U.S. Chamber of Commerce

1615 H Street, NW
Washington, DC 20062-2000
uschamber.com

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Mr. Raymond Windmiller
Executive Officer, Executive Secretariat
U.S. Equal Employment Opportunity Commission
131 M Street, N.E.
Washington, DC 20507

By electronic submission: http://www.regulations.gov

Re: Proposed Rule, Regulations to Implement the Pregnant Workers Fairness Act (88 Fed. Reg. 54714, August 11, 2023); RIN 3046-AB30

Dear Mr. Windmiller:

The U.S. Chamber of Commerce ("Chamber") presents these comments to the Equal Employment Opportunity Commission ("Commission" or "EEOC") in response to its Notice of Proposed Rulemaking and Request for Comments regarding the Pregnant Worker Fairness Act (the "PWFA" or the "Act") ("Proposed regulations" or "NPRM").

The Chamber worked extensively with a broad spectrum of advocates to find agreement on various provisions of the Act, and to push strongly for its passage. The Chamber took a leading role within the business community in recognizing the gap in protective coverage of pregnant workers and in helping the relevant stakeholders to formulate a responsive and workable solution addressing this issue. The passage of the PWFA demonstrates that through good faith negotiations, legislative solutions to important issues can be achieved.

Unfortunately, the proposed regulations stray from the text of the PWFA and the intentions of those who developed the legislation. In several key areas the EEOC has expanded the definitions and requirements of the PWFA in ways that will create excessive burdens on employers, confusion between employees and employers, and potentially increase opportunities for litigation—precisely the problems the PWFA was meant to solve.

BACKGROUND

The purpose of the PWFA is simple – to fill the coverage gap between the Pregnancy Discrimination Act (PDA) and the Americans with Disabilities Act (ADA) to enable pregnant workers to remain in the workplace, through accommodations that do not present undue hardships. A key component to the bipartisan support for the PWFA was its incorporation of the widely known and accepted interactive process associated with the ADA that is the method for determining reasonable accommodations for employees covered by the ADA. The concept of the interactive process allows accommodations to be precisely tailored to meet the temporary needs of employees consistent with the workplace and productivity requirements. Drawing from experience under the Rehabilitation Act and the ADA and the 2008 Amendments, the interactive process appropriately lets the various enforcement agencies set the ground rules for the individual discussions between employee and employer while

keeping the government from imposing arbitrary or heavy-handed accommodation requirements not carefully tailored. The Chamber strongly supports the PWFA and its intended application – to provide pregnant workers with reasonable accommodations for medical conditions relating to their pregnancy, through an interactive process as prescribed by the ADA. The interactive process is a bedrock of the PWFA. Unfortunately, the proposed regulations give it short shrift.

The Commission's proposed regulations attempt to greatly expand the PWFA's intended coverage to include non-pregnant workers and medical conditions that are not related to a woman's pregnancy. In doing so, the proposed regulations have no basis in the PWFA. The proposed regulations also greatly expand, beyond the language of the PWFA and the intention of its drafters, the obligations imposed on employers – in an unreasonable, unfounded manner to cover accommodations for any reproductive issue of a pregnant or non-pregnant worker potentially for multiple years at a time.

Specifically, the Chamber does not support the proposed regulations to the extent that they: include four "predictable assessments" for accommodations under the PWFA that do not require engagement in an interactive process; fail to clarify when the ADA and PWFA frameworks apply to accommodation requests; incorporate proposed definitions of "related medical conditions" and "qualified employee or applicant" that conflate "pregnancy" with "reproductive issues" making them overbroad and not based on the PWFA or its intent; do not follow the ADA standard for requesting medical documentation; and do not clarify further, the definition of "communicated to the employer."

COMMENTS

1. The "predictable assessments" are a regulatory overreach that are inconsistent with the PWFA and should be eliminated from the proposed regulations (§1636.3(j)(4), 88 Fed. Reg. 54769).

The PWFA incorporates the definition of reasonable accommodation and undue hardship from the ADA. Under the ADA, the Commission advises that employers must make undue hardship determinations on a case-by-case basis and determine reasonable accommodations through an interactive process between the worker and the employer. Through individualized assessments, employers and employees work cooperatively to arrive at reasonable workplace accommodations based upon the specific essential functions of a job, the nature of the workplace, and the employer's specific business needs. Much of the support that the Chamber was able to obtain for the PWFA was based on the assurance that the interactive process would be a key element in the process of determining appropriate accommodations for pregnant workers.

The Commission's inclusion of four "predictable assessments" for accommodations under the PWFA, which EEOC has concluded "will virtually always be reasonable accommodations that do not impose an undue hardship" is an unwarranted overreach which undercuts the individualized assessment that is the foundation of the interactive process under the ADA; the same standard that Congress intended to be applied under the PWFA. The Commission's assumption that the specific modifications proposed as "predictable assessments" are *per se* reasonable ignores the purpose of the interactive process which was foundational to the PWFA and minimizes the legitimate differences in jobs and workplaces

that exist in this country. Providing seating to perform work tasks, while sounding simple, may not be reasonable for every type of job and workplace. Requests for additional breaks to eat and drink are not *per se* reasonable without qualification. Rather, the determination of reasonableness necessarily depends upon the specific accommodation being sought (*e.g.*, how many breaks, how much time for each break, etc.), the type of work an employee is performing, and the workplace in which it is performed.

Compounding the issue, the proposed regulations specify that employers cannot require any medical documentation when a pregnant worker requests one of the four "predictable assessments." The Commission's proposed "self-attestation" to support requests for the "predictable assessments" could lead to abuse if employers are prohibited from obtaining medical documentation confirming that an employee who is not obviously pregnant is, in fact, pregnant and engaging in a full and appropriate interactive process as contemplated by the drafters of the PWFA. Nothing in the PWFA or its legislative history supports an agency headquartered in Washington, DC mandating individualized accommodations for the myriad jobs and employers throughout the country. Without this statutory permission, the EEOC is without the authority or latitude to prescribe "predictable assessments" for every workplace where a pregnant worker seeks an accommodation under the PWFA.

Accordingly, the Commission should remove the "predictable assessments" from the proposed regulations altogether and restore the requirement that employers and pregnant workers engage in an appropriate interactive process under the PWFA for all accommodation requests to determine reasonable accommodations on a case-by-case basis. Such interactive processes need not be complicated or time consuming, but they are essential to all parties having a clear understanding of how to proceed and making sure all parties' interests are recognized. This is what the drafters of the PWFA and Congress intended, and why they were the basis for the strong bipartisan support PWFA.

2. When the ADA versus PWFA framework applies to an accommodation request needs to be clarified.

The PWFA was intended to fill in gaps between the PDA and ADA in terms of reasonable accommodations for pregnant workers because an uncomplicated pregnancy is not a disability entitling a worker to reasonable accommodation under either law. However, the proposed regulations create ambiguity as to the practical interplay between the ADA and the PWFA.

While both the ADA and PWFA require reasonable accommodations, the PWFA has a more lenient standard for accommodation when compared to the ADA because it requires employers to consider removing essential job functions as part of the reasonable accommodation (as long as the inability to perform an essential function is temporary, the essential function can be performed again in the near future, and accommodating the inability to perform the essential function can be reasonably accommodated). However, applying the lower accommodation standard under the PWFA to what the Proposed regulations purport to be "pregnancy-related conditions" under the PWFA that also constitute ADA disabilities could result in disparate treatment.

For example, a male and female employee both have back injuries and are unable to lift more than 20 pounds. The male employee's injury is due to obesity; the female employee's back injury arises from pregnancy. Lifting more than 20 pounds is an essential function of both employees' jobs. Both employees submit medical certifications that state they can lift 20 pounds again in nine months.

Under the ADA, the employer would not be required to accommodate the male employee because lifting 20 pounds is an essential function of his job. The House report on the PWFA contemplates this outcome, citing case law that establishes that, while an employer might need to grant leave to an employee if such leave will allow the employee to resume their essential functions in the near future, this is generally construed as a period not exceeding six months. *See* House Report at p. 28.[1] By contrast, the same employer would be required to accommodate the female employee if the inability to perform the essential function can be reasonably accommodated because the proposed regulations explicitly state that, under the PWFA, in the "near future" is 40 weeks. In addition, under the PWFA, the employer could not place the female employee on leave unless it showed there was no on-the-job accommodation available (including removal of an essential job function, which is not required under the ADA).

The proposed regulations should clarify that employers are to address requests for reasonable accommodation under the PWFA for conditions that would also constitute a disability under the ADA by first analyzing the issue under the ADA to determine whether the condition would constitute an ADA-qualifying disability. If it would qualify under the ADA, then the ADA framework should apply to the reasonable accommodation process. If the condition would not qualify as a disability under the ADA, and it is pregnancy-related, then it should be considered for reasonable accommodation under the PWFA process. Since the PWFA is merely a gap-filling measure, this process would be appropriate and lead to consistent treatment in the workplace, which is the goal of legislation enforced by the EEOC.

3. The proposed definition of "related medical conditions" is overbroad and attempts to re-write the PWFA (§ 1636.3(b), 88 Fed. Reg. 54767).

The proposed definition of "related medical conditions" to pregnancy and childbirth in §1636.3(b) would extend the PWFA far beyond the intent or understanding of the law's bipartisan advocates or those who drafted the bill. As the EEOC notes in the NPRM, the PWFA is intended to fill a gap in the definition of "disability" under the ADA as to uncomplicated pregnancy and conditions related to pregnancy or childbirth (such as morning sickness and other typical issues that accompany uncomplicated pregnancies). Accordingly, the purpose of the PWFA is to ensure that workers receive consideration for workplace accommodations for issues directly related to *being* pregnant. The proposed definition and examples of conditions that fall under the purview of "related medical conditions" would inappropriately broaden the scope of the PWFA to encompass any issue remotely related to reproduction – whether it directly relates to a current or recent pregnancy or not. This was never the intent of the law. The legislative history is replete with references to easing

[1] https://www.govinfo.gov/content/pkg/CRPT-117hrpt27/pdf/CRPT-117hrpt27-pt1.pdf

hardships for "pregnant" workers, not "potentially pregnant", "seeking to become pregnant", or "long ago pregnant" workers."[2]

The commentary to the NPRM on page 54715 states that "related medical conditions" is a term from Title VII that previously has been defined by the Commission. The Commission then cites first to USC 2000e(k), the Title VII definition of "because of sex" or "on the basis of sex," which specifies that those terms include pregnancy, childbirth or related medical conditions. Title VII does not define the term "related medical conditions" generally or in the context intended by the PWFA – which is conditions directly related to a current or recent pregnancy – as opposed to potential, intended, hoped for, or long-past pregnancy. The Commission also cites to its Enforcement Guidance on Pregnancy Discrimination II (2015) at I.A.4 II (2015)[3], as support for the contention that "related medical conditions" is a term previously defined by the Commission. However, the cited section simply states:

> Title VII prohibits discrimination based on pregnancy, childbirth, or a related medical condition. Thus, an employer may not discriminate against a woman with a medical condition relating to pregnancy or childbirth and must treat her the same as others who are similar in their ability or inability to work but are not affected by pregnancy, childbirth, or related medical conditions.

Clearly, this is not the same as the broad definition of "related medical conditions" in §1636.3(b) of the proposed regulations. The overarching purpose of the Title VII definition is to ensure that employees are not discriminated against on the basis of sex, and clarifying that pregnancy and related conditions are included in that prohibition against discrimination. This is different from the purpose of the PWFA, which is to fill the gap and enable pregnant workers to receive workplace accommodations that they are not otherwise eligible for under the ADA or Pregnancy Discrimination Act.

The Commission should appropriately narrow the definition of "related medical conditions" for the PWFA to clarify that only conditions directly related to an actual pregnancy (current or recent (meaning within the past six months or less)) are covered by the PWFA. Requests for workplace accommodations for reproductive health issues that are not directly related to an actual current, or recent pregnancy, such as menstruation, use of birth

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[2] See Footnote 48 of the NPRM (88 Fed. Reg. 54720) citing to Markup of the Pregnant Workers Fairness Act, at 54:46 (statement of Rep. Kathy E. Manning) (goal of the PWFA is help pregnant workers "to deliver healthy babies while maintaining jobs"); id. at 21:50 (statement of Rep. Robert C. Scott) ("[W]ithout these protections, too many workers are forced to choose between a healthy pregnancy and their paychecks"), id. at 1:35 (statement of Rep. Lucy McBath) ("[N]o mother should ever have to choose between the heath of themselves and their child or paycheck."); id. at 1:44 (statement of Rep. Suzanne Bonamici) ("[P]regnant workers should not have to choose between a healthy pregnancy and a paycheck.").

[3] https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues

control, endometriosis, incontinence, infertility, etc. should be analyzed under the ADA rather than the PWFA.

Indeed, the proposed definition of "related medical conditions" under the PWFA to include issues such as fertility/infertility and birth control could lead to gender discrimination claims against employers unless male workers are eligible for accommodation under the PWFA for the same issues, which is clearly beyond the scope of what was intended by the law (and further demonstrates why the PWFA definition should be narrowed). For example, a male employee seeking accommodation for fertility/infertility treatments or testing would be considered for accommodation under the ADA framework, which does not require that an employer consider removing an essential job function as a reasonable accommodation. However, if that same worker was female, she would be eligible for accommodation under the PWFA framework, which requires employers to consider removing essential job functions for a temporary period as long as the function can be performed again in the near future, and the request can be accommodated. This type of disparate treatment is inconsistent with the intent of the PWFA.

4. **The EEOC's proposed definitions regarding a "qualified employee or applicant" need to be limited (§1636.3(f)(2), 88 Fed. Reg. 54767).**

The PWFA provides that an employee or applicant shall be considered "qualified" even if they cannot perform one or more essential functions of their job as long as the inability to perform the essential function is (1) for "a temporary period," (2) the essential function could be performed again "in the near future," and (3) the inability to perform the essential function can be reasonably accommodated. Congress left it to the EEOC to define the terms "in the near future" and "temporary period" which the Commission has done in §1636.3(f)(2) of the proposed regulations.

Forty weeks is not "in the near future." The EEOC proposes to define "in the near future" to mean that "the ability to perform the essential function(s) will generally resume within forty weeks of the suspension" of an essential function. This proposed definition is grossly overbroad. A full-term pregnancy is a temporary condition generally lasting 40 weeks or less. If Congress had intended "in the near future" to mean a period lasting as long as the entire duration of a full-term pregnancy, then the PWFA simply would have specified that "qualified" pregnant workers need not be able to perform the essential functions of their job. Of course, this is not what the PWFA says.

Indeed, this was a specific point of negotiation to gain bipartisan support for the PWFA. As introduced in the 116th Congress, the PWFA did not include a requirement that the employee or applicant be able to perform the essential functions of the job, with or without reasonable accommodation, to be entitled to accommodation. However, as noted in the House Report on the PWFA at page 53[4], Ellen McLaughlin, a partner with Seyfarth Shaw LLP specializing in labor and employment law, raised significant concerns with this omission of the requirement that the employee or applicant be able to perform the essential functions of the job, with or without reasonable accommodation, when she testified before the Subcommittee on Civil Rights and Human Services in 2019, calling it a ''key provision of the

[4] https://www.govinfo.gov/content/pkg/CRPT-117hrpt27/pdf/CRPT-117hrpt27-pt1.pdf

ADA'' (on which the PWFA was based). To address these concerns, the PWFA was amended to add a requirement that the employee or applicant be ''qualified,'' meaning the individual, ''with or without reasonable accommodation, can perform the essential functions of the employment position.'' In addition, to address concerns from supporters of H.R. 1065 that workers with known limitations related to pregnancy who are temporarily unable to perform an essential function be able to receive an accommodation, the amendment included what was intended to be a limited exception that an employee or applicant ''shall be considered qualified if—(A) any inability to perform an essential function is for a temporary period; (B) the essential function could be performed in the near future; and (C) the inability to perform the essential function can be reasonably accommodated."

Defining "in the near future" as 40 weeks would completely eviscerate this amendment because a pregnant worker could be entitled to accommodation even if she could not perform the essential functions of her job for the entire length of her pregnancy. This is plainly not what Congress intended.

Moreover, the House Report on the PWFA itself provides additional evidence the legislature did not intend "in the near future" to mean 40 weeks. On page 28, the House Report notes that, under the ADA, "courts have found workers are entitled to reasonable accommodations if they only need a finite leave of absence or a transfer that would allow them to perform the essential functions of the job in the near future."[5] The case example cited in the House Report for this proposition is *Robert v. Board of County Commissioners of Brown County, Kansas*, 691 F.3d 1211, 1218 (10th Cir. 2012). In *Robert*, the Tenth Circuit laid out a framework for determining the reasonableness of a request for leave under the ADA, noting there are two limits on bounds of reasonableness for a leave of absence due to a temporary inability to perform the functions of the job:

> The first limit is clear: The employee must provide the employer an estimated date when she can resume her essential duties. Without an expected end date, an employer is unable to determine whether the temporary exemption is a reasonable one. The second is durational. A leave request must assure an employer that an employee can perform the essential functions of her position *in the "near future."*

691 F.3d at 1218 (internal citations omitted and emphasis added). The Tenth Circuit went on to hold that, "[a]lthough this court has not specified how near that future must be, the Eighth Circuit ruled in an analogous case that a six-month leave request was too long to be a reasonable accommodation." *Id.* (citing *Epps v. City of Pine Lawn*, 353 F.3d 588, 593 (8th Cir. 2003)).

The *Roberts* case is viewed as establishing a bright line that six-months (26 weeks) is too long to mean "in the near future." Indeed, the Tenth Circuit acknowledged as much in its subsequent decision in *Hwang v. Kansas State University*, 753 F.3d 1159, 1161-62 (10th Cir. 2019). The House Report's explicit citation to the Tenth Circuit's opinion in *Roberts* can only

[5] https://www.govinfo.gov/content/pkg/CRPT-117hrpt27/pdf/CRPT-117hrpt27-pt1.pdf

mean Congress did not intend "in the near future" to be as long as 40 weeks, but rather, a period less than six months.

Accordingly, the Chamber recommends that the §1636.3(f)(2) definition of "in the near future" be revised to "a period of less than six months."

Longer than 40 weeks is not a "temporary period." The proposed regulations define "temporary period" as a period, "lasting for a limited time, not permanent, and may extend beyond 'in the near future.'" The definition of "temporary period" needs revision for the same reason that "in the near future" should be less than six months. Indeed, "temporary" should not exceed six months generally and should not "extend beyond 'in the near future.'" The defined periods for "temporary" and "in the near future" should be co-extensive as used in the proposed regulation.

"Can be reasonably accommodated" is not the same as undue hardship. There is yet another issue with the Commission's proposed standard under which an employer evaluates whether a pregnant worker who cannot perform an essential function of the job is "qualified." Like the language in the PWFA, §1636.3(f)(2)(iii) of the proposed regulations states that a pregnant worker is qualified only if the temporary suspension of essential functions "can be reasonably accommodated by the employer." The Commission then goes on to provide multiple examples of situations where the suspension of essential functions *can* be a reasonable accommodation. However, the proposed regulations provide no examples where an employer concluded that it could not reasonably accommodate the inability to perform essential functions.

What is more concerning, however, is that the Commission is conflating the inclusion of "reasonably accommodate" in §1636.3(f)(2) with the undue hardship standard. The Commission suggests several times in the NPRM and examples that, for an employer to take the position that an employee is not "qualified" under the definition in §1636.3(f)(2), it must demonstrate that the proposed accommodation places an undue hardship on the employer. However, this is not what the PWFA or even §1636.3(f)(2) says. Rather, an employer must only establish that the temporary suspension of the essential function cannot be "reasonably accommodated" in order to deny a reasonable accommodation under §1636(f)(2). Understanding the impact to employers of having to excuse the performance of an essential function, even on a temporary basis, Congress expressly chose a standard lower than undue hardship in the negotiated text that resulted in the second definition of "qualified employee."

Accordingly, the proposed regulations should acknowledge this lower burden and include examples of when an employer could not reasonably accommodate a temporary inability to perform an essential function. Although the proposed regulations contain a specific definition of undue hardship, its definition for reasonable accommodation under §1636(f)(2) is singularly unhelpful. In §1636.3(i)(5), the proposed regulation states that the "temporary suspension of one or more essential function(s) . . . is a reasonable accommodation if an applicant or employee with a known limitation is unable to perform one or more essential functions with or without reasonable accommodation and the conditions in paragraph (f)(2) of this section are met." This is a circular definition because paragraph (f)(2) itself requires a determination by the employer that the suspension *cannot* be reasonably accommodated.

In addition, the following issues should be addressed in the Proposed Regulation set forth in §1636.3:

(1) **Appropriate pay adjustments are permissible.** An employee's compensation can be adjusted during the period in which essential job functions are suspended or if the employee must be placed in a lower paying position as an accommodation. This is not specifically addressed in the NPRM but would be consistent with language elsewhere in the NPRM stating that, if a production standard is lowered as an accommodation, the employee's pay can be proportionately reduced.

(2) **Multiple periods of "temporary inability" to perform essential functions were not contemplated by Congress.** The proposed regulations permit a scenario in which more than one period of temporary inability to perform essential functions can occur during a pregnancy. However, the PWFA refers to "*a* period of temporary inability." Despite this, the proposed regulations appear to contemplate multiple periods of temporary inability – each of a potential 40-week duration--that could be stacked to result in the requirement for removal of essential functions for far beyond a total of 40 weeks (for example, 40 weeks pre-pregnancy, 40 weeks during pregnancy, and then 40 weeks *post-partum*, and this could repeat with subsequent pregnancies). This could amount to a period of well over two years, which was never contemplated by Congress or the Act's supporters. The proposed regulations should clarify that there is only one period of temporary inability per pregnancy or alternatively that multiple periods together cannot exceed the duration stated in the definition of "in the near future," which we proposed to be less than six months.

5. The PWFA regulations should follow the ADA documentation standard (Section 1636.3(l), 88 Fed. Reg. 54769).

Rather than simply following the established framework of the ADA for requesting medical documentation, the proposed regulations only permit an employer to require supporting documentation when it is "reasonable under the circumstances." Under the ADA, an employer can require documentation to support a request for accommodation except when the need for the accommodation is obvious. The documentation rule should be no different under the PWFA. Applying the ADA framework's familiar bright line guidance is more useful to employers than an amorphous and new "reasonableness" standard. Under the proposed regulations, an employer will never know when the "reasonableness" of their request for documentation might be second-guessed.

While the Chamber agrees that it is not reasonable for an employer to require proof of pregnancy when an employee's pregnancy is obvious, the proposed regulations should specify that employers can require proof of pregnancy when a pregnancy is *not* obvious. Moreover, whether a pregnancy itself is obvious, employers should be able to require medical documentation confirming that a requested accommodation is related to pregnancy and is necessary. The Commission's proposed self-attestation process has the potential to lead to abuse by employees, especially when paired with a limitation on the ability to require documentation of a non-obvious pregnancy.

The Proposed regulations suggest that pregnant workers face more challenges obtaining medical documentation than employees suffering from non-pregnancy-related impairments. However, a pregnant worker's ability to see a health care provider is no more difficult than an employee seeking an accommodation under the ADA for a new or non-chronic impairment. Both may not have already been consulting a physician when the need for accommodation arose, but medical documentation can be obtained. Thus, an employer should be able to require medical documentation under the PWFA to the same degree that it can under the ADA (and provide temporary accommodations conditioned upon the receipt of documentation in a reasonable period of time).

The Chamber also believes that the Commission should allow employers to require a periodic update from pregnant workers, including medical documentation, as to the necessity of a continued accommodation. For example, an employee who is suffering from morning sickness early in pregnancy who asks for a later start time may not need that accommodation as her pregnancy progresses. An employer should be able to request medical updates on a periodic basis to determine whether an accommodation continues to necessary as it can under the ADA.

6. The definition of "communicated to the employer" should be clarified (§ 1636.3(d), 88 Fed. Reg. 54767).

The accommodation process under the PWFA will only be effective to the extent an employer is adequately and appropriately put on notice of the need for an accommodation under the statute.

The proposed regulations state that a covered worker should be permitted to request an accommodation through multiple avenues and means, including "a supervisor, manager, someone who has supervisory authority for the employee (or the equivalent for an applicant), or human resources personnel, or by following the covered entity's policy to request an accommodation." The Chamber supports this definition as consistent with the process that many employers follow for requesting an ADA accommodation, especially since it expressly contemplates that employers can create a policy with their own, more narrow process for making an accommodation request. However, the Chamber believes that any expansion of the universe of persons to whom an accommodation request can be made beyond supervisory personnel or human resources would create an unmanageable process for employers.

The proposed regulations also state that, to request a reasonable accommodation, the employee or applicant need only communicate: (1) the limitation, and (2) that the employee/applicant needs an adjustment or change at work. The Chamber believes that the proposed regulation should be modified to state that the employee must communicate (1) the limitation; and (2) that the employee/applicant needs an adjustment or change at work due to the limitation. This slight change would clarify that the employee may only request accommodations that are necessitated by the limitation (which is necessarily related to pregnancy). Case law interpreting the ADA is clear that, while the burden to provide notice under the ADA sufficient to initiate the reasonable accommodation process is not a heavy one, adequate notice does require that the employee or applicant inform the employer both of

the disability, limitations associated with the disability, and the need for accommodations based on that disability. *EEOC v. Fed. Express Corp.*, 513 F.3d 360, 369 (4th Cir. 2008).

CONCLUSION

The Chamber is disappointed at the Commission's attempt to grossly expand the PWFA through the proposed regulations far beyond the gap filling measure that it was intended to be. The PWFA was not intended to open the door to obligating employers to remove essential job functions for virtually any reproductive issue for years at a time. Nor was the PWFA intended to supersede the PDA or the ADA, or even Title VII. Accordingly, the Chamber urges the Commission to revisit the proposed regulations and appropriately tailor them to reflect the intent of the law.

Sincerely,

Marc Freedman
Vice President, Workplace Policy
Employment Policy Division
U.S. Chamber of Commerce

Of Counsel:

SEYFARTH SHAW, LLP
Camille Olson
Lawrence Lorber
Karla Grossenbacher
Debbie Caplan