



LEHR MIDDLEBROOKS
VREELAND & THOMPSON, P.C.

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This is going to be a bigger deal than I thought:
A series of blog posts reflecting on the proposed Pregnant Workers Fairness
Act regulations, Part 5 of 5

Takeaway 5: Left unchecked, the proposed PWFA regulations will turn the PWFA into an unpaid leave entitlement.

The PWFA—the statute—appeared to be an extension or even a slight expansion of the ADA reasonable accommodations process to employees with pregnancy, childbirth, or related limitations. The word *leave* appears in the statute itself exactly once; where it advises employers that they will violate the Act if they require an able and willing employee to take leave when another reasonable accommodation will address her limitations. The U.S. House Committee Report on the PWFA mentions *leave* a bit more robustly, but still makes it clear that “leave is one possible accommodation under the PWFA, including time off to recover from delivery.” Time off to recover from delivery is the only cause of leave specifically enumerated; other causes are clearly contemplated, but this is more in the context of the prohibition of an employer necessitating leave over other viable alternatives that allow an employee to remain working. Absences for morning sickness or prenatal appointments get grouped under *scheduling* in this Report.

Yet, the proposed PWFA regulations discuss leave as an accommodation extensively: leave to recover from all pregnancy or childbirth-related conditions, not just delivery; intermittent leave for prenatal and postnatal appointments; and leave when no other accommodation exists. Further, as discussed in Part 2, leave for extended periods of forty weeks (or possibly more) without rendering the employee to be someone not qualified to perform the position (and thus outside the scope of the Act). This doesn’t mean that leave has to be provided, only that, if the employee prefers leave—or if no other accommodation is possible—the employer must prove that the duration, frequency, unpredictability, or some other aspect of the leave imposes an undue hardship.

We hope you got to join us on August 23rd for our complimentary webinar. If you missed it, you can view it or download the slides [here](#).

If you have any questions or would like to discuss this further, please contact [Whitney Brown](#) at 205-323-9274 or wbrown@lehrmiddlebrooks.com.