

## NEW PROTECTIONS FOR PREGNANT WORKERS & NURSING MOTHERS: WHAT EMPLOYERS NEED TO KNOW

On December 29, 2022, as part of the Consolidated Appropriations Act for 2023, President Biden signed two new federal laws, offering legal protections to pregnant/postpartum and nursing employees and applicants: The Pregnant Workers Fairness Act (“PWFA”) and the Providing Urgent Maternal Protections (“PUMP”) for Nursing Mothers Act. The first question on every employer’s mind is — ***do these new laws apply to this company?*** That question is closely followed by the next — ***if so, how?***

Read on for more information, including who is covered under each Act and under what circumstances.

***The Pregnant Workers Fairness Act:*** (“PWFA”) takes effect on **June 27, 2023**, and affords workers the right to request and receive reasonable accommodations for medical conditions resulting from pregnancy, childbirth or other, related conditions, ***unless*** to do so would be an untrue hardship for the employer. It is not the simple fact of pregnancy alone that triggers the Act’s application; rather, the trigger is a related medical condition, physical or mental. Governmental employers and private employers with 15 or more employees are bound by the new law. PWFA applies to employees of a qualifying employer who work full or part-time, or are temporary or seasonal workers. It also applies to job applicants or potential new hires.

Some examples of reasonable accommodations under the PWFA include, but are not limited to:

light duty/assistance with manual labor and lifting; temporary transfer to a less physically demanding position; additional or longer breaks to drink water, eat, rest, or use the bathroom; changing food or drink policies to allow a worker to have a water bottle or food at a work station, or moving a work station closer to a restroom; providing a locked, private, clean lactation station; modifying a work station to allow for a place to sit; changing a uniform to allow maternity wear; flexible scheduling related to shortening work hours or allowing for later arrival to accommodate morning sickness, providing remote or telework options or time away from work for pre or postnatal appointments.

The Act requires employers to engage promptly in the interactive process with the employee or applicant, in person, by phone, through mail or in mail, once the request for reasonable accommodation is made. However, there are no “magic words,” the words “reasonable accommodation” or the name of the Act need not be used to trigger the Act’s application. Unlike the ADA, if an employee is unable to perform the “essential functions” of the position, ***provided*** the inability to perform is only temporary, the Act applies to protect the employee or applicant’s position.

Retaliation is expressly prohibited under the law. It is a violation of the PWFA for an employer to: force an accommodation without discussion; require an employee to take leave where another accommodation that would allow the employee to continue working exists; deny employment opportunities to a qualified employee or applicant based on the person’s need for a reasonable accommodation; retaliate against an employee or applicant for reporting or opposing unlawful discrimination under the PWFA or for participating

in an investigation initiated pursuant to PWFA; or otherwise interfere with anyone's rights under the PWFA. Claims are brought before the Equal Employment Opportunity Commission ("EEOC").

The PWFA was created to address perceived limitations in other, related laws like the **Pregnancy Discrimination Act** which also provides pregnant or post-partum employees the right to request and receive reasonable accommodations where they can identify other similarly-situated employees in the workplace who received these types of reasonable accommodations, or the **Americans with Disabilities Act** which also provides pregnant or post-partum employees the right to request and receive reasonable accommodations where the employee has a pregnancy-related disability.

In addition, the second Act, *The Providing Urgent Maternal Protections ("PUMP") for Nursing Mothers Act*, went into effect on **December 29, 2022** and expands protections previously conferred through the Break Time for Nursing Mothers Act, passed in 2010 as part of the Affordable Care Act ("ACA"), for nursing mothers who choose to breastfeed in the workplace. Employers with less than 50 employees are not required to comply with the break time and space requirements of the Act if such compliance would impose an undue hardship upon the employer. PUMP requires, for the first time, that employers afford reasonable break time to the requesting employee to nurse, as well as a private place to pump for up to one year after the birth of their child. Employers must provide "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."

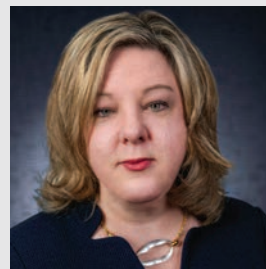
The United States Department of Labor ("US DOL") is responsible to enforce the PUMP Act and maintains resources on its website to aid in interpretation. Employer violations or PUMP, from a denial of the various protections the Act affords, through termination, create for the affected employee an immediate right to file either a Complaint with the Wage and Hour Division of the US DOL, or a private lawsuit where an employer fails, within ten (10) days of proper notice, to address a request to rectify a problem. This provision of the Act, the enforcement provision, was delayed

and took effect on **April 28, 2023**. An employer who violates an employee's right to reasonable break time and space to pump breast milk may be liable for legal or equitable remedies including, but not limited to, reinstatement, promotion, payment of wages lost (with an additional equal amount as liquidated damages), compensatory damages, payment on resultant economic losses and punitive damages, where appropriate, regardless of whether redress is sought through a Complaint filed with the Wage and Hour Division, or in a private cause of action.

<sup>1</sup> See United States Department of Labor, Wage and Hour Division, Fact Sheet #73: FLSA Protections for Employees to Pump Breast Milk at Work, Revised January 2023

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Jaime serves as the head of the firm's Litigation and Labor & Employment Groups.

Her clients include corporations, insurance companies, title agencies, municipalities, professional and recreational associations, school districts, private developers, and regional contractors and subcontractors. She has also worked on behalf of design professionals and sureties. She advises her clients on risk allocation, and risk shifting mechanisms including insurance, indemnity and bonding provisions in contract formation.

Jaime has successfully represented clients in nonjury and jury trials in courtrooms across Pennsylvania. She has also litigated complex construction claims on behalf of owners, contractors and subcontractors before the American Arbitration Association.

After graduating from Boston College in 1999, Jaime earned her J.D. from the University of Pittsburgh School of Law.