# The EEOC's Litigation Under the Pregnant Workers Fairness Act

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On June 27, 2023, the Equal Employment Opportunity Commission (EEOC) began accepting charges of discrimination for alleged violations of the Pregnant Workers Fairness Act (PWFA). On April 15, 2024, the EEOC published the final regulations to enforce the act, with an effective date of June 18, 2024. Since the law went into effect, the EEOC has reported that it has received more than 2,000 charges alleging violation of the PWFA. In addition, the EEOC has recently filed several lawsuits against employers who have allegedly violated the PWFA, which provides accommodations for pregnant, and postpartum, applicants and employees.

The PWFA applies to employers who have 15 or more employees, in both the private and public sectors. It requires covered employers to provide reasonable accommodations to a worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship. The PWFA also notes that covered employers cannot:

- Require the employee to accept an
- accommodation without having a discussion with the employee about the
- accommodation;
- Deny a job or other employment opportunities to an employee or an applicant based on the individual's needs for an accommodation;
- Require the employee to take a leave of absence if another accommodation would allow the employee to continue working;
- Retaliate against an individual for reporting or opposing discrimination
- under the PWFA (or for requesting an accommodation under the PWFA); or
- Interfere with any individual's rights
- under the PWFA.

On Sept. 10, 2024, the EEOC filed suit against Wabash National Corp. in the U.S. District Court for the Western District of Kentucky. The EEOC alleges that Wabash failed to accommodate a pregnant employee by refusing to transfer her to a role that did not require she bend over or lay on her stomach, immediately placed her on unpaid

leave after she requested an accommodation, and requested that her physician to fill out an ADA questionnaire "designed to elicit information about disabilities and disability-related impairments." When the employee's doctor indicated that her limitations were due to pregnancy, not disability, her accommodation request was denied. As a result of Wabash's actions, the employee resigned. The EEOC alleges two violations of the PWFA—denial of accommodation and adverse action for requesting an accommodation. The EEOC also alleges violations of the ADA and Title VII. See *EEOC v. Wasbash National*, 5:24-cv-00148, (W. D. Ky. 2024).

On Sept. 25, 2024, the EEOC filed suit against Polaris Industries, Inc. in the Northern District of Alabama. There, the EEOC alleges that Polaris denied a pregnant worker's requested accommodations to attend medical appointments and to temporarily be reassigned to a position that required less overtime while she was in the initial probationary period of her employment. The EEOC alleges that Polaris refused to allow the employee to attend medical appointments without accruing attendance points (which would lead to her termination) and required her to work more than 40 hours, which had a direct negative effect on her pregnancy-related conditions of nausea, swollen feet, aching joints and gestational diabetes. Even with a medical note indicating her restrictions, Polaris refused to accommodate the employee's request to not work overtime during her pregnancy, despite the fact that there was a surplus of workers who could work overtime in her stead. The employee resigned after she was told she would be terminated the next time she took a day off or needed to leave work for a medical appointment. As a result, the EEOC's complaint alleges failure to accommodate and constructive discharge. See *EEOC v. Polaris Industries*, 5:24-cv-01305, (N.D. Ala. 2024). At the time the lawsuit was filed, the EEOC stated:

"Employers should be on notice that since June 27, 2023, it has been illegal under the PWFA to deny reasonable accommodations to employees with known limitations related to their pregnancy, even if the employee is temporarily unable to perform an essential function of her job, provided that she will be able to perform that function in the near future," said Marsha Rucker, regional attorney for the EEOC's Birmingham District. "It is also illegal under the PWFA to take adverse action against an employee requesting a reasonable accommodation related to pregnancy, childbirth or related medical conditions of that employee. The EEOC will diligently pursue remedies for individuals whose employers deny them the protections that the PWFA offers." See, "EEOC Sues Two Employers Under the Pregnant Workers Fairness Act," *EEOC News*, Sept. 26, 2024.

On Sept. 26, 2024, the EEOC filed a federal lawsuit in the Northern District of Oklahoma against Urologic Specialists of Oklahoma, Inc., a specialty medical practice, for refusing to allow a pregnant medical assistant to sit, take breaks or work part-time. The employee was in the final trimester of a high-risk pregnancy and had a note from her physician. Urologic Specialists required the employee to take unpaid leave and then terminated her when she would not return to work unless she was allowed breaks to express breastmilk, which the company refused to agree to. See *EEOC v. Urologic Specialists of Oklahoma*, Case 4:24-cv-0452, (N.D. Okla. 2024).

"A pregnant employee does not have to risk her health and safety just to keep her job," said Andrea G. Baran, regional attorney for the EEOC's St. Louis District. "Federal law requires employers to reasonably accommodate pregnant employees absent an undue hardship. The EEOC will continue to vigorously protect expectant and new mothers in the workplace." See, "EEOC Sues Two Employers Under the Pregnant Workers Fairness Act," *EEOC News*, Sept. 26, 2024.

On Sept. 30, 2024, the EEOC filed its complaint against Kurt Bluemel, a commercial nursey located in Baltimore County, in the District of Maryland. The EEOC alleges that Bluemel did not accommodate a pregnant employee's request for maternity leave and then fired her when she attempted to resume her work. See *EEOC v. Bluemel*, 24-cv-2816, (D. M.D. Sep 30, 2024).

"The Pregnant Workers Fairness Act mandates that employers work with employees to identify accommodations that support pregnancy while protecting the employee's job," said Debra Lawrence, Regional Attorney for the EEOC's Philadelphia District. "An employer cannot escape this mandate by simply firing the employee."

Rosemarie Rhodes, the EEOC's Baltimore field office director, said, "Compliance with the Pregnant Workers Fairness Act requires collaboration and an interactive process. Terminating the employee will never work as a way to avoid federal anti-discrimination law." See, "EEOC Sues Kurt Bluemel for Pregnancy Discrimination," *EEOC News*, Sept. 26, 2024.

On Sept. 30, 2024, the EEOC filed suit against Lago Mar Properties, Inc. in the Southern District of Florida. The EEOC alleged that an employee, a line cook for the employer, was terminated three days after requesting a six-week leave to recover and grieve following the traumatic stillbirth of her child. The EEOC found that Lago Mar did not engage in any interactive process prior to terminating the employee. On Oct. 11, 2024, the parties reached a settlement by consent decree for $100,000. In addition to the monetary relief, and among other things, the employer has agreed to provide reasonable accommodations in accordance with the PWFA, appoint an EEO coordinator, and review and revise its policies to conform to all requirements of the ADA, PWFA and the consent decree. The employer will also provide the revised policies to the EEOC for review.

The PWFA provides additional protections to those already established under the ADA and Title VII, and other state and local laws which protect pregnant and postpartum employees from discrimination for pregnancy-related issues. Employers need to be aware of the requirement to accommodate (unless it will cause the employer an "undue hardship"). Even if an employee will be unable to perform an essential function of their job, as long as they will be able to in the near future, this does not necessarily constitute an undue hardship. Additionally, employers need to engage in the interactive process and consider options to accommodate employees in order to ensure they are in compliance with the PWFA and other protective state and federal laws.

The EEOC is not taking enforcement of the PWFA lightly, and employers should proactively review and update their policies and instructions accordingly. Many of the accommodations requested in the lawsuits

are what the EEOC refers to as "basic, common sense" accommodations. As the PWFA is clearly a priority for the EEOC's enforcement units, employers must exercise caution when handling pregnancy-related accommodation requests, particularly if an accommodation request will be denied.

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