Pregnant Workers Fairness Act

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Background: The Pregnancy Discrimination Act defines unlawful sex discrimination under Title VII to include discrimination “on the basis of pregnancy, childbirth or related medical conditions.” Despite its enactment in 1978, litigation continues. In 2015, the U.S. Supreme Court issued its decision in Young v. UPS, which observers hoped would clarify whether employers must provide pregnant employees workplace accommodations (water, more frequent restroom breaks or light duty) but left many questions unanswered.

Issue: Ambiguity exists for employers, especially when existing accommodation policies may not address the needs of pregnant workers. Employers and employees need clear guidance in accommodating pregnancy in the workplace. This would enable pregnant women to have the maximum opportunity to remain engaged employees in the workplace.

Outlook: Representative Jerrold Nadler (D-NY) introduced H.R. 2694, the Pregnant Workers Fairness Act (PWFA). By a bipartisan vote of 29-17, the House Education and Labor Committee agreed to an amendment that provides technical changes favorable to employers.

The legislation currently has more than 225 bipartisan co-sponsors and is anticipated to receive consideration by the House of Representatives in the coming weeks. A companion bill has not been introduced in the Senate, but an overwhelming bipartisan vote of approval in the House could generate introduction and consideration in the Senate by year’s end.

SHRM Position: SHRM believes an engaged workforce plays an integral role in fostering mutually beneficial work environments that serve both businesses and employees, and strongly supports H.R. 2694. The PWFA closely aligns with the Americans with Disabilities Act (ADA), triggering a familiar, interactive process once an employee requests an accommodation to perform essential functions of her position. Importantly, leave may be provided as an accommodation only after the interactive process cannot identify a reasonable accommodation within the workplace. SHRM urges lawmakers to co-sponsor H.R. 2694.

Talking Points:

- Supporting the PWFA is imperative because it:
  - Clarifies the rules about accommodations that many employers already offer. The PWFA provides clear guidelines so employers can anticipate their responsibilities, retain valuable employees, and reduce costs associated with litigation and turnover.
  - Represents balanced legislation achieved through bipartisan negotiations. The amended PWFA is a true compromise that provides a smart legislative solution to assist both employers and employees.
  - Relies on familiar processes from the Americans with Disabilities Act. The PWFA uses the interactive process from the ADA for determining appropriate accommodation when a pregnant worker is limited in the performance of her essential functions.
o **Ensures that the employee must inform the employer when she needs an accommodation.** The employer’s obligation to engage in the interactive process is triggered when the employee or her representative informs the employer that because she is pregnant, she is unable to perform all the essential functions of her job and needs an accommodation. This definition of a “known limitation” ensures that employers are properly on notice that an accommodation is needed.

o **Allows leave as an accommodation, but only as a last resort.** If, after engaging in the interactive process with the employee, no other accommodation can be found, the employer can have the employee take leave as a way of accommodating her known limitation.

o **Provides that the limitation on performing an essential function must be temporary.** The PWFA specifies that the inability to perform an essential function must be a temporary condition.

- SHRM strongly supports H.R. 2694 and urges lawmakers to co-sponsor and support the legislation during floor consideration.

- **TELL YOUR STORY:** *In your meetings with policymakers, discuss how the PWFA will provide much-needed clarity to appropriately accommodate pregnant workers.*