

2024 Annual Safety Workshop

Welcome!

8:30 am to 10:30 am

Presenters:

Lauri Cochran – Comprehensive Risk Management
Lynn Schonberg, Esq. – Ross, Brittain & Schonberg Co
LPA





BWC Overview

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BWC Overview

Reminders:

- Payroll true up - 8/15
 - 7/1/23-6/30/24
 - Additional premium (if any) also due 8/15
 - Online or call in
 - No further grace periods
 - Lack of true up/premium = program ineligibility

BWC Program Changes

- Safety Council Plus
 - New Program – 2 year pilot
 - July 1, 2025
 - Employers not in group or group retro
 - 5% bonus - \$20k max

BWC Program Changes

- Transitional Work Grants (>7/1/2023)
 - 100% reimbursement
 - \$200/hr – plan development
 - \$350 – job analysis
 - 11-49 employees - \$3,700
 - 50-199 employees - \$6,800
 - 200 + employees - \$8,200
 - Good for 5 years
 - List of program developers online

BWC Program Changes

- Transitional Work Bonus Program
 - TWB-2 Form no longer needed
 - Phase Out
 - 2024 – up to 7% (\$25k max)
 - 2025 – up to 4% (\$25k max)
 - 7/1/2026 – no longer offered
- Go Green Discount
 - Online payment – phased out 7/1/24

BWC Program Changes

- Grow Ohio
 - New Businesses
 - Option to join GO or Group
 - GO = 25% discount
 - BWC eliminating due to lack of participation
- Lapse Free
 - Discount eliminated

BWC Program Changes

- 100% EM Capping
 - Reduced rate volatility
 - Prevented large premium increases
 - Automatically applied
 - BWC eliminating due to low rate of requirement completion

BWC Program Changes

- One Claim Program
 - One significant claim causing removal from group rating
 - BWC to streamline renewal
 - BWC reviewing requirements
 - 7/1/2024

BWC General Changes

- Rates

- Effective 7/1/2024
- Base rate and BWC admin rate now combined
- Result was net decrease

BWC General Changes

- Credit Card Fees

- Under review
- Credit cards fees will be passed on to employers soon
- EFT payments

BWC General Changes

- Break Even Factors

- BWC revisiting need
- Implemented around 2007 through 2012
- Provided discounts to non-group participants
- May impact current Premium Size Factor adjustments

BWC General Changes

- Premium Size Factor Adjustment

- New Formula

- Up to \$6,000 – paid at 100%
- >\$6000 to \$119,999 – discounted 13%
- >\$120,000 to \$599,999 – discounted 18%
- >\$600,000 – discounted 23%

BWC General Changes

- OHID transition

- Questions on process?
- Don't share accounts!!!

- Mail

- Emailed notices
- Hopefully by 2025

BWC Div of Safety & Hygiene

- Division of Safety & Hygiene

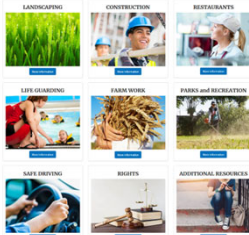
- Risk reduction branch of BWC
- Resources – written, training, videos and events
- Industry Initiatives
 - Construction
 - Nursing

Summer's Here

Young and new worker orientation checklist	
11. Basic contents of the occupational health and safety program (formal or informal)	<input type="checkbox"/>
12. Hazardous materials and WHMIS	<input type="checkbox"/>
(a) What hazardous materials are in the workplace	<input type="checkbox"/>
(b) Purpose and significance of hazard information on product labels	<input type="checkbox"/>
(c) Location, purpose, and significance of safety data sheets (SDSs)	<input type="checkbox"/>
(d) How to handle, use, store, and dispose of hazardous materials safely	<input type="checkbox"/>
(e) Procedures for an emergency involving hazardous materials, including clean-up of spills	<input type="checkbox"/>
13. Contact information for the occupational health and safety committee or worker health and safety representative	<input type="checkbox"/>
14. Bullying and harassment	<input type="checkbox"/>
(a) What is workplace bullying and harassment	<input type="checkbox"/>
(b) How to report incidents of workplace bullying and harassment (e.g. forms, procedures, contact information)	<input type="checkbox"/>
(c) Who is responsible for following up on complaints	<input type="checkbox"/>

Summer's Here

- OSHA – wealth of info
- <https://www.osha.gov/young-workers-summer-jobs>



Summer's Here

- OSHA Standard
- Under the **General Duty Clause**, Section 5(a)(1) of the Occupational Safety and Health Act of 1970, employers are required to provide their employees with a place of employment that "is free from recognized hazards that are causing or likely to cause death or serious harm to employees." The courts have interpreted OSHA's general duty clause to mean that an employer has a legal obligation to provide a workplace free of conditions or activities that either the employer or industry recognizes as hazardous and that cause, or are likely to cause, death or serious physical harm to employees when there is a feasible method to abate the hazard. This includes heat-related hazards that are likely to cause death or serious bodily harm.

Summer's Here

- Heat Illness Prevention
 - Sources of heat illness
 - Outdoor work
 - Heat sources (ovens, fires, etc.)
 - Strenuous physical activity
 - Non-breathable or heavy clothing
 - Create Heat Illness Prevention Plan
 - Supervise the plan

Summer's Here

- Key Elements of Heat Prevention Plan
 - Daily oversight
 - Developing heat tolerance
 - First aid versus medical assistance
 - Ways to reduce heat stress
 - Ways to measure heat stress
 - Heat advisories or heat warnings

Summer's Here

- Key Elements of Heat Prevention Plan (con't)
 - Determine hazard of heat stress
 - Training for workers and supervisors
- Daily Oversight
 - Identify heat hazards
 - Know symptoms of heat stress
 - Administer first aid or contact EMS

Summer's Here

● Prevention

- Protect new workers
- Training of supervisors and workers
- Determining total heat stress
- Implement controls and practices to mitigate heat illnesses
- Provide rest, shade, water

Summer's Here

● Recognizing Heat Illnesses

Heat-Related Illness	Symptoms and Signs
Heat stroke	<ul style="list-style-type: none">•Confusion•Slurred speech•Unconsciousness•Seizures•Heavy sweating or hot, dry skin•Very high body temperature•Rapid heart rate
Heat exhaustion	<ul style="list-style-type: none">•Fatigue•Irritability•Thirst•Nausea or vomiting•Dizziness or lightheadedness•Heavy sweating•Elevated body temperature or fast heart rate
Heat cramps	<ul style="list-style-type: none">•Muscle spasms or pain•Usually in legs, arms, or trunk
Heat syncope	<ul style="list-style-type: none">•Fainting•Dizziness
Heat rash	<ul style="list-style-type: none">•Clusters of red bumps on skin•Often appears on neck, upper chest, and skin folds
Rhabdomyolysis (muscle breakdown)	<ul style="list-style-type: none">•Muscle pain•Dark urine or reduced urine output•Weakness

Summer's Here

● Heat Illness

- Never try to diagnose a heat illness
- Symptoms can occur together
- When in doubt, call 911!
- Heat illness victims can rapidly deteriorate
- If possible, move employee to cool area
- In an emergency – cool with ice
- Cold towels (head, neck, trunk, armpits, groin)
- Fans

Summer's Here

● Personal Risk Factors

- Obesity
- Diabetes/high blood pressure/heart disease
- Low level physical fitness
- Certain medications
- Alcohol and drug use

● OSHA Resources

- Numerous resources can be found on OSHA site (www.osha.gov)
- Link for a good training guide:
- https://www.osha.gov/sites/default/files/osha_heattraining_guide_0411.pdf

● Questions – comments?

Safety and Employment Laws 2024

Presented by:
Lynn Schonberg
Ross, Brittain & Schonberg Co. L.P.A.
June 12, 2024

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Major New Workplace Laws 2024

- OSHA Walkaround New Rules
 - Effective May 31, 2024
- DOL Salary Threshold Changes
 - Effective July 1, 2024
- Pregnancy Workers Fairness Act
 - Effective April 15, 2024
- EEOC New Harassment Guidelines
 - Effective April 29, 2024

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OSHA's "Walkaround" Rule

- Effective May 31, 2024
- Allows workers to designate a union or other employee representative to accompany an OSHA inspector during a facility walkaround
 - Altered the previous rule that required an employee representative *be an employee* of the employer being inspected

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OSHA's "Walkaround" Rule

- New Rule Allows:
 - The representative(s) authorized by employees may be an employee of the employer *or a third party*
 - The third party need merely have:
 - Relevant knowledge, skills, or experience with hazards or conditions in the workplace or similar workplaces, or language or communication skills

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OSHA's "Walkaround" Rule

- Possible jobsite visitors include:
 - Union Organizers
 - Other employee of employer
 - Community activists
 - Industry competitors
 - Others vested in workplace safety
- The jobsite visitor must aid in the process of the inspection

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OSHA's "Walkaround" Rule

- New Rule *does not change* requirement that the employer consent prior to the inspection occurring, unless OSHA has a warrant
 - Employers can and should still control how OSHA accesses company property and areas covered
 - A supervisor should be pre-designated to be the contact person whenever OSHA arrives

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OSHA's "Walkaround" Rule

- Best Practices:
 - Review or create an OSHA Inspection Plan
 - Designate supervisory employee as contact person
 - Designated supervisor must stay with inspector at all times except during interviews with non-supervisory employees who do not request a manager's presence
 - Be prepared to take side-by-side photos, sampling and tests if/when OSHA requests to do so

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OSHA's "Walkaround" Rule

- Best Practices:
 - Do not permit any manager or supervisor interviews by OSHA on the day it arrives
 - Only provide OSHA 300 logs, 300A Summaries, 301 forms and relevant safety data sheets (SFA) on first day
 - Lead inspector straight to and straight from the area under inspection
 - Ensure employees are not engaging in high hazardous activities while OSHA present

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OSHA's "Walkaround" Rule

- Best Practices:
 - Protect Trade Secrets
 - Ensure site management knows which areas of worksite contain trade secrets or other confidential commercial information
 - Insist that no third party access such areas and OSHA's photos marked "trade secret"
 - Consider Establishing a Safety Committee
 - Committee members would hold the "representative" role
 - Work with labor counsel to create

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OSHA's "Walkaround" Rule

- Best Practices:
 - At opening conference:
 - Obtain identity of all parties with OSHA
 - Ask how a third party will aid in the OSHA inspection or investigation
 - Ask qualifications, skills, knowledge that they possess to aid in the inspection
 - Ask about their work experience
 - Ask who requested the third party
 - Does the third party have proper PPE?

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OSHA's "Walkaround" Rule

- Best Practices:
 - If in manufacturing, construction and related safety sensitive industries, establish relationship with trusted and knowledgeable OSHA counsel
 - Upon initial visit by OSHA, immediately contact OSHA counsel and inform OSHA of such contact and proceed accordingly

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Salary Threshold Changes

- Changes for Executive, Administrative and Professional Exemptions (EAP)
 - July 1, 2024
 - Increase from **\$35,568/year** (\$684/week) to **\$43,888/year** (\$844/week)
 - January 1, 2025
 - Increase to **\$58,656/year** (\$1128/week)
 - July 1, 2027
 - Automatic updates every three years from that date forward

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Salary Threshold Changes

- Highly Compensated Employees (HCE)
 - July 1, 2024
 - Increase from **\$107,432.00** annually to **\$132,964.00** annually
 - January 1, 2025
 - Increase to **\$151,164** annually
 - July 1, 2027
 - Automatic updates every three years from that date forward

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Salary Threshold Changes

- Thresholds Not Applicable to Law or Medical Professions, Teachers, Outside Sales
- Computer Employee Exemption
 - No changes - \$684 per week on a salary basis or paid at least \$27.63 an hour.
- Duties Test for Exemptions/Salary Basis
 - No changes

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Salary Threshold Changes

- Legal Challenges
 - May 22, 2024 Texas lawsuit filed by business associations challenges rule as exceeding the DOL's authority
 - June 3, 2024 Texas Attorney General filed a second federal lawsuit seeking an injunction to prevent the implementation of the rule
 - Both cases are currently pending in the U.S. District Court for the Eastern District of Texas

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Salary Threshold Changes

- Best Practices
 - Determine Impact on Employees
 - Identify impacted exempt employees
 - Decide whether to increase their salaries or re-classify them to hourly and new rate of pay
 - Determine whether other exemption may be met – computer, outside sales
 - Consider employee morale factors

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Salary Threshold Changes

- Best Practices
 - Notify Re-Classified Employees ASAP
 - Determine new hourly pay rate and keep in mind “regular rate of pay”
 - Includes non-discretionary bonuses, etc.
 - Require updated signatures on rules/handbook
 - Determine and inform whether bonuses, incentive plans, etc. will change or be eliminated

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Salary Threshold Changes

- Best Practices
 - Provide Detailed Training On:
 - Scheduled hours
 - OT approval policies
 - Timekeeping procedures
 - Recordkeeping procedures
 - Rules on meal and rest breaks
 - Policies on using personal devices for work
 - Prohibition on off-the-clock work

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Salary Threshold Changes

- Best Practices
 - Ensure Salary Basis Being Followed
 - Improper Deductions
 - Employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis
 - No reductions because of variations in the quality or quantity of work
 - Subject to exceptions, must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked

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Salary Threshold Changes

- Best Practices
 - Ensure Salary Basis Being Followed
 - Improper Deductions
 - No need to be paid for any *workweek* in which no work is performed
 - Where employee is ready, willing and able to work, deductions may not be made for time when work is not available
 - Employers may use nondiscretionary bonuses and incentive payments (including commissions) paid on an annual or more frequent basis, to satisfy up to 10 percent of the standard salary level

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Salary Threshold Changes

- Best Practices
 - Ensure Salary Basis Being Followed
 - Proper Deductions
 - Absent from work for one or more full days for *personal reasons* other than sickness or disability
 - *No work performed*
 - Absences of one or more full days due to *sickness or disability* if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness
 - To offset amounts employees receive as jury or witness fees, or for military pay

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Salary Threshold Changes

- Best Practices
 - Ensure Salary Basis Being Followed
 - Proper Deductions
 - For penalties imposed in good faith for infractions of safety rules of major significance
 - Unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions
 - Initial or terminal week of employment
 - Weeks in which an exempt employee takes unpaid leave under FMLA – applies to reduced hour/day and intermittent leaves

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Salary Threshold Changes

- Best Practices
 - Ensure Exemptions Proper
 - Executive Exemption
 - Primary duty to manage enterprise or customarily recognized dept/subdivision
 - Customarily and regularly direct at least 2 FTEs
 - Authority to hire or fire or their suggestions and recommendations are given particular weight

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Salary Threshold Changes

- Best Practices
 - Ensure Exemptions Proper
 - Administrative Exemption
 - Primary duty performance of office or non-manual work
 - Directly related to management or general business operations of employer or its customers
 - Exercise of discretion and independent judgment with respect to matters of significance

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Salary Threshold Changes

- Best Practices
 - Ensure Exemptions Proper
 - Professional Exemption
 - Primary duty performance of work requiring advanced knowledge, intellectual in character and requiring consistent exercise of discretion and judgment
 - Advanced knowledge in field of science or learning and is customarily acquired by a prolonged course of specialized intellectual instruction

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Salary Threshold Changes

- Best Practices
 - Create Safe Harbor Policy to Protect Against Losing Exemption
 - Clearly communicated policy prohibiting improper deductions and including a complaint mechanism
 - Reimburse employees for any improper deductions and
 - Makes a good faith commitment to comply in the future

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PWFA

- Enacted June 27, 2023
 - Applies to employers with 15+ employees
 - Requires
 - Reasonable accommodation to qualified employees or applicants with
 - Known limitations related to, affected by or arising out of pregnancy, childbirth or related medical conditions
 - Unless the accommodation will cause undue hardship on the employer's business

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PWFA

- April 15, 2024 EEOC's Regs issued
 - Turbo-Charged the PWFA into a significantly burdensome expansion of employee entitlements
 - Must engage in reasonable accommodation analysis but different from ADA
 - Must understand the differences
 - Regs go into effect on June 18, 2024

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PWFA And ADA Differences

- PWFA Incorporates ADA Concepts
 - Although pregnancy is not a disability, the PWFA requires employers to treat it as such
 - Therefore, employers required to follow the *general* practices of the ADA but with many differences
 - Essential to understand the differences

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PWFA And ADA Differences

- The Interactive Process
 - Central in determination of requests for accommodations under both the ADA and PWFA.
 - Not required under the ADA
 - Mandated under the PWFA before requiring a qualified employee to accept a reasonable accommodation
 - Cannot deny request unless and until the interactive process initiated and completed

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PWFA And ADA Differences

- The Interactive Process
 - Continue to implement in *all* cases where employee requests accommodation
 - Dialogue, dialogue, dialogue
 - Document document document
 - Consider retraining on how to handle accommodation requests
 - Be wary of consequences of an undue delay

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PWFA And ADA Differences

- Definition of Qualified Employee
 - ADA
 - A person is qualified if can perform the essential functions with or without reasonable accommodation
 - PWFA
 - A person is qualified if *cannot* "temporarily" perform the essential functions of the position but will be able to perform them "in the near future."
 - Temporary defined generally as 40 weeks

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PWFA And ADA Differences

- Reasonable Accommodation Definition
 - ADA
 - Cannot excuse performance of essential duties
 - PWFA
 - Must excuse performance of essential duties during temporary period of pregnancy, childbirth or related medical condition
 - Keep in mind that what is unreasonable under ADA will be reasonable under PWFA

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PWFA And ADA Differences

- Reasonable Accommodation Definition
 - ADA
 - Leaves of reasonable duration permitted
 - PWFA
 - Leave is an accommodation of last resort
 - Cannot require employee to take a leave if another accommodation exists that allows her to continue working

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PWFA And ADA Differences

- PWFA Reasonable Accommodations in “Virtually All Cases” – Predictable Accommodations
 - Allowing the carrying of water and drink, as needed, in the employee’s work area
 - Allowing additional restroom breaks
 - Allowing standing or sitting as needed and
 - Allowing breaks, as needed, to eat and drink

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PWFA And ADA Differences

- Other Examples of PWFA Reasonable Accommodations
 - Temporary suspension of essential function(s)
 - Assigning essential function to others
 - Temporary assignment to different job
 - Light duty even if only provided to workers’ compensation claimants
 - Remote work during pregnancy

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PWFA And ADA Differences

- Other Examples of PWFA Reasonable Accommodations
 - Note the listing is *non-exhaustive*
 - Therefore, essential that the interactive process is initiated for each and every request to explore and identify accommodations

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PWFA And ADA Differences

- Requesting Medical Information
 - ADA uniformly permits requests
 - PWFA permits *only* when "reasonable concerns" exist
 - Is employee's condition or limitation is related to, affected by or arising out of pregnancy, childbirth or related medical conditions
 - Limited to "reasonable" request for documentation
 - Cannot seek more information than required to make a proper determination

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PWFA And ADA Differences

- Requesting Medical Information
 - PWFA regs define "reasonable" documentation as sufficient to describe or confirm:
 - the physical or mental condition
 - is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions and
 - the change or adjustment at work needed due to the limitation.

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PWFA And ADA Differences

- Requesting Medical Information
 - Under PWFA, most times no documentation needed
 - Can always request self-confirmation
 - *Never* for predictable assessments
 - Only request to determine whether a physical condition necessitates accommodation requested
 - If not, action for retaliation or coercion

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PWFA And ADA Differences

- Requesting Medical Information
 - Must provide reasonable time to submit
 - Grant interim accommodation pending submission of documentation
 - Best practice and invaluable legal defense
 - *Do not* use ADA Interactive Process Questionnaire for accommodation requests related to pregnancy
 - Create and use much more limited request based on individual facts and circumstances

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PWFA And ADA Differences

- Unreasonable Medical Info Requests
 - Condition and change obvious
 - Use self-confirmation statement
 - Employer has sufficient info
 - Employee having trouble sitting/standing
 - Predictable Assessments
 - If documentation not typically required for other employees under similar circumstances

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PWFA And ADA Differences

- Severity of Condition
 - ADA
 - Condition must substantially limit one or more major life activities
 - PWFA
 - No threshold for the severity of the pregnancy-related condition
 - Employees with healthy and normal pregnancies can seek and receive accommodations

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PWFA And ADA Differences

- Severity of Condition
 - PWFA
 - Medical conditions can include impediments or problems that are modest, minor, or episodic
 - Can include actions that need to be taken to maintain the employee's health or the health of their pregnancy
 - Can include a worker who is simply seeking health care for their pregnancy, childbirth, or related medical condition

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PWFA And ADA Differences

- Undue Hardship
 - Both ADA and PWFA require
 - An "undue hardship" must exist to deny accommodation request
 - Define it as significant difficulty or expense for the operation of the employer
 - Undue hardship under either statute extremely difficult to prove

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PWFA And ADA Differences

- Undue Hardship
 - PWFA sets forth 4 specific criteria
 - How long unable to perform essential function
 - Existence of other work for the employee
 - Nature of the essential function
 - Frequency, whether temporarily suspended before, other employees can perform or be temporarily hired
 - Whether the essential function can be postponed or remain unperformed for any length of time and, if so, for how long

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PWFA Provisions

- Definition of Pregnancy, Childbirth or Related Medical Conditions
 - Current, past, and potential pregnancy
 - Infertility and fertility treatment
 - Use of contraception
 - Termination of pregnancy
 - Including via miscarriage, stillbirth, or abortion

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PWFA Provisions

- Definition of Pregnancy, Childbirth or Related Medical Conditions
 - Pregnancy-related sicknesses ranging from
 - Nausea or vomiting to edema, from preeclampsia to carpal tunnel syndrome, and many other pregnancy-related conditions
 - Lactation and associated issues
 - Menstruation

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PWFA Provisions

- Accommodations for Abortions
 - Employers must provide reasonable accommodations for abortion procedure or recovery.
 - On April 25, 2024, AGs sued EEOC in AR
 - EEOC rule “constitutes an unconstitutional federal overreach” that “exceeds the scope of the agency’s authority”
 - EEOC states employer not required to pay for health insurance benefits for abortion

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PWFA

- Best Practices
 - Review and update accommodations review process and be sure that it now includes the interactive process
 - Develop separate accommodations process for PWFA-related requests
 - Be knowledgeable on list of “predictable accommodations”
 - Contact legal counsel before denying any pregnancy-related request

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EEOC Harassment Rule

- April 29, 2024 EEOC Issued Guidance
 - First update in 30 years
 - Not considered “law” but will be used by EEOC Investigators in investigating charges of harassment
 - Broadens harassment coverage
 - 5 Major Highlights

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EEOC Harassment Rule

- Broad Protections for LGBTQ+
 - Clarifies that harassment of LGBTQ+ workers, particularly transgender employees, violates federal anti-discrimination law
 - Sexual-orientation discrimination and gender identity/transgender discrimination are forms of "sex" discrimination under Title VII

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EEOC Harassment Rule

- Broad Protections for LGBTQ+
 - Examples of LGBTQ+ harassment
 - Denial of access to a bathroom consistent with the individual's gender identity
 - Intentional and repeated misgendering of an individual
 - Harassment of an individual because they do not present in a manner stereotypically associated with their gender

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EEOC Harassment Rule

- Pregnancy = Sexual Harassment
 - Employees are now also protected against discrimination (including harassment) involving decisions related to pregnancy
 - Lactation, contraceptive choices and the decision to have, or not to have, an abortion
 - Strengthens PWFA protections

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EEOC Harassment Rule

- Religious Expression Clarification
 - Reaffirms obligations to
 - Accommodate sincerely held religious beliefs
 - Engage in interactive process
 - Clarifies that employers *not* required to accommodate religious expression that creates or “reasonably threatens to create” a hostile work environment
 - Highly fact specific

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EEOC Harassment Rule

- Balancing Religious Beliefs
 - *Kluge v. Brownsburg Community School*
 - On 4/30/24, district court rejected former teachers’ claim for a reasonable accommodation to only use last names for all students, not just transgender students
 - Negatively affected well-being of trans students but also affected learning environment for other students and teachers
 - Unreasonably burdened school’s “business” to maintain supportive learning environment

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EEOC Harassment Rule

- Religious Expression Clarification
 - “If a religious employee attempts to persuade another employee of the correctness of his beliefs, the conduct is not necessarily objectively hostile”
 - “If, however, the employee objects to the discussion but the other employee nonetheless continues, a reasonable person in the complainant’s position may find it to be hostile.”

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EEOC Harassment Rule

- Virtual Harassment
 - Conduct that occurs virtually and communicated by email, IM, etc.
 - Sexist, racist, or otherwise discriminatory speech communicated via electronic platforms may be considered harassment
 - But, "postings on a social media account generally will not, standing alone, contribute to a hostile work environment if they do not target the employer or its employees."

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EEOC Harassment Rule

- Intraclass Harassment
 - Clarifies that harassment against another individual where both are in same protected class prohibited
- Intersectional Harassment
 - Harassment can be based on more than one protected characteristic or be actionable under more than one EEO statute

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EEOC Harassment Rule

- May 13, 2024 AG Lawsuit filed in TN
 - Seeks to block enforcement of the transgender guidance
 - Claim that EEOC overstepped Title VII by requiring accommodation of transgenders
 - Cites use of bathrooms, other gender-segregated facilities and use of preferred pronouns
 - Presently Pending

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EEOC Harassment Rule

- Basics Reaffirmed
 - Where harassment **not** based on a protected category, not actionable
 - Harassment must be based on protected category **and** affect a term or condition of employment
 - Title VII is not a general civility code
 - Does not that cover “run-of-the-mill boorish, juvenile, or annoying behavior” but requires tangible or economic effects.

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EEOC Harassment Rule

- Basics Reaffirmed
 - Conduct must be severe or pervasive
 - lone remark by a co-worker about a female menstruating is insufficient – simply offensive
 - Taking prompt remedial action to prevent and correct the harassment remains key
 - Complaining employee cannot unreasonably fails to use the employer’s complaint procedure

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EEOC Harassment Rule

- Basics Reaffirmed and then some . . .
 - “Harassment by a supervisor that occurs *outside the workplace is more likely* to contribute to a hostile work environment than similar conduct by coworkers.”
 - “It is increasingly likely that the non-consensual distribution of real or computer-generated intimate images” can contribute to a hostile work environment”

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EEOC Harassment Rule

- EEOC strongly *encourages*:
 - Clear, easy-to-understand anti-harassment policy
 - Safe and effective procedures to use to report potential harassment, including more than one option for reporting
 - Training to all employees and
 - Take steps to ensure the anti-harassment policy is followed and is effective

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Safety and Employment Laws 2024

For further information contact:

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