

LEGAL NEWS FOR YOUR BUSINESS

September 2023

Small Business Alert

NEW REPORTING REQUIREMENTS UNDER CORPORATE TRANSPARENCY ACT

Dedicated to preventing money laundering and other illicit financial activities, the U.S. Treasury Department's Financial Crimes Enforcement Network ("**FINCEN**") has released new regulations regarding reporting under the Corporate Transparency Act ("**CTA**"). These regulations largely affect small businesses.

Beginning January 1, 2024, all businesses classified as a "reporting company" must report information about the reporting company, personal information about beneficial owners of the reporting company, and personal information about individuals who form or direct or control the formation of the reporting company. A reporting company is any domestic or foreign privately held company created by the filing of a document with the secretary of state or similar office in the U.S., or under the law of a foreign jurisdiction authorized to do business in the U.S. The regulations also contain 23 exemptions from the definition of a reporting company, which largely focus on entities already subject to significant government oversight. These exemptions include, but are not limited to:

- Large companies, defined as companies with 20 or more employees, a physical operation location in the U.S., who have filed a U.S. tax return for the previous year showing at least \$5,000,000 in gross receipts or sales, excluding receipts or sales from outside the U.S.;
- Subsidiaries of exempt entities, except subsidiaries of money service businesses, pooled investment vehicles, entities assisting tax-exempt entities, or any inactive entity.

Reporting companies must also furnish information regarding their beneficial owners and company applicants. Beneficial owners are defined as individuals who exercise substantial control, or who own at least 25% of the reporting company. All members of a company's board of directors, CEOs, Presidents, COOs, CFOs, and General Counsel must be reported as beneficial owners. Company applicants capture two categories of individuals: (1) those

who directly file formation documents; and (2) individuals controlling or directing the filing of formation documents. Company applicants may include attorneys or company representatives and each reporting company is limited to two company applicants. Information regarding company applicants is only required for businesses formed on or after January 1, 2024.

Reporting companies formed prior to January 1, 2024, will have until January 1, 2025, and reporting companies formed on or after January 1, 2024, will have 30 days from formation to report the following information:

For reporting companies:

- Full legal name and any d/b/a or assumed business names;
- U.S. address of the principal place of business;
- Jurisdiction of formation;
- Taxpayer identification number or employer identification number.

For beneficial owners and company applicants:

- Full legal name;
- Date of birth;
- Residential street address;
- Unique identifying number from a passport, driver's license, or other government identification. A copy of the I.D. used should also be included.

Penalties for not complying with the regulations are severe, consisting of fines of up to \$500 per day for willful violations, criminal penalties of up to \$10,000, and up to two years of prison time. Although the enforcement does not begin for existing companies until 2025, businesses should start taking steps now to identify whether they are exempt or non-exempt and begin gathering relevant information to prepare for reporting.

If you have questions about your business's obligations under the CTA, please do not hesitate to reach out to any member of Gardner Skelton's corporate team.

Employment Alert

EEOC RELEASES PROPOSED RULE ENFORCING THE PREGNANT WORKERS' FAIRNESS ACT

On August 11, 2023, the Equal Employment Opportunity Commission (“**EEOC**”) released a proposed rule to establish regulations enforcing the Pregnant Workers’ Fairness Act (“**PWFA**”). The PWFA took effect on June 27, 2023, and requires employers with 15 or more employees to provide certain accommodations to qualified employees with limitations due to pregnancy, childbirth, or other related medical conditions.

The proposed rule heavily mirrors concepts from the Americans with Disabilities Act (“**ADA**”), including the definitions of “undue hardship,” “essential job functions,” “interactive process,” and “reasonable accommodation.” Employers will likely be able to use their ADA procedures to engage pregnant workers in the interactive process. There are, however, a few key differences between the ADA and the PWFA.

First, the EEOC defines a “qualified employee” as “an employee or applicant who, with or without reasonable accommodation, can perform the essential functions of the employment position.” Importantly, under the proposed rule, employees can be qualified even if they are not able to perform one or more essential job functions. In this scenario, the inability to fulfill the job function(s) must be a direct result of the pregnancy-related condition and the inability is temporary, meaning the employee will be able to perform the function in the near future. The EEOC considers “in the near future” as within forty weeks. However, these forty weeks do not consist of the entire time period for accommodations. For example, an employee may not be able to fulfill Job Duty A during forty weeks of pregnancy. After giving birth, that employee may be able to fulfill Job Duty A, but not Job Duty B. In this case, they would have an additional forty weeks to be able to fulfill Job Duty B.

Additionally, the EEOC considers a variety of medical conditions to be pregnancy-related, including infertility and fertility treatments, past pregnancy, endometriosis, birth control use, menstruation, miscarriage, stillbirth, abortion (and the process of choosing not to have one), lactation and lactation-related conditions, and post-pregnancy limitations or complications. The EEOC includes an extensive list of acceptable reasonable accommodations for these conditions.

The proposed rule is open for public comments until October 10, 2023. The EEOC is expected to enact a final rule fairly quickly after the close of the comment period, as final regulations must be enacted December 29, 2023. Although employers may be able to use existing policies and procedures to comply with the PWFA and EEOC regulations, they should start preparing now to strengthen policies, review definitions, and begin identifying potential reasonable accommodations.

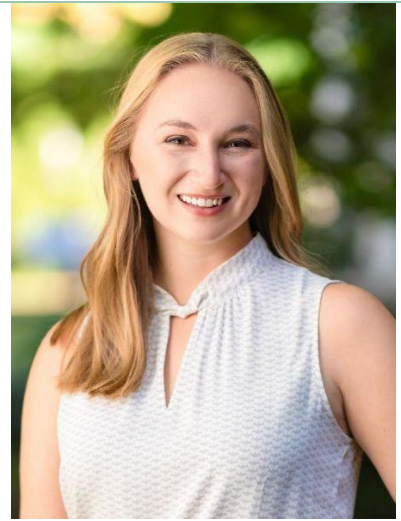
If you have questions or concerns about employer obligations under the PWFA, please do not hesitate to reach out to any member of Gardner Skelton’s employment team.



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