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Recently Enacted Federal Laws That May Affect Workplace Policies and Practices

Several recently enacted federal laws will impact employers' workplace policies and practices, including the Speak Out Act ("SOA"), the Pregnant Workers Fairness Act ("PWFA") and the Providing Urgent Maternal Protections for Nursing Mothers Act ("PUMP Act"). An overview of each of these new federal laws is provided below.

The Speak Out Act

- The SOA prohibits employers from entering into pre-dispute nondisparagement or nondisclosure agreements with respect to allegations of sexual harassment or sexual assault: "With respect to a sexual assault dispute or sexual harassment dispute, no nondisclosure clause or nondisparagement clause agreed to before the dispute arises shall be judicially enforceable." 42 U.S.C.A. § 19403.
- The term "dispute" is not specifically defined under the SOA. A cautious approach would be to consider a "dispute" to range from an employee making a complaint of sexual harassment or assault to an employee initiating a lawsuit alleging sexual harassment or assault.
- The SOA covers pre-dispute nondisparagement or nondisclosure clauses, so a nondisparagement or nondisclosure agreement entered into with an employee after a dispute arises would generally be enforceable. By way of example, if an employee initiates a lawsuit alleging sexual harassment, and the employer and employee enter into a settlement agreement in relation to that lawsuit, the employer may enforce a nondisparagement or nondisclosure provision in the settlement agreement as those provisions were entered into after the dispute arose. If, however, an employer required an employee to enter into an employment agreement with nondisparagement and nondisclosure provisions, and the employee later experiences sexual harassment, those provisions may not be enforced in relation to the sexual harassment that the employee experienced because the contact was entered into before the dispute arose.
- Employers should include carve-out language in their employee contracts that exempts allegations of sexual harassment or sexual assault from any nondisparagement or nondisclosure requirements.

The Pregnant Workers Fairness Act

- The PWFA takes effect in June 2023.
- The PWFA is modeled after the Americans with Disabilities Act (“ADA”) and requires certain employers to grant reasonable accommodations for limitations an employee has in relation to pregnancy, childbirth or related medical conditions. For example, an employee may seek light duty as an accommodation under the PWFA. Additionally, the PWFA requires employees and qualified employees to engage in the interactive process to determine appropriate reasonable accommodations. Like under the ADA, accommodations are subject to whether they impose an undue hardship on the employer.
- The PWFA applies to employers with 15 or more employees and to “qualified employees,” who are employees or job applicants who can perform the essential functions of the position with or without reasonable accommodation.
- Employers should make sure their accommodation policies reflect employee rights under the PWFA and take into account employees who may request accommodations for pregnancy, childbirth or related medical conditions.

The Providing Urgent Maternal Protections for Nursing Mothers Act

- Under the PUMP Act, nursing employees, regardless of whether they are exempt or non-exempt, are entitled to a private space to express breast milk (other than a bathroom) and a reasonable break to do so for up to a year after giving birth.
- If a nursing employee is on a break to express breast milk, but the employee is not completely relieved of their work duties during that break, such time must be considered hours worked.
- Employers should ensure they have policies and procedures in place to afford nursing employees break time and a private space to express breast milk.

If you have questions about how these new laws affect your organization, including ensuring that your policies and practices are compliant, please contact your Kutak Rock attorney or a member of our [National Labor and Employment Practice](#). You may also visit us at www.KutakRock.com.

