

EMPLOYMENT PRACTICES LIABILITY INSURANCE AND TREATMENT: PREGNANT AND NURSING EMPLOYEES

As Congress wrapped up 2022, it enacted two new laws to expand protections for expecting and nursing employees, the PWFA & PUMP Acts. Employers need to learn about these new requirements and prepare for EPLI Carrier inquiries regarding actions they are taking to prevent Claims.

Let's look at each new act:

PWFA (Pregnant Workers Fairness Act)

In the past, there were gaps between Federal Disability laws and Pregnancy Anti-discrimination laws. Pregnant women were not necessarily protected under the ADA (Americans with Disabilities Act) so some employers refused to provide them accommodations. Under the new law, employers must provide reasonable accommodations that do not cause "undue hardships".

Takeaway:

Employers treat a pregnant employee's accommodation requests as you would other employee's.

PUMP (Providing Urgent Maternal Protections)

This law is meant to fix the gap left in the FLSA (Fair Labor Standard Act). That rule, provided for unpaid 15-minute breaks in a private space, only applied to exempt workers. The new act extends the protection to salaried workers.

Takeaway:

Employers must set aside a private place (that is not a bathroom) for nursing mothers who want to pump up to 1 year after giving birth. If the workers are salaried, and still getting their regular amount of work produced, despite the breaks, their pay should remain as is.

Employment Practices Liability Insurance Takeaways:

Will claims under these Acts be covered by EPLI policies?

PWFA claims will most likely be treated similarly to ADA claims in that discrimination and/or retaliation allegations by employees will be covered but the costs of accommodations required by the act, for example a stool, will not. Coverage for PUMP claims may be treated as FLSA claims are, except for allegations of retaliation which should be covered as almost all employment related retaliation claims are under the majority of EPLI policies.

It would be best to be prepared for Carrier inquiries about compliance and even prevent claims by:

- 1) Reviewing handbooks and additional written policies or forms used to request accommodations and breaks
- 2) Preparing needed private spaces
- 3) Training managers and supervisors!

To learn more, contact our team:

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