

**CLIENT ALERT: Workplace Rights for Pregnant Workers and Nursing Mothers**

April 6, 2023

In December, 2022 the President signed two federal laws, the Pregnant Workers Fairness Act (PWFA) and the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act). These two new federal laws will impact most employers. Under the PWFA, pregnancy has been given disability-like protection. The PUMP Act expands existing employer obligations under the Fair Labor Standards Act (FLSA) to provide employees with reasonable break time to express breast milk for their nursing child for one year after the child's birth and also to provide a suitable location for mothers.

**Q: Are these laws in effect?**

A: The PUMP Act became effective December 29, 2022. The PWFA takes effect on June 27, 2023.

**Q: Do these new laws apply to all employers?**

A: The PWFA applies to employers with at least 15 employees.

The PUMP Act applies to almost all employers (with some very limited exceptions). Employers with fewer than 50 employees are not subject to the break time and physical space requirements if compliance with these provisions would impose an undue hardship. All employees who work for a covered employer, regardless of work site, are counted when determining whether this exemption applies.

**Q: What are the requirements of the PWFA?**

A: The PWFA requires employers to provide reasonable accommodations (just like the ADA) for pregnant workers so long as they do not impose an undue hardship. Under the PWFA, employers will be required to provide reasonable accommodations to employees and applicants with known temporary limitations on their ability to perform the essential functions of their jobs based on a physical or mental condition related to pregnancy, childbirth, and related medical conditions.

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**Q: What type of accommodations might be provided?**

A: Some examples of accommodations that may be required include providing additional restroom breaks, reducing lifting requirements, providing leave for an employee who does not qualify for leave under the Family and Medical Leave Act, and providing different office equipment (e.g., providing a stool for an employee who typically is required to stand).

**Q: What are the requirements of the PUMP Act?**

A: The PUMP Act applies to non-exempt and exempt employees. For one year after the child's birth, employees may take a reasonable break time "each time such employee has need to express [their] milk." An employer may not deny an employee a needed break to pump. Employees who telework are eligible to take pump breaks on the same basis as other employees.

Employees must be provided with "a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk." A bathroom, even if private, is not a permissible location for the employer to provide for pumping breast milk.

**Q: Is break time under the PUMP Act paid?**

A: It depends. If a non-exempt employee uses her paid 15 minute breaks to express milk, her break is paid like any other employees. If she needs additional breaks beyond those regular breaks, they don't have to be paid breaks. Note that the employee must be relieved from all duties during her break, and if she's still working, then she must be paid.

**Bottom line:**

Many employers are already flexible and offer the nursing breaks and the suitable space. Moving forward, however, this is no longer simply a matter of sound policy; it is now a mandate under federal law. The new requirement that pregnant employees have ADA type rights is a more sweeping change, and one that employers should reflect in policy and also ensure that leaders are well trained about these rights.

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