

Congress Expands Protections for Pregnant and Nursing Employees



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As part of the 2023 omnibus spending bill, Congress expanded protections for pregnant and nursing employees through the Pregnant Workers Fairness Act (“PWFA”) and the Providing Urgent Maternal Protections for Nursing Mothers (“PUMP”) Act. These acts fill the gaps in federal and state law and clearly define how employers must accommodate pregnant and nursing employees.

The PWFA: Reasonable Accommodations for Pregnant Workers

While pregnant workers were federally protected from discrimination under the Pregnancy Discrimination Act, employers were only required to accommodate pregnant employees if they provided the same accommodations to non-pregnant employees of similar ability. This meant employers were not generally required to provide pregnancy-related accommodations such as the need for additional bathroom breaks.

Under the PWFA, employers with 15 or more employees must provide reasonable accommodations to employees and applicants with known limitations related to pregnancy, childbirth, or related medical conditions. Modeled after the Americans with Disabilities Act, the PWFA requires employers to engage in an interactive process to determine if reasonable accommodations can be made that do not impose an undue hardship on the business. The PWFA prohibits employers from requiring that qualified employees take leave if another accommodation is available. Workers who request an accommodation under the act are also protected from retaliation.

The PWFA becomes effective on June 27, 2023.

The PUMP Act: Time and Space to Nurse

In 2010, Congress expanded the Fair Labor Standards Act ("FLSA") to require all employers with 50 or more employees to provide non-exempt employees with time and a private space to pump breast milk for one year after the birth of a child. The PUMP Act expands that protection to all employees under the FLSA. Time spent expressing breastmilk must be considered hours worked if the employee is simultaneously working.

Small businesses that employ fewer than 50 employees may qualify for a hardship exemption. Rail and motorcoach operators face relaxed requirements, and air carriers are exempted from the PUMP Act.

Before filing a complaint with the Department of Labor for violation of the act, an employee must notify their employer of its non-compliance and give the employer 10 days to remedy the problem. The 10-day notice period does not apply if an employer terminates a notifying employee.

The PUMP Act's provisions are effective immediately, but its remedies provisions become effective on April 28, 2023.

Key Takeaways

The PWFA and Pump Acts impact employers across the country, and all employers should consider reviewing their policies and handbooks to ensure they are in compliance. State law and municipal ordinances may provide greater workplace protections to pregnant and nursing employees, and employers should consider consulting legal counsel if they have questions about additional requirements.

The Phillips Murrah [Labor & Employment](#) Law team stands ready to advise employers on all aspects of the ever-changing labor and employment laws.

[Michele C. Spillman](#) is a Director with a background in both commercial litigation and labor & employment law. She offers clients comprehensive solutions to meet their business goals. Michele represents employers in a wide variety of industries and provides advice and counsel on federal and state employment laws regarding discrimination, harassment, retaliation, medical leave requests and accommodations, and wage and hour issues. She also assists employers with human resources matters, including employment policies, handbooks, severance agreements, non-competition matters, and internal investigations into alleged violations of various employment laws. Contact Michele at mcpillman@phillipsmurrah.com or 469.485.7342.

