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OPINION

Today's Business: Navigating new federal protections for pregnant and nursing mothers

Erica O. Nolan, Esq., Contributing Writer

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Attorney Erica Oates Nolan is an associate at Hurwitz, Sagarin, Slossberg & Knuff, LLC, practicing employment law and business litigation. *Contributed photo*

Your employee just announced that she's pregnant. Now what?

Those with at least 15 employees should become familiar with the provisions of the new Pregnant Workers Fairness Act, which went into effect June 27. While it was already illegal for an employer to terminate a pregnant woman or otherwise discriminate against her on the basis of her pregnancy, childbirth or related medical conditions, the PWFA expands protections. Employers now must provide "reasonable accommodations" for pregnant and nursing mothers, unless such accommodations would cause the employer an "undue hardship," similar to the standard required by the Americans with Disabilities Act.

Likewise, the protections of Fair Labor Standards Act were recently expanded by the enactment of the Providing Urgent Maternal Protections for Nursing Mothers Act (“PUMP Act”), effective on April 28, 2023. The FLSA now protects the rights of employees to pump or express breastmilk at work — regardless of their status as exempt or non-exempt.

It is important to note that many states offer greater protections to pregnant or nursing women than the federal standards. Connecticut is one of those states. The PUMP Act and the PWFA do not preempt or override state or local laws that provide greater protections to employees, but rather, serve as a baseline for those states who do not provide such protections for women.

Reasonable accommodations for a pregnant or postpartum woman could include, but are not limited to:

- The ability to sit or drink water as needed.
- More frequent bathroom breaks.
- Be excused from strenuous activities.
- Have a relaxed dress code.
- The ability to work a flexible schedule or take time off for doctors’ appointments.
- The ability to take leave or time off to recover from childbirth.

Employers should endeavor to be creative as to how to best accommodate the pregnant or nursing mother but need not always provide the exact accommodation requested by the employee. For example, for a new mother returning from maternity leave and requiring time to pump, if the employee has her own office space, the accommodation may be as simple as installing a lock on her door or providing a privacy screen that she can put up in her window. Or, an employer could make an empty office available and accessible to the nursing mother to pump in when needed.

The bottom line in navigating these new protections is communication between the employee and employer. Be prepared to have an open, honest dialogue with the employee to determine what she needs to do her job effectively, no matter how awkward that conversation might be. Be proactive to put a plan into place as to how to best support the employee, while enabling the employer to continue to run their business.

Begin planning early. Although it might seem as though eight months is plenty of time to figure out a transition plan, circumstances can change quickly and require a pregnant woman to begin her maternity leave or be put on bedrest earlier than expected.

As a new mother who recently returned from maternity leave myself, I can attest that, although it is a huge transition in any woman's life, the return to work is significantly easier when there is open and honest communication with the employer. Similarly, employees should be prepared to openly express what they need in order to do their job effectively while navigating the inherent changes that come with pregnancy and postpartum.

Attorney Erica Oates Nolan is an associate at Hurwitz, Sagarin, Slossberg & Knuff, LLC, practicing employment law and business litigation. She can be reached at 203-877-8000 or ENolan@hssklaw.com.