

EMPLOYEE BENEFITS NEWSLETTER

February 2023

INSIDE THIS ISSUE:

Pregnancy and Nursing Accommodations	1
Foley and Foley	2
Worker Protection Act	2
Compliance Reminders	2

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New Laws Expand Pregnancy and Nursing Accommodations

Two new laws that were included in the federal Omnibus Appropriations Bill, enacted on Dec. 29, 2022, expand workplace rights for employees affected by pregnancy, childbirth or related conditions starting in 2023.

FLSA Break Time and Private Pumping Space

Effective upon enactment, the Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act amends the Fair Labor Standards Act (FLSA) to require employers to provide break time and a private place, other than a bathroom, for all employees (including those who are exempt from FLSA overtime rules) to express breast milk. It also clarifies these breaks must be paid work time if an employee is not completely relieved of all work duties during the break. A hardship exemption is available for employers with fewer than 50 employees.

Effective April 27, 2023, the PUMP Act also allows individuals to obtain damages and other remedies from employers that violate the new mandates.

ADA Accommodations for Pregnancy

Effective June 27, 2023, the Pregnant Workers Fairness Act (PWFA) amends the Americans with Disabilities Act (ADA), which applies to employers with 15 or more employees. Under the PWFA, employers must provide reasonable accommodations to a qualified employee's limitations related to pregnancy, childbirth or related medical conditions unless it would impose an undue hardship on the business.

The accommodations must be determined through an informal, interactive process, and employers may not deny opportunities based on the need to make them. The PWFA also prohibits employers from requiring leave if another change can be provided or retaliating against an employee for requesting or using a pregnancy-related accommodation.

Compliance Reminders

Sexual Harassment Training

Sexual Harassment Training is an annual requirement for NYS Employers. The HRWS 2023 Training is now available.

Please reach out to Cheryl Clary cheryl.clary@bbrown.com or Kristin Clark kristin.clark@bbrown.com for more information.

Disclosure to CMS Due by March 1st

Just a reminder:

Employers with health plans that provide prescription drug coverage to individuals who are eligible for Medicare Part D are subject to certain disclosure requirements. One of these requirements provides that plan sponsors must disclose to the Centers for Medicare and Medicaid Services (CMS) on an annual basis and at other select times, whether the plan's prescription drug coverage is creditable or non-creditable. The annual disclosure must be provided within 60 days after the start of the plan year. The disclosure to CMS for calendar year plans is due to by March 1, 2023.

Please find the link disclosure form below:

<https://www.cms.gov/medicare/prescription-drug-coverage/creditablecoverage/ccdisclosureform>

Warehouse Worker Protection Act

Gov. Kathy Hochul signed the Warehouse Worker Protection Act (WWPA) into law late last year. This new legislation aims to protect warehouse distribution workers from undisclosed or unlawful work speed quotas and includes protections for workers who fail to meet these quotas. The law took effect **Feb. 19, 2023**.

The WWPA requires covered employers to provide a written description of quotas to which employees are subject and states that employees shall not be required to meet quotas that prevent compliance with meal or rest periods, or use of bathroom facilities, including reasonable travel time to and from bathroom facilities. A "covered employer" is anyone who employs 100 or more employees at a single warehouse distribution center or 500 or more employees at one or more warehouse distribution centers.

- The WWPA requires that employers to provide a written description of each quota to relevant employees, as well as the potential consequences of not meeting such quota. The notices must be given upon hire, or within two business days of a quota change
- The WWPA also requires employers keep records of quota-related data, including employees' work speed data, aggregate work speed data and written descriptions of quotas
- Employees are protected from exercising rights under the law, including requesting quota-related information or filing a complaint. If an employer takes adverse action within 90 days of the employee exercising their rights under the law, there will be a rebuttable presumption that the adverse action was unlawfully

Foley and Foley

In 2022, Brown & Brown partnered with the Foley & Foley Law Firm to provide access to legal advice at **no cost** to our clients. Foley & Foley focuses on employer/employee relationship and will assist if an employer runs into a difficult employee situation. Foley and Foley will provide:

- Virtual In-House Employment Counsel Level of Protection – At No Cost
- Direct and Immediate Access to a Team of Employment Lawyers
- Fully Indemnified and Caveat-Free Legal Opinions
- No Cap on Utilization
- Attorney-Client Privileged and Protected Advice and Counsel Covering the Hundreds of Issues that Arise Within the Full Cycle of the Employer-Employee Relationship, with Just a Few Exceptions

Please use the Portal link below to register for the Foley & Foley Triage Service

Foley and Foley Portal Information:

<https://foleylawpractice.com/employment-counsel-on-call-triage-service-portal/>

Password: BrownBrown