EEOC ISSUES FINAL RULE ON
PREGNANT WORKERS FAIRNESS ACT[1]

To: **ICRMT Members**
From: **IFMK Law**
Date: **May 31, 2024**
Re: **Final Rule on Pregnant Workers Fairness Act**

Pursuant to Congress' directive in the federal Pregnant Workers Fairness Act (PWFA), the EEOC published its final rule which provides interpretive guidance on the law. The rule becomes effective June 18, 2024. Additional information from the EEOC can be accessed here.

The PWFA requires employers to provide reasonable accommodations to a qualified worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an "undue hardship." A similar requirement has been in effect in the Illinois Human Rights Act since 2015.

The newly-published federal guidance interprets the terms "pregnancy, childbirth, or related medical conditions" expansively to include not only current or past pregnancy, labor, and childbirth, but also, potential or intended pregnancy (including fertility treatment and the use of contraception.) "Related medical conditions" is also defined broadly to include conditions such as ectopic pregnancy, preterm labor, gestational diabetes, pre-eclampsia, miscarriage and stillbirth, as well as abortion. Also included in the definition are conditions such as dehydration, hemorrhoids, edema of the legs, feet, and ankles, high blood pressure, infection, depression, anxiety, psychosis, lactation issues, loss of balance, and frequent urination, among other conditions. According to the rule, the condition requiring accommodation need not be severe--it can be "modest, minor, and/or episodic."

The possible accommodations enumerated by the rule include:

- job restructuring
- frequent breaks to eat, drink, rest, or use the restroom
- modification of equipment or uniforms
- providing devices to assist with lifting
- providing seating
- permitting the use of paid or unpaid leave

[1] This memo has been prepared by IFMK Law for ICRMT members. It is for informational purposes only and should not be considered legal advice. Member entities should consult with their State's Attorney, corporation counsel or other legal adviser to address compliance issues.

- or any other appropriate adjustment.

The rule also states that a temporary suspension of an essential function of the employee's position may be a reasonable accommodation. "Temporary" means "lasting for a limited time, not permanent and may extend beyond 'in the near future.'"

An employer is not required to seek supporting documentation regarding the requested accommodation, and may request it only "when it is reasonable under the circumstances for the employer to determine whether the employee has a physical or medical condition and needs a change at work due to the limitations." It is NOT reasonable to seek documentation when the limitation is obvious, when an accommodation is requested for a predictable reason, when the employer already has sufficient documentation, or when other non-pregnant employees receive the accommodation without documentation.

When an employer does seek supporting documentation, it is only permitted to: (1) confirm the physical or mental condition; (2) confirm the physical or mental condition is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions; and (3) describe the change or adjustment at work needed due to the limitation. As a result, employers should not use existing ADA forms because the forms may seek more information than is allowable. Employers who engage in unnecessary delay in providing a reasonable accommodation may be in violation of the PWFA.

Employers are encouraged to revisit their reasonable accommodations policy to ensure that it covers pregnancy, childbirth, and related conditions and should revise it as appropriate. Employers should also keep in mind that the EEOC has embraced an expansive interpretation of reasonable accommodations in the context of pregnancy and childbirth.