



The Pregnant Workers' Fairness Act: What You Should Know

JUNE 12, 2024

Jenna M. Lakamp
Brittney J. Herron
Meredith B. Grant
Sarah Moore

Always exceed expectations through teamwork and excellent client service.

© 2024 Armstrong Teasdale LLP

Continuing Legal Education Credits

- For AT to process your continuing legal education credit, you will be asked to confirm your participation in this webinar by submitting a code word in the Zoom Chat function, which will be provided at the conclusion of the session.

Objectives and Agenda

- **Understanding the PWFA**
 - Legal and practical implications in the workplace
 - What employers can do for compliance
- **Agenda includes:**
 - Background of PWFA
 - Impact of the EEOC's Final Rule
 - Hypotheticals
 - Compliance Assistance - BenefitBump
 - Question and Answer



Sarah Moore, Esq.
VP Business Development

June 2024

www.benefitbump.com

What Is the Pregnant Workers' Fairness Act

- Effective June 27, 2023
- Purpose
 - Fill gaps in coverage between the ADA and Title VII for workers who experience a pregnancy-related medical condition.
 - **Title VII**, amended by the Pregnancy Discrimination Act of 1978
 - Discrimination on the basis of pregnancy, childbirth or related medical conditions is a type of unlawful sex discrimination.
 - **ADA**
 - Requires reasonable accommodations for those with disabilities affecting a major life activity unless doing so would create an undue hardship.

PWFA - Requirements

- “covered employers”
- “reasonable accommodations”
- “qualified employees”
- “known limitations”
- due to pregnancy, childbirth or “related medical conditions”
- “undue hardship”

EEOC's Final Rule – Reasonable Accommodation

- For “Qualified Employees”
 - Not limited to employees who can perform the essential functions of the job with an accommodation (like the ADA)
 - Still “qualified” if the inability to perform essential functions is “temporary,” the employee could perform them “in the near future,” and the inability can be reasonably accommodated
 - “Temporary” suspension of essential functions
 - Essential functions can resume in the near future
 - “In the near future”
 - Within 40 weeks of the suspended essential function
 - Case-by-case basis

EEOC's Final Rule – Related Medical Conditions

- **Effective June 18, 2024**
- **“Related Medical Conditions”**
 - Lactation
 - Infertility and Fertility Treatments
 - Contraception
 - Abortion
 - Religion and hardship defenses available
 - Miscarriage
 - Stillbirth
 - Postpartum

EEOC's Final Rule – Related Medical Conditions *cont.*

- Associated conditions
 - Mental health
 - Physical health
- Labor and childbirth
- Breastfeeding/pumping
- Low milk supply
- Clogged ducts
- Preeclampsia
- Gestational diabetes
- Dehydration
- Nausea, anxiety, change in hormone levels
- Menstruation
- Others - to be determined on a case-by-case basis

EEOC's Final Rule – Reasonable Accommodation *cont.*

- **Requests**
 - Supervisor, HR, following company policy
 - Any format
 - Timing - simultaneous with communicating condition
- **Interactive Process**

EEOC's Final Rule – Reasonable Accommodation

▪ Possible Accommodations

- Leave
- Frequent breaks
- Remote work
- Job restructuring
- Part-time or modified work schedules
- Acquisition or modification of equipment, uniforms or devices
- Allowing seating for jobs that require standing or standing in jobs that require sitting
- Adjustment or modification of examinations or policies
- Light duty
- Lactation accommodations – Pump Act

EEOC's Final Rule - Proof of Condition

- **When reasonable**
 - Confirm a mental or physical condition
 - Confirm a physical or mental condition is related to pregnancy, childbirth or related medical condition
 - Describe an adjustment or modification needed for work
- **When requesting supporting documentation is not reasonable**
 - For accommodations related to obvious conditions
 - When sufficient information is already received
 - For accommodations for self-confirmed mental and physical conditions related to pregnancy
 - For accommodations related to time and place to pump
 - When requested accommodation is also available for those not experiencing a pregnancy or a pregnancy-related condition
- **Validation of documentation**

Distinctions Between the PWFA and ADA

▪ ADA

- Only covers “impairments” related to pregnancy
- Requires reasonable accommodations
- Workers must still be capable of performing the essential functions of the job
- Employers can require leave where a serious medical condition exists
- Damages

| – <u>Employees</u> | <u>Amount</u> |
|--------------------|---------------|
| – 15-100 | \$50,000 |
| – 101-200 | \$100,000 |
| – 201-500 | \$200,000 |
| – 500+ | \$300,000 |

▪ PWFA

- Covers pregnancy, childbirth **AND** related medical conditions
- Requires reasonable accommodations
- Eliminates the need of workers performing the essential functions of the job
- Employers cannot force leave or any accommodations
- Damages

| – <u>Employees</u> | <u>Amount</u> |
|--------------------|---------------|
| – 15-100 | \$50,000 |
| – 101-200 | \$100,000 |
| – 201-500 | \$200,000 |
| – 500+ | \$300,000 |

What can employers do for compliance?

PWFA - Compliance

- **Compliance with both State and Federal laws**
 - 31 states currently enacted Pregnancy discrimination laws.
 - Prohibits discrimination
 - Prohibits discrimination and requires reasonable accommodations.
- **Recent Cases**
 - *Beddingfield v. United Parcel Serv., Inc.*, 2024 WL 1521238, (N.D. Cal. Apr. 8, 2024)

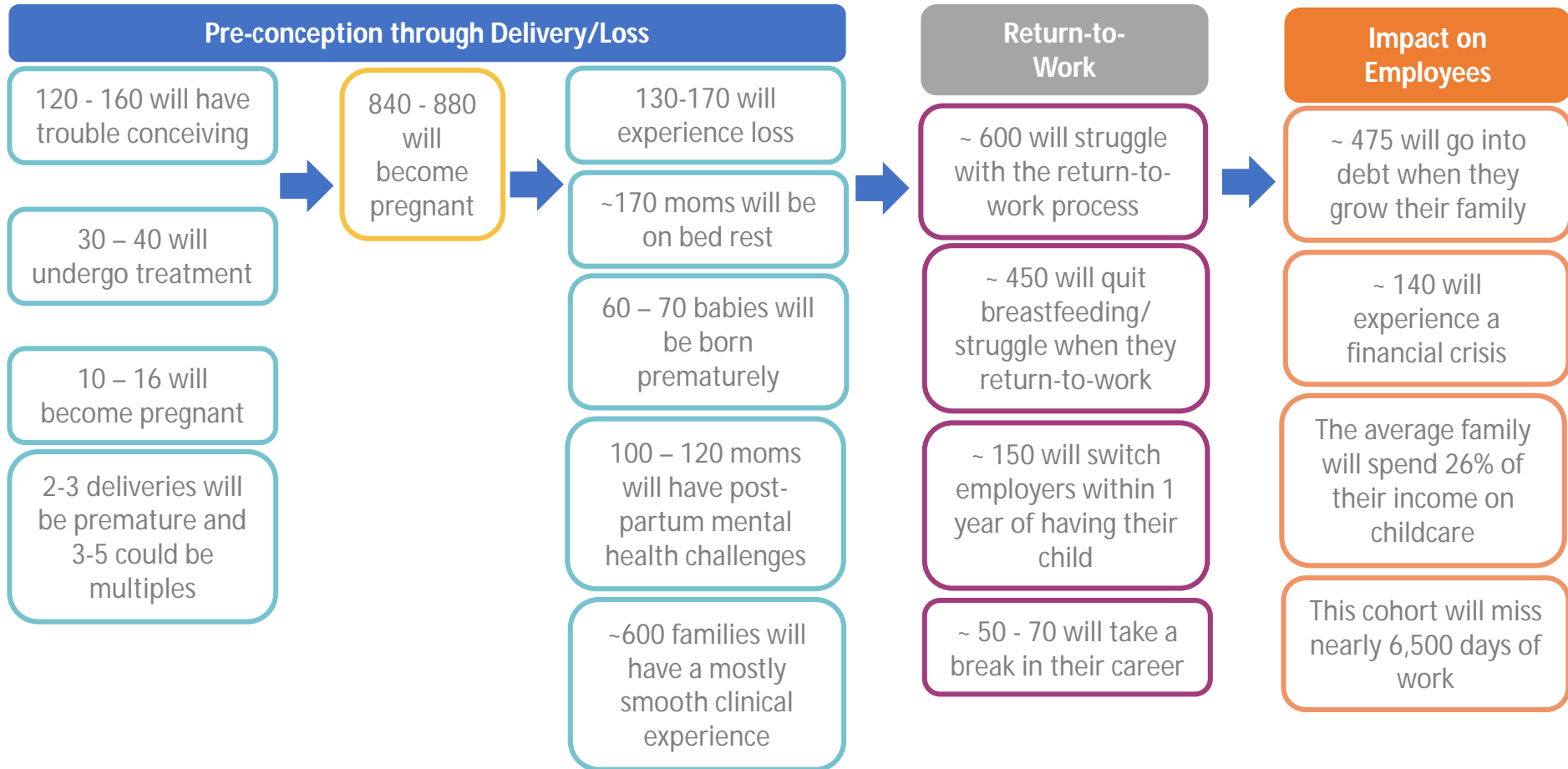
PWFA – Practical Implications

- Training for managers/supervisors
- Review documentation for PWFA compliance
- Understand there is no one size fits all
- Creative solutions to finding reasonable accommodations
- BenefitBump



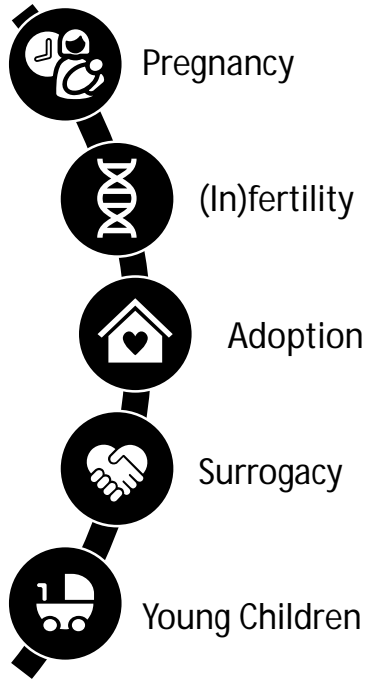
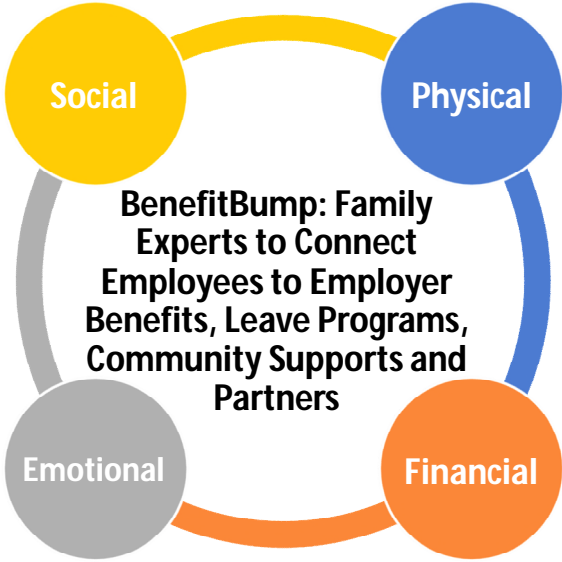
The path to parenthood is complex

If 1,000 employees want to expand their family...





BenefitBump is built to support employees through growing family challenges...





Top employee pain points

Based on issues discussed with navigators

- 1 **Employer-paid leave and time off**
- 2 **State leave**
- 3 Finding affordable and reliable childcare
- 4 Breastfeeding and pumping resources
- 5 Budgeting
- 6 Fertility coverage
- 7 Managing health (physical and emotional)
- 8 Personal relationships
- 9 **Work accommodations**
- 10 **Loss**

82% of participant calls include a discussion of time off and leave programs and **64%** of the time, participants are looking for in-the-moment support for their stress and anxiety



Employer action items

What can you do?

- Manager training
- Worksite/workplace supports
- Policies/procedures
- Parental support guides

BenefitBump supports employers by...

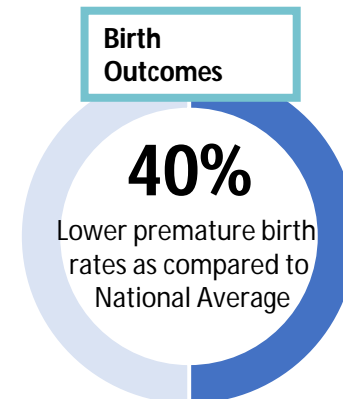
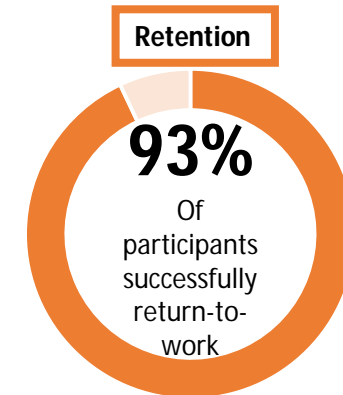
- Communicating workplace supports
- Partnering on best practices
- Serving as a go-between to resolve employee issues
- Help employees get back to work (whole person approach)



Employer results

Impacting the bottom line...
...both VOI and ROI

| | | |
|----------------------------|------------------------|-------------------------------|
| Improve Birth Outcomes | Retain Employees | Enhance Benefits Satisfaction |
| Reduce Risks | Reduce Missed Workdays | Fill Gaps Internal/Vendor |
| Support DEI Efforts | State Leave Navigation | Ensure Benefit Program ROI |
| Optimize Existing Benefits | Reduce Demand on Staff | Improve RTW |



72% of expectant parents with moderate to high anxiety

Family building represents 25-30% of all leave requests

33% attrition of new moms, 75% switched employers

Practice with Examples

HYPOTHETICAL # 1

- Jaclyn informs HR that she has engaged a surrogate for the birth of her child. The surrogate is experiencing problematic symptoms due to the pregnancy, which is causing Jaclyn traumatic stress. She seeks an accommodation under the PWFA.
- Is Jaclyn covered under the PWFA?

HYPOTHETICAL # 2

- Lauren is a traveling sales associate for a leading insurance company. 90% of her job consists of traveling to different states and cities engaging new clientele. However, Lauren recently gave birth to her child and is still pumping. Lauren has requested to telework for the next three months so that she can continue to pump milk for her newborn child.
- What are the employer's next steps?
- What kind of accommodations can be offered?

HYPOTHETICAL # 3

- An employee tells her manager that she is experiencing postpartum depression. The employee expresses that following the birth of her child, nine months ago, she began to experience feelings of anxiousness, sadness, loss of enjoyment, withdrawal and fatigue. She attempted to push through it as long as possible but needs some assistance and would like a workplace accommodation.
- Can the employer seek documentation confirming the employee has postpartum depression?

HYPOTHETICAL # 4

- Allie suffered miscarriage two years ago at a previous job. Her health care provider attributed the miscarriage to stress. Now Allie has found out that she is again pregnant. She is a Client Account Manager and requests that her current employer hire an assistant, as an accommodation, that will perform most of her job duties for the next seven months of her pregnancy while Allie simply oversees the assistant's work. The employer counters with offering to reduce Allie's workload, transferring some clients to other account managers. However, Allie declined the offer noting that she wants to eliminate all stress and also does not want to lose any of her accounts.
- What can the employer do?
- What if Allie does not accept any of the employer's accommodation offers?

HYPOTHETICAL # 5

- **Michelle is a receptionist at ELEMENOPEE, a startup tech company with 15 employees. Michelle is in the late stages of her pregnancy and is no longer able to climb the office stairs. ELEMENOPEE owns the second floor of a small two-story office building. As an accommodation for her physical limitations resulting from her pregnancy, Michelle has requested that ELEMENOPEE install an elevator for the building. The first floor's owner has approved the installation but requires ELEMENOPEE to cover the full expense.**
 - ELEMENOPEE received a small business loan of \$1 million to operate. The business is projected to generate \$15 million in revenue for years 2-5.
 - An elevator installation was estimated at \$30,000.
 - ELEMENOPEE'S operating expenses for year one are \$700,000.
- **Would this accommodation request pose an undue hardship upon ELEMENOPEE?**



QUESTIONS



Jenna M. Lakamp

314.342.4177

jlakamp@atllp.com



Meredith B. Grant

720.613.7082

mgrant@atllp.com



Brittney J. Herron

314.342.8089

bherron@atllp.com



Sarah Moore

sarah.moore@benefitbump.com

Continuing Legal Education Credits

- For AT to process your continuing legal education credit, you will be asked to confirm your participation in this webinar by submitting a code word in the Zoom Chat function, which will be provided at the conclusion of the session.
- Code Word: **Childcare**