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The Pregnant Workers Fairness Act builds on other federal legislation, but includes more than California's laws.

Pregnancy and the workplace

Pregnant Workers Fairness Act: What you need to know

KATHRYN REED
For North Bay Business Journal

The Pregnant Workers Fairness Act that took effect this summer aims to help women continue working through their pregnancy instead of having to go out on unpaid leave.

This will be achieved through employee accommodations, which include modifying work conditions, allowing time off for medical appointments, reducing work hours, and a slew of other possibilities.

The modifications will be decided between the worker and employer; it won't be a one-sided mandate by management.

Arif Virji

Nor can bosses force workers to take unpaid leave.

While the law has some gray area, it is designed to allow for case-by-case solutions, as every woman doesn't fit into the same scenario.

"The whole focus is women say: 'I need this income, and if you just accommodate me, I can continue to work,'" explained Arif Virji, partner in charge of the labor and employment group with Carle, Mackie, Power & Ross law firm in Santa Rosa. "And that is the goal; to encourage employers to say we will through the interactive process to accommodate you. The down side for employers is there are times where they will not be getting 100% productivity because of the accommodations."

The federal law pertains to businesses with 15 or more workers.

"The other big expansion here is that this law not only applies during pregnancy, but it affects them if they are trying to get pregnant during pregnancy, and after pregnancy," Virji said. The accommodations include for conditions arising from infertility and fertility treatment and from a miscarriage or stillbirth, among other scenarios.

His firm, which represents a number of wineries and construction companies in Sonoma and Napa counties, in July conducted a seminar about the law known by its initials, PWFA.

Virji and his colleagues found that a number of companies did not realize how much more encompassing PWFA is.

This regulation, which will be enforced by the Equal Employment Opportunity Commission, builds on other federal legislation, but is more expansive than even what California has on the books.

Lisa Ann Hilario

"From an employee's perspective, "The act is important because it provides additional workplace protections to working women who have physical or mental conditions caused by pregnancy, childbirth or related conditions," said Lisa Ann Hilario, partner with Spaulding, McCullough & Tansil law firm in Santa Rosa. "It allows them

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to keep working when a reasonable accommodation exists for their condition, which means they can continue to financially provide for themselves and their families,"

"From the perspective of a California employer with 15 or more employees, understanding this act is important because it contains broader protections than were previously provided by California law," Hilario said. "Typically, California law is more generous than federal law, but in this instance, federal law is broader, so California employers need to understand and apply the differences in the workplace."

Hilario added, "From a human perspective, we all benefit from the protection of worker rights, but the additional protections the law requires employers to provide add to the already challenging business environment businesses face when attempting to deliver a product or service to the consumer at a reasonable price."

The law also grants allowances for menstruation issues.

Not all states are on board with the regulations, though. A federal judge in Louisiana sided with that state and Mississippi by issuing a preliminary injunction that blocks enforcement of PWFA in those two states. However, a federal judge in Arkansas in June said the 17 states suing the EEOC lacked standing. They were fighting the part of the law encompassing abortions, where women would be given time off, and guaranteed other rights.

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EXAMPLES OF REASONABLE ACCOMMODATIONS FOR EMPLOYERS UNDER THE PWFA

- Additional, longer, or more flexible breaks to drink water, eat, rest, or use the restroom
- Changing food or drink policies to allow a worker to have a water bottle or food
- Changing equipment, devices, or workstations such as providing a stool to sit on, or a way to do work while standing
- Changing a uniform or dress code or providing safety equipment that fits
- Changing a work schedule, such as having shorter hours, part-time work, or a later start time, or telework
- Temporary job reassignment
- Leave for appointments with health care providers
- Light duty or help with lifting or other manual labor
- Leave to recover from childbirth

SOURCE: ARIF VIRJI WITH CARLE MACKIE POWER & ROSS LLP, SANTA ROSA

LOCAL REACTION

Vacaville-based Travis Credit Union recognizes this will be another layer of law to comply with.

"The PWFA emphasizes reasonable accommodations for pregnancy-related conditions that extend beyond typical disability definitions, ensuring inclusivity for common pregnancy-related needs," Catherine Johnson, chief people officer, at Travis Credit Union, said.

Those pregnancy-related conditions, Johnson said, include "occasional morning sickness, and the need for health care appointments, even if these do no qualify as disabilities under the ADA. Importantly, the ADA does not classify pregnancy itself as a disability."

Johnson believes TCU, where 71% of the employees are female, is ahead of the game.

"(O)ur ergonomic and wellness programs have positioned us well to meet these new federal requirements. In 2023, we proactively trained our HR team on managing leaves, ADA accommodations, and the anticipated PWFA regulations," Johnson said.

COURTESY: TRAVIS CREDIT UNION

Catherine Johnson is chief people officer at Travis Credit Union.

Another Solano County business, NorthBay Health, also has a large number of women workers — 80% — so it, too, is well versed in handling issues surrounding pregnancies.

Jim Anderson

"Whether it is our patients, providers, nurses, or our other team members, NorthBay Health has always believed that every pregnant individual deserves compassionate and accessible care and the appropriate accommodations at work and home," Jim Andersen, vice president and chief human resources officer, said.

Many North Bay businesses believe they are already accommodating those who would be affected by this legislation, so they contend complying with it will be easy.

"Honestly, we work really hard to accommodate any employee who has limitations or restrictions, so that is our way of operating," said Julie Secviar, human resources director with the Far Niente wine group based in the Napa Valley. "The new law placed no further impact on us as it is the right thing to do."

Julie Secviar

The Fairmont Sonoma Mission Inn & Spa also does not anticipate substantive changes going forward.

Michelle Heston

Michelle Heston, executive regional director of public relations, said the Sonoma hotelier "has supported and perpetuated reasonable accommodations for qualified applicants or employees who have known limitations. The Pregnant Workers Fairness Act is aligned with the resort's past practices and as such will not affect operations."

BUSINESS GROUPS WEIGH-IN

While the California Chamber of Commerce does not take a stance on federal legislation, the U.S. Chamber of Commerce does. The larger business group did not respond to inquiries; however it has been involved and vocal about PWFA.

"The chamber worked extensively with a broad spectrum of advocates to find agreement on various provisions of the Act, and to push strongly for its passage," said Marc Freedman, vice president of employment policy for the U.S. Chamber of Commerce, in an October 2023 letter to Raymond Windmiller at the EEOC.

In the same letter, Freedman went on to say, "In several key areas the EEOC has expanded the definitions and requirements of the PWFA in ways that will create excessive burdens on employers, confusion between employees and employers, and potentially increase opportunities for litigation — precisely the problems the PWFA was meant to solve."

The Society of Human Resources Management, which has more than 300,000 HR and business executive members in 165 countries, fully supports the federal law.

"SHRM and its membership championed the passage of the PWFA and offered guidance to the EEOC as this historic law conferred important workplace protections for pregnant workers and ensured that employers have flexibility and clarity regarding how to handle workplace accommodations for pregnant employees," said Emily M. Dickens, chief of staff and head of public affairs for SHRM.