EEOC Proposes Expansive Pregnant Worker Act Rule

Description

PSH Partner Michael Gamboli was quoted in *Rhode Island Lawyers Weekly* commenting on a recent proposed rule for the Pregnant Worker Fairness Act ("PWFA") from the U.S. Equal Employment Opportunity Commission ("EEOC").

The ruling triggered a 60-day public comment period. The notice, in part, explains how the EEOC interprets the PWFA and certain terms contained in the statute.

Mike explains, "The scope and the breadth of what is covered and what you have to accommodate [under the PWFA] is expansive. What employers need to understand is that, if an employee is pregnant, you have to accommodate their pregnancy, whatever the effects of [the accommodation] happen to be."

The PWFA went into effect on June 27. The statute requires covered employers to provide reasonable accommodations to a qualified employee's "known limitations" related to pregnancy, childbirth or related medical conditions, unless the accommodation will cause the employer an "undue hardship."

Mike further stated, "The way I read the PWFA is it essentially does no more than say that pregnancy is now automatically a disability and that you have to accommodate it."

The proposed rule clarifies the definitions of "covered entity", "known limitation", and "qualified employee" to include "any ability to perform the essential function…".

"I don't believe this idea of putting essential functions aside is anything new. It happens all the time under the ADA," Mike said. "However, it is not laid out as clearly in the ADA. The proposed regulations of the PWFA really go into detail."

Rhode Island enacted its PWFA in 2015 and Massachusetts enacted its PWFA in 2018.

Mike anticipates the federal PWFA is not going to change the way employers do business in the majority of states.

"Massachusetts and Rhode Island already have the same protections in place, which are actually broader, at least in terms of the scope of employers they apply to," he said. "The federal statute applies if you have 15 or more employees. The Rhode Island statute applies if you have four or more employees. In Massachusetts, its six or more."

According to Mike, the regulations interpreting the Massachusetts and Rhode Island statutes are not nearly as well developed as the EEOC's proposed regulation implementing the PWFA. For that reason, he said he foresees that the federal regulation in its final form will provide important guidance for interpretating state pregnancy discrimination statutes.

"It will offer some clarity on essential functions and undue hardship," he said.

The Employment & Labor Group at Partridge Snow & Hahn is ready to assist Rhode Island businesses with their compliance efforts.

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