



LEHR MIDDLEBROOKS
VREELAND & THOMPSON, P.C.

LABOR • EMPLOYMENT • IMMIGRATION

January 5, 2023

Protections for Pregnant and Nursing Mothers in the Omnibus Spending Bill

The recently-enacted Consolidation Appropriations Act of 2023 (H.R. 2617) included two provisions for pregnant and nursing mothers.

The Providing Urgent Maternal Protections for Nursing Mothers Act (“PUMP Act”) expands lactation break rights to exempt employees.

The PUMP Act amends the lactation provision of the FLSA (inserted by ACA) to add that exempt workers (in addition to nonexempt workers) have the right to reasonable break time to express breast milk in a private secured place that is not a bathroom for one year after the child’s birth. The law also claims to clarify that the compensability of this time (with respect to nonexempt employees), but it really doesn’t do that. It maintains the presumption that the time is non-compensable, provided the employee is completely relieved of their job duties, but employers already knew that. What really would’ve been helpful would be establishing a minimum time threshold for the pumping break to be non-compensable, but I digress. Employers should thus continue to exercise caution when declaring any break of fewer than 20 minutes to be non-compensable, including lactation breaks. Employers of fewer than 50 employees may be exempted if they can meet the standard of showing compliance would be an undue hardship (consult counsel first!).

The PUMP Act takes effect on April 28, 2023.

Beware misinformation about the PUMP Act!!

I have seen multiple respected national news sources report that the PUMP Act also extends the pump break entitlement to two years after the birth of a child. *It does not do this; it maintains the one-year limit.* It appears that reporters have read a stand-alone version of the Bill introduced in the House earlier this year that would have enlarged the entitlement to two years (H.R. 3110), but, again, that version was not what was placed into the Omnibus Bill that was passed into law, which maintains the one-year limit. You may read it yourself at page 1635 of [H.R. 2617 as enrolled here](#).

The Pregnant Workers Fairness Act (“PWFA”) formalizes a right to reasonable accommodation for pregnant employees.

The PWFA creates an explicit right to reasonable accommodation (consistent with how that term is used under the ADA) for employees with limitations due to pregnancy, childbirth, or a related medical condition, even if that condition is not a disability as defined by the ADA. The PWFA also contains anti-retaliation provisions consistent with other employment laws. The PWFA doesn’t displace any other law that provides more comprehensive protection for employees. Claims under the PWFA will have to be administratively exhausted before the EEOC and suits and damages will be subject to the same procedures and limitations on damages as are available under Title VII.

The PWFA becomes effective on June 27, 2023. The law directs the EEOC to issue regulations for the PWFA within one year.

What’s the Practical Impact of the PWFA?

Not much. It’s hard to imagine a hypothetical where an employer commits an act that would violate the PWFA but not violate the PDA in light of the Supreme Court’s decision in

[Young v. UPS](#) and the expanded definition of disability in the ADAAA, which specifically encompassed most pregnancy-related conditions, even if they were temporary.

The PWFA also makes explicit two related legal standards that still trip up employers when it comes to pregnant employees: (1) an employer may not force a pregnant employee into a work restriction when she has not requested it and there is no observed impairment in the employee's performance; (2) an employer may not force a pregnant employee to take leave (even paid leave) if a reasonable accommodation exists that permits her to work.

Please contact Whitney Brown at wbrown@lehrmiddlebrooks.com if you have any questions.