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Title 29 – Labor

Subtitle B – Regulations Relating to Labor

Chapter XIV – Equal Employment Opportunity Commission

Part 1636 – Pregnant Workers Fairness Act

Authority: 42 U.S.C. 2000gg *et seq.*

Source: 89 FR 29182, Apr. 19, 2024, unless otherwise noted.

§ 1636.4 Nondiscrimination with regard to reasonable accommodations related to pregnancy.

- (a) It is an unlawful employment practice for a covered entity not to make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity.
- (1) An unnecessary delay in providing a reasonable accommodation to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee may result in a violation of the PWFA, 42 U.S.C. 2000gg-1(1), even if the covered entity eventually provides the reasonable accommodation. In determining whether there has been an unnecessary delay, factors to be considered, with no one factor to be dispositive, include:
- (i) The reason for the delay;
 - (ii) The length of the delay;
 - (iii) The length of time that the accommodation is needed. If the accommodation is needed for a short time, unnecessary delay in providing it may effectively mean failure to provide the accommodation;
 - (iv) How much the employee and the covered entity each contributed to the delay;
 - (v) Whether the covered entity was engaged in actions related to the reasonable accommodation request during the delay;
 - (vi) Whether the accommodation was or would be simple or complex to provide. There are certain accommodations, set forth in § 1636.3(j)(4), that are common and easy to provide. Delay in providing these accommodations will virtually always result in a finding of unnecessary delay; and
 - (vii) Whether the covered entity offered the employee an interim reasonable accommodation during the interactive process or while waiting for the covered entity's response. For the purposes of this factor, the interim reasonable accommodation should be one that allows the employee to continue working. Leave will not be considered an interim reasonable accommodation supporting this factor, unless the employee selects or requests leave as an interim reasonable accommodation.
- (2) An employee with known limitations related to pregnancy, childbirth, or related medical conditions is not required to accept an accommodation. However, if such employee rejects a reasonable accommodation that is necessary to enable the employee to perform an essential function(s) of the position held or desired or to apply for the position, or rejects the temporary suspension of an

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essential function(s) if the employee is qualified under § 1636.3(f)(2), and, as a result of that rejection, cannot perform an essential function(s) of the position, or cannot apply, the employee will not be considered “qualified.”

- (3) A covered entity cannot justify failing to provide a reasonable accommodation or the unnecessary delay in providing a reasonable accommodation to a qualified employee with known limitations related to pregnancy, childbirth, or related medical conditions based on the employee failing to provide supporting documentation, unless:
 - (i) The covered entity seeks the supporting documentation;
 - (ii) Seeking the supporting documentation is reasonable under the circumstances as set out in § 1636.3(l)(1);
 - (iii) The supporting documentation is “reasonable documentation” as defined in § 1636.3(l)(2); and
 - (iv) The covered entity provides the employee sufficient time to obtain and provide the supporting documentation.
- (4) When choosing among effective accommodations, the covered entity must choose an accommodation that provides the qualified employee with known limitations related to pregnancy, childbirth, or related medical conditions equal employment opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges as are available to the average employee without a known limitation who is similarly situated. The similarly situated average employee without a known limitation may include the employee requesting an accommodation at a time prior to communicating the limitation.
- (b) It is an unlawful employment practice for a covered entity to require a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process referred to in 42 U.S.C. 2000gg(7) and described in § 1636.3(k).
- (c) It is an unlawful employment practice for a covered entity to deny employment opportunities to a qualified employee if such denial is based on the need, or potential need, of the covered entity to make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of the qualified employee.
- (d) It is an unlawful employment practice for a covered entity:
 - (1) To require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided to the known limitations related to the pregnancy, childbirth, or related medical conditions of the qualified employee that does not result in an undue hardship for the covered entity; but
 - (2) Nothing in paragraph (d)(1) of this section prohibits leave as a reasonable accommodation if that is the reasonable accommodation requested or selected by the employee, or if it is the only reasonable accommodation that does not cause an undue hardship.
- (e) It is an unlawful employment practice for a covered entity:
 - (1) To take adverse action in terms, conditions, or privileges of employment against a qualified employee on account of the employee requesting or using a reasonable accommodation to the known limitations related to the pregnancy, childbirth, or related medical conditions of the employee.

- (2) Nothing in paragraph (e)(1) of this section limits the rights available under 42 U.S.C. 2000gg-2(f).