



Update procedures for new laws protecting pregnancy-related conditions, nursing

By Anjali Patel, Esq., **cyberFEDS**® Legal Editor Washington Bureau

IN FOCUS: Agencies must "update and revise" their accommodation procedures to comply with two new laws protecting pregnant workers and new mothers -- the [Pregnant Workers Fairness Act](#) and the [Providing Urgent Maternal Protections \(PUMP\) for Nursing Mothers Act](#), Federal Practice Group Debra D'Agostino told **cyberFEDS**® in an exclusive interview.

Congress passed these laws as part of the omnibus Consolidated Appropriations Act of FY 2023 at the end of 2022.

Pregnant Workers Fairness Act

The PWFA "codifies and clarifies the 2015 Supreme Court decision, [Young v. United Parcel Service Inc.](#), [[115 LRP 12648](#) , 135 S. Ct. 1338(2015)], which held that employers making reasonable accommodations for other similarly situated workers must also provide pregnant workers with reasonable accommodation," D'Agostino said.

"While it was clearly the Supreme Court's intent in *Young* to do away with maddening decisions holding that only women with complicated pregnancies or underlying disabilities, . . . could get accommodation, the decision resulted in some bizarre outcomes, like pregnant women being denied accommodation because of a lack of a non-pregnant comparator," D'Agostino said.

Consequently, she added, by June 27, agencies:

- Must engage in the interactive process to reasonably accommodate the known limitations related to pregnancy and childbirth unless the accommodation would create an undue hardship.
- May not require an employee to take leave if another reasonable accommodation can be provided.
- May not deny employment opportunities or take adverse actions against employees because they used or requested reasonable accommodation.

Unlike the Americans with Disabilities Act, the PWFA does not require showing the condition meets the definition of disability. Rather, a person is a "qualified employee" under the PWFA if: the inability to perform an essential function is for a temporary period; the essential function could be performed in the near future; and the inability to perform the essential function can be reasonably accommodated.

"If a woman believes that her agency has failed to reasonably accommodate her limitations related to pregnancy or childbirth, or retaliated because she requested reasonable accommodation, she should contact her agency's EEO office within 45 days to initiate an informal EEO complaint, she said.

To promote compliance and reduce potential complaints, D'Agostino urged agencies to:

- Ensure that "limitations caused by pregnancy or childbirth are clearly encompassed" in their reasonable accommodation policies.
- Educate and inform supervisors to recognize and appropriately respond to a request for reasonable accommodation related to childbirth or pregnancy.

By December 2024, the Equal Employment Opportunity Commission must issue regulations providing examples of reasonable accommodations that address known limitations regarding pregnancy, childbirth, and related medical conditions.

PUMP for Nursing Mothers Act

The FY 2023 omnibus appropriations law also includes the [Providing Urgent Maternal Protections \(PUMP\) for Nursing Mothers Act](#), which requires federal agencies to "provide a reasonable break time to express breast milk for 1 year after a child's birth and a private place other than a bathroom to express milk," D'Agostino explained.

"While most federal agencies have understood their obligation to provide reasonable break time and appropriate spaces for breastfeeding since the Affordable Care Act was passed, the PUMP for Nursing Mother's Act applies to both salaried and hourly employees who are not exempt from Fair Labor Standards Act, showing the intent to make sure all nursing mothers are able to express milk at work."

The PUMP for Nursing Mothers Act goes into effect April 28.

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