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May 1, 2024

The Honorable Bernard Sanders
Chairman
The Honorable Bill Cassidy
Ranking Member
Committee on Health, Education, Labor, and Pensions
United States Senate

The Honorable Virginia Foxx
Chairwoman
The Honorable Bobby Scott
Ranking Member
Committee on Education and the Workforce
House of Representatives

Subject: *Equal Employment Opportunity Commission: Implementation of the Pregnant Workers Fairness Act*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Equal Employment Opportunity Commission (EEOC) entitled "Implementation of the Pregnant Workers Fairness Act" (RIN: 3046-AB30). We received the rule on April 15, 2024. It was published in the *Federal Register* as a final rule and interpretive guidance on April 19, 2024. 89 Fed. Reg. 29096. The effective date is June 18, 2024.

According to EEOC, the final rule implements the Pregnant Workers Fairness Act, included as part of the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, div. II, 136 Stat. 4459, 6084 (2022), and codified at 42 U.S.C. §§ 2000gg-2000gg-6. EEOC states that this Act requires a covered entity to provide reasonable accommodations to a qualified employee's or applicant's known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause an undue hardship on the operation of the business of the covered entity.

Enclosed is our assessment of EEOC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Charlie McKiver, Assistant General Counsel, at (202) 512-5992.

Shirley A. Jones
Managing Associate General Counsel

Enclosure

cc: Carol R. Miaskoff
Legal Counsel
Equal Employment Opportunity Commission

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
ENTITLED
“IMPLEMENTATION OF THE PREGNANT WORKERS FAIRNESS ACT”
(RIN: 3046-AB30)

(i) Cost-benefit analysis

The Equal Employment Opportunity Commission (EEOC) prepared a Final Regulatory Impact Analysis. EEOC estimated the cost of the rule to be between \$466.71 million and \$484.71 million in the first year, and between \$14.82 million and \$32.82 million annually thereafter. EEOC identified the two main expected costs associated with the rule as: (1) annual costs associated with providing reasonable accommodations to qualified applicants and employees with known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions by employers in states that do not currently have such a requirement; and (2) one-time administrative costs for covered entities, which include becoming familiar with the rule, posting new equal employment opportunity (EEO) posters, and updating EEO policies and handbooks.

EEOC stated that the non-quantifiable benefits of the rule include: improved maternal and infant health; improved economic security for pregnant employees; increased equity, human dignity, and fairness; improved clarity of enforcement standards and efficiencies in litigation; and decreased costs related to employee turnover for covered entities. EEOC stated that while those benefits cannot be fully quantified and monetized, the agency concluded that, consistent with Executive Order No. 13563, the benefits will justify the costs.

(ii) Agency actions relevant to the Regulatory Flexibility Act (RFA), 5 U.S.C. §§ 603–605, 607, and 609

The Chair of EEOC certified that this final rule will not have a significant economic impact on a substantial number of small entities. Although EEOC determined that the rule will impact a substantial number of small entities, EEOC determined that the economic impact on entities affected will not be significant.

(iii) Agency actions relevant to sections 202–205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532–1535

EEOC determined that the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to the Pregnant Workers Fairness Act due to a provision (2 U.S.C. § 1503) that excludes from UMRA’s coverage any provision in a final regulation that, among other things, enforces constitutional rights of individuals or establishes or enforces any statutory rights that prohibit discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or disability.

(iv) Agency actions relevant to the Administrative Pay-As-You-Go-Act of 2023, Pub. L. No. 118-5, div. B, title III, 137 Stat 31 (June 3, 2023)

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 amended 5 U.S.C. § 801(a)(2)(A) to require GAO to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO's major rule reports. In guidance to Executive Branch agencies, issued on September 1, 2023, the Office of Management and Budget (OMB) instructed that agencies should include a statement explaining that either: "the Act does not apply to this rule because it does not increase direct spending; the Act does not apply to this rule because it meets one of the Act's exemptions (and specifying the relevant exemption); the OMB Director granted a waiver of the Act's requirements pursuant to section 265(a)(1) or (2) of the Act; or the agency has submitted a notice or written opinion to the OMB Director as required by section 263(a) or (b) of the Act" in their submissions of rules to GAO under the Congressional Review Act. OMB, *Memorandum for the Heads of Executive Departments and Agencies*, Subject: Guidance for Implementation of the Administrative Pay-As-You-Go Act of 2023, M-23-21 (Sept. 1, 2023), at 11–12. OMB also states that directives in the memorandum that supplement the requirements in the Act do not apply to proposed rules that have already been submitted to the Office of Information and Regulatory Affairs, however agencies must comply with any applicable requirements of the Act before finalizing such rules.

EEOC did not discuss the Act in the rule or in its submission to us.

(v) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 *et seq.*

On August 11, 2023, EEOC issued a proposed rule. 88 Fed. Reg. 54714. EEOC received 98,600 comments, several of which were signed by multiple individuals. EEOC stated that the vast majority of the comments were form comments that were identical or slightly altered versions of a few base form comments. EEOC responded to comments in this final rule.

Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501–3520

EEOC determined that there is no new requirement for information collection associated with this final rule.

Statutory authorization for the rule

EEOC promulgated this final rule pursuant to sections 2000gg *et seq.* of title 42, United States Code.

Executive Order No. 12866 (Regulatory Planning and Review)

EEOC determined that this final rule is significant under the Order and submitted it to OMB for review.

Executive Order No. 13132 (Federalism)

EEOC determined that this final rule does not have federalism implications. EEOC stated that the rule does not limit or expand the relevant statutory definitions describing the application of

the Pregnant Workers Fairness Act to states, and the rule will not have substantial direct effects on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.