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Laws Evolving for Pregnant Workers: What NY Employers Need to Know

The introduction of both New York's first-of-its-kind prenatal paid leave and the EEOC's rule implementing the PWFA signals to employers nationwide the need to strengthen workplace accommodations for their pregnant employees and the importance of understanding the implications of this evolving area of the law.

By Keith Gutstein, Jennifer E. Sherven, Amanda Gazzo

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In April 2024, New York passed amendments to the New York Paid Sick Leave Law becoming the first state to provide paid prenatal personal leave to eligible pregnant employees, effective Jan. 1, 2025. New York passed this benefit days after the Equal Employment Opportunity Commission (EEOC) issued its final rule implementing the federal Pregnant Workers Fairness Act (PWFA), which went into effect June 18, 2024. The introduction of both New York's first-of-its-kind prenatal paid leave and the EEOC's rule implementing the PWFA signals to employers nationwide the need to strengthen workplace accommodations for their pregnant employees and the importance of understanding the implications of this evolving area of the law.

New York's Amended Paid Sick Leave Law

Under New York's newly amended law, employers will be required to provide pregnant employees with 20 hours of paid prenatal personal leave during any 52-week calendar period. Significantly, this leave is separate from the 40 to 56 hours (depending on the size of the employer) of paid sick leave per calendar year that employers are already required to provide. Eligible employees may elect to take this leave for health care services during their pregnancy or related to pregnancy. Leave may be taken in hourly increments and benefits must be paid in hourly installments. Employers must pay this leave at the employees' regular hourly rate, or the applicable minimum wage, whichever is greater. Employers may not require the employee to disclose confidential information as a prerequisite to providing the paid prenatal leave (akin to when employees take paid sick leave). Notably, the text of the law suggests that this leave must be made immediately available to pregnant employees rather than accruing. The leave also does not appear to apply to partners of pregnant employees. Employers are not required to pay employees for unused paid prenatal personal leave upon employees' separation of employment.

New York's law will place an additional requirement on New York State employers with pregnant employees, in addition to the already existing protections for pregnant employees. For example, in 2015, the New York State Human Rights Law (NYSHRL) was amended to make explicit that New York employers are required to provide reasonable accommodations of pregnancy-related conditions. The NYSHRL prohibits pregnancy discrimination as a form of sex discrimination and familial status discrimination. It also provides that employers may not treat pregnancy-related conditions differently from other medical conditions and disabilities. Further, retaliation against a pregnant employee who exercised entitlements under the NYSHRL is unlawful. New York also provides Paid Family Leave to employees and, as of June 19, 2024, Labor Law 206-c provides all employees with the right to paid break time to express breast milk.

Employers in New York City should also be familiar with Local Law 78, the Pregnant Workers Fairness Act, which was enacted by New York City on Oct. 2, 2013, (not to be confused with the federal PWFA discussed further herein), which also affirmatively requires employers to reasonably accommodate "the needs of an employee for her pregnancy, childbirth, or related medical condition."

The Pregnant Workers Fairness Act

The federal PWFA requires employers to provide reasonable accommodations to a qualified employee's or applicant's known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an "undue hardship." Falling within the scope of the PWFA are all pregnancies (uncomplicated or complicated), vaginal deliveries, cesarian sections, miscarriage, postpartum depression, edema, placenta previa, lactation, and termination of pregnancy. The EEOC has faced challenges concerning its authority to implement legislation that requires employers to provide accommodations for employees who seek "purely elective abortions." These challenges have resulted in split court decisions, which indicates that the applicability of the final rule may change. However, employers should ensure they follow the PWFA accommodation requirements and any additional challenges.

It is worth noting, providing some of these accommodations may affect an employer's staffing needs. For example, the requirement of allowing additional breaks may cause an employer to ensure there are additional employees present to cover for the pregnant employee taking a break.

PWFA and ADA Distinctions

The federal PWFA overlaps somewhat with the Americans with Disabilities Act (ADA) but there are distinct differences that employers must keep in mind, including the definition of "qualified" employee. The PWFA includes two definitions of "qualified." The first is similar to the ADA's definition ("an employee or applicant who, with or without reasonable accommodation, can perform the essential functions of the position"). The second definition provides that a pregnant employee may still be "qualified" even if unable to perform one or more essential functions of the job under the following circumstances: if the inability to perform the essential functions is "temporary," the employee could perform the essential functions "in the near future," or the inability to perform the essential functions can be reasonably accommodated.

Like New York's prenatal personal leave law, the PWFA places restrictions on an employer's ability to ask the employee for documentation. All documentation requests must be reasonable, and to that end, a documentation request is unreasonable if the limitation or necessary accommodation is "obvious." If employers are allowed to request documentation, employers are limited to documentation confirming the employee's condition and that it is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, and describes the adjustment that is needed due to the limitation. As such, employers must be aware of what would be considered an "obvious" limitation or need for accommodation, so that they know whether they are entitled to request documentation. Further, employers must be careful to limit their requests to documents that are directly related to the pregnancy and resulting conditions.

The PWFA expands upon already existing federal level protections for pregnant employees, including under the Pregnancy Discrimination Act, Title VII, the ADA, the Family Medical Leave Act (FMLA), the Fair Labor Standards Act (FLSA) and its protections for employees who pump at work. Before the federal PWFA was enacted, employers had to provide accommodations to pregnant employees in the same manner as the employers treated non-pregnant employees. The PWFA now affirmatively provides pregnant employees with workplace accommodations that are needed as a result of their pregnancy and related conditions. It is important to note that the PWFA does not replace federal, state, or local laws that are more protective of workers affected by pregnancy, childbirth, or related medical conditions.

Key Steps to Consider

As a result of these new laws, it is important for employers to understand what actions they need to take to comply on both the New York state and federal level. In doing so, employers must evaluate their current personnel policies and practices regarding pregnant employees. There are several ways employers can update their procedures to ensure they are adhering to these new laws. First, employers should review their employee handbooks or other policies and update them to conform with these new laws. For example, under the New York state prenatal personal leave law, employers should set forth how pregnant employees can request their paid prenatal leave, how far in advance they must put in the request, and if any non-confidential documentation is required. New York employers should also provide copies of the New York State Department of Labor's policy on the rights of employees to express breast milk in the workplace. For the federal PWFA, employers should set forth how pregnant employees can request a reasonable accommodation and provide employees with examples of what would be such an accommodation. Employers should also distribute an display any required physical posters and documentation concerning these laws.

Additionally, employers should begin to train and educate their management and human resources employees concerning these new laws so that they can properly apply them to pregnant employees' requests. Specifically, management and human resources employees should be informed of these new laws, the ways the employer is implementing them, and any relevant procedures in connection with these laws. Importantly, employers should educate these employees on what types of documentation they are allowed to request under the restrictions set forth in the laws. Further, under the PWFA, all documentation requests must be reasonable. Employers should also educate management and human resources employees on what is considered a "reasonable accommodation" under the PWFA. Employers should reference the EEOC's final rule in determining whether to approve an accommodation as "reasonable."

Lastly, employers must understand what a violation of either of these laws could mean. Employees may look to litigate alleged violation in court, bringing unwanted publicity and draining company resources. They could also face steep penalties for violating these laws including payment of lost wages and benefits. As such, it is important for employers to take affirmative steps to be in compliance with these laws, as a proactive way to avoid any potential litigation, costly damages and public scrutiny. Staying up to date on the status of these laws is also critical, as they are continually evolving.

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