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Final Rule for Pregnant Workers Fairness Act Takes Effect as Scheduled for Most Employers, Despite Legal Challenges

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June 20, 2024

On June 18, 2024, the Final Rule implementing and interpreting the Pregnant Workers Fairness Act ("PWFA" or the "Act") took effect as scheduled for most employers, despite several legal challenges that sought to block it.

The PWFA requires employers with 15 or more employees to make reasonable accommodations (absent undue hardship) for qualified employees and applicants with known limitations due to pregnancy, childbirth or related medical conditions. The PWFA further prohibits employers from retaliating against employees or applicants because they have requested an accommodation, opposed discrimination or participated in an investigation or proceeding under the Act.

The Final Rule includes a significant, but non-exhaustive, list of conditions that constitute "related medical conditions," which may necessitate a reasonable accommodation, including, but not limited to, conditions relating to the "termination of pregnancy, including via miscarriage, stillbirth, or abortion." The U.S. Equal Employment Opportunity Commission's ("EEOC") decision to include abortion as a "related medical condition" has been hotly contested since the EEOC issued its notice of proposed rulemaking on August 11, 2023, and over half of the nearly 100,000 comments submitted during the rulemaking process urged the EEOC to exclude abortion from PWFA coverage.

On June 17, 2024, one day before the Final Rule was set to take effect, a federal judge in Louisiana ruled in State of Louisiana, et al. v. EEOC, No. 2:24-cv-00629 (W.D. La.) and U.S. Conference of Catholic Bishops, et al. v. EEOC, No. 2:24-cv-00691 (W.D. La.), that the EEOC exceeded its statutory authority by requiring employers to accommodate elective abortions (meaning abortions unrelated to the treatment of an underlying medical condition), and the court preliminarily enjoined enforcement of this provision of the Final Rule against employers with employees in Louisiana or Mississippi, two states where state law broadly prohibits abortion. The preliminary injunction applies only to employees whose primary duty station is located in one of these two states (and to a select group of Catholic organizations that also filed suit). The ruling postpones the effective date of the "abortion accommodation mandate" until a final judgment is issued by the court after further briefing. All other provisions of the Final Rule remain in effect.

The Final Rule faced a similar challenge in State of Tennessee, et al. v. EEOC, No. 2:24-cv-00084 (E.D. Ark.), which was brought by 17 state attorneys general in Arkansas federal court, but the court in that case dismissed the challenge for lack of standing on June 14, 2024. For most employers, therefore, the Final Rule took effect in full as scheduled on June 18, 2024.

Employers are encouraged to review and update their existing policies and practices to ensure compliance with the PWFA's requirements. For additional information, please contact **Michelle T. Olson** at molson@vedderprice.com, **Ellen M. Hemminger** at ehemminger@vedderprice.com or any other Vedder Price attorney with whom you have worked.