LEHR MIDDLEBROOKS
VREELAND & THOMPSON, P.C.

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Does Your Organization Need a PWFA Policy?

In a word, no.

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What, too short? Okay, okay; here's *why* your Organization *doesn't* need a PWFA-specific policy:

1. **It's not required.** Employers have to mention some laws by name in their handbooks. The FMLA is one. Nothing in the PWFA requires it to appear, by name, in your employee handbook. Why does this matter? It's not to play hide the ball (or law) from employees; it's to take the opportunity to reflect positive corporate values. Imagine this: You just found out you're pregnant. When you consult your employee handbook to view any available benefits, do you want to read that your employer complies with the law (*i.e.*, does the bare minimum) or that your employer believes in supporting pregnant women in the workplace because it's the right and business-sensible thing to do?

2. **It's not helpful.** An employee handbook isn't a legal textbook. Employees don't consult it to read up on their legal entitlements, but to get actionable answers to real life employment issues. Imagine you're a pregnant warehouse employee and you just received a pregnancy-related lifting restriction from your physician. Do you want to read all about 42 U.S.C. §2000gg *et seq.*, or do you want to know that it's okay to ask for help and how you should go about doing that?

3. **The actionable information an employee needs should already be there.** You'd only *add* a policy if you needed to provide *additional* information that wasn't already there. But the PWFA didn't create a brand new entitlement for reasonable accommodations due to pregnancy. The PDA partially did that in 1978 by saying a pregnant employee couldn't be denied an accommodation granted to others. Then the ADA was amended in 2009 to encompass a number of pregnancy limitations as disabilities. Then, in 2015, the Supreme Court decision in *Young v. UPS* established the that pregnant women could use employees with disabilities or employees receiving light duty following workplace injuries as comparators to establish a PDA violation. All that to say, if you already have an accommodations provision in the EEO section of your handbook, and it already references pregnancy as a basis to request an accommodation, what more needs to be done other than tweaking it to include the specific terminology of "pregnancy, childbirth, or related medical conditions"? Nothing.

4. **It couldn't be reliable.** Almost everything new and different that you hear or read about the PWFA in the legal, HR, and risk management worlds stems from the EEOC's regulatory scheme, most of which is so far beyond the intent of the statute that it's unlikely to stand the test of time or judicial scrutiny. There's simply no need for an employer to encourage employees to follow the EEOC's dubious interpretations rather than addressing requests on a case-by-case basis.

5. **It's no substitute for training.** What employers should be really worried about is supervisors failing to recognize accommodation requests, referring accommodation requests to HR with no follow up, requesting medical documentation, or denying accommodation requests without HR review, especially if they utter the dreaded phrase, "if I do that for you, I will have to do it for everyone." Untrained front line supervisors present the most significant obstacle to pregnant employees exercising their rights under the PWFA and thus the greatest source of future pain for employers.

Now, if for some reason you don't already have an all-purpose reasonable accommodation policy for disability, pregnancy, and religion right there in your EEO policy, you do need that. But a PWFA-specific policy? There's simply no need.

Want to learn more about the PWFA? Check out our blog posts (#1, #2, #3, #4, #5, #6) and webinars on the draft and final regulations. Want to talk more about the PWFA or supervisor training? Check out our Effective Supervisor registration page or contact wbrown@lehrmiddlebrooks.com.