

EEOC ISSUES FINAL RULE LIMITING EMPLOYERS' ABILITY TO REQUEST DOCUMENTATION FROM EMPLOYEES SEEKING CERTAIN ACCOMMODATIONS

05.14.2024

On April 15, 2024, the Equal Employment Opportunity Commission (“EEOC”) issued a Final Rule to Implement the Pregnant Workers Fairness Act (“PWFA”). Generally, the PWFA requires a covered employer to provide a “reasonable accommodation” to qualified employees for 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.” The Rule—which will go into effect on June 18, 2024—limits when employers may request supporting documentation for a PWFA accommodation. Notably, the Rule states that an employer's request that an employee provide supporting documentation for certain “predictable assessments” related to pregnancy could be a violation of the PWFA.

The Rule generally prohibits employers from seeking documentation in the following circumstances: (1) when the limitation and need for a reasonable accommodation is obvious; (2) when the employer already has sufficient information to support a known limitation related to pregnancy; (3) when the request is for one of four identified reasonable accommodations (i.e., additional restroom breaks; food/drink breaks; beverages near the work station; and sitting or standing as needed); (4) when the request is for a lactation accommodation; and (5) when the accommodation is available without documentation for other employees seeking the same accommodation for non-PWFA reasons.

Employers may only seek documentation when it is “reasonable under the circumstances for the covered entity to determine whether” to grant the accommodation. In situations where employers may seek documentation, employers may only require the minimum information needed to confirm that

ATTORNEYS

McKayla Hendrix

PRACTICES

Employment Litigation
and Counseling

Labor and Employment

EEOC Issues Final Rule Limiting Employers' Ability to Request Documentation from Employees Seeking Certain Accommodations

the physical or mental condition is related to pregnancy, childbirth, or related medical conditions and that an accommodation is necessary.

The Rule further states that an employer's delay in providing the accommodations identified as predictable assessments "will virtually always result in a finding of unnecessary delay" and a violation of the PWFA.

Employers should review their policies and current accommodation practices in light of this Rule. Employers may want to provide additional training to supervisors and human resources personnel regarding how to handle accommodation requests made under the PWFA.

If you have questions or if you would like assistance with this or any other matter, please do not hesitate to contact us.