the original, or the substantial cause* of the physical or mental condition for which an employee may be entitled to request reasonable accommodation.

#### *“Rapid Interactive Process”*

The interactive process is an existing concept and process that employers are familiar with through the ADA. The EEOC’s Final Regulation for the PWFA leverages this existing process for providing reasonable accommodations under the PWFA with an emphasis on ensuring the process is short, efficient,

and provides the needed reasonable accommodation as quickly as possible to allow the employee or applicant to continue to safely work.

The EEOC emphasized that a short informal interactive communication is all that will be needed for a wide variety of common sense, no hardship accommodations, i.e., allowing an employee more bathroom breaks, providing a stool for sitting and/or allowing an employee to stand while working instead of sitting; allowing an employee to carry a water bottle and or eat snacks during duty.

In many instances, an appropriate interactive process under the PWFA may include a single conversation between the employee and employer and implementation of the needed reasonable accommodation with follow-up communication confirming the details of the reasonable accommodation and the employer's willingness to continue providing reasonable accommodations to the pregnant employee or applicant as needs may change.

The EEOC's Final Regulation provides further detailed guidance to the above key definitions, as well as a collection of 78 "real life" examples of potential reasonable accommodation requests and solutions for employers and employees to use as a starting point.

As part our Leave Law Workshop Series, the third workshop scheduled for November 5, 2024 - Pregnancy Disability Leaves, will include more in depth information on how districts can ensure compliance with the PWFA.

We look forward to seeing clients at the workshop to further discuss this topic.

-Tumara T. Thelen

---

*Education Law Updates are intended to alert Schools Legal Service clients to developments in legislation, opinions of courts and administrative bodies and related matters. They are not intended as legal advice in any specific situation. Consult legal counsel as to how the issue presented may affect your particular circumstances.*