



Written by [Michael Tennant](#) on September 2, 2023

Biden Administration Proposes Forcing Employers to Give Abortion Leave

The Biden administration has proposed a regulation that would require employers to grant their employees time off to get abortions even if doing so violates an employer's religious beliefs.

The [Pregnant Workers Fairness Act \(PWFA\)](#), passed as part of last year's omnibus spending bill, mandates that employers with more than 15 workers provide "reasonable accommodations" for an employee's "pregnancy, childbirth, or related medical conditions."

The ostensible purpose of the law was to provide pregnant employees with the same kinds of privileges afforded to the disabled under the Americans with Disabilities Act (ADA). Pregnant workers would, for example, be allowed to take more frequent bathroom breaks or carry water to their job sites.

But, [as with the ADA](#), the PWFA is clearly going to have some (allegedly) unintended consequences, thanks in part to Congress' lack of legislative specificity. Last November, [CatholicVote](#) warned:

The bill's language is intentionally vague and offers no specific examples of what would qualify as "pregnancy-related" work situations. It delegates that responsibility to the Equal Employment Opportunity Commission (EEOC), an administrative body responsible for enforcing federal anti-discrimination laws in the workplace.

The EEOC does not typically act in a way that aligns with pro-life or Catholic views. In general, the EEOC has interpreted "pregnancy-related" discrimination issues to include protecting workers' "right" to abortion.

Sure enough, last month, President Joe Biden's EEOC [proposed regulations](#) declaring that the "related medical conditions" employers must accommodate under the PWFA include "abortion."

"If the proposal gets finalized and abortion becomes subject to the PWFA," noted [The Federalist](#), "most employers will have to give their workers leave to obtain an abortion or abortion-related services."

This contravenes both the expectations of many pro-life groups — which, notwithstanding the red flags raised by their allies and the fact that [pro-abortion groups](#) favored the bill, backed the PWFA as a means of discouraging abortion — and the explicit statements of the PWFA's sponsors.

During Senate debate on the bill, Senator Bob Casey (D-Pa.) [claimed](#) that under the PWFA, "the EEOC



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could not — could not — issue any regulation that requires abortion leave, nor does the act permit the EEOC to require employers to provide abortions in violation of state law.” (It’s worth noting, however, that despite having once identified as pro-life, Casey [denounced](#) the *Dobbs* decision and [supports](#) codifying abortion rights at the federal level.)

“Even though the lead Democratic co-sponsor of the bill explicitly stated that it provided no such authority to the EEOC to require abortion leave, the commission put out a proposal that would do precisely that,” wrote The Federalist. “For all their talk of protecting ‘our democracy,’ the left never misses an opportunity to use the powers of government to make unilateral policy decisions when they decide it is in our best interest.”

Since the Left is also extremely hostile to religion, especially Christianity, it’s no surprise that neither the PWFA nor the EEOC exempts religious employers from the abortion-leave rule. This, too, was expected by many.

Republicans on the House Education and Labor Committee issued a [report](#) in 2021 stating:

If an employee working for a religious organization requests time off to have an abortion procedure, [the PWFA] could require the organization to comply with this request as a reasonable accommodation of known limitations related to pregnancy, childbirth, or related medical conditions. This accommodation could be required to include paid leave if the employee is eligible for paid medical leave as part of the employer’s workplace policies. These kinds of accommodations, however, could be contrary to the organization’s religious beliefs, placing the organization in a position of either violating federal law or violating its faith.

House and Senate Republicans both offered amendments to the PWFA that would have exempted religious entities from provisions that violated their faith. Both amendments were defeated, neither garnering a single Democratic vote.

Democrats contended that the amendments were unnecessary because the Religious Freedom Restoration Act (RFRA) already prohibits the government from forcing religious entities to violate their consciences. But the RFRA allows the government to “substantially burden” religious freedom “in furtherance of a compelling governmental interest,” and the Biden administration would surely argue that abortion constitutes just such an interest.

Any employer challenging the abortion-leave regulation would face an uphill battle. According to the Republican report, J. Matthew Sharp of the Alliance Defending Freedom (ADF) told the committee in 2019 “that courts rule in favor of the federal government and against those attempting to be free of a substantial burden on their religion in over 80 percent of RFRA cases.”

Opponents of the proposed EEOC rule have until October 10 to try to convince the agency not to finalize it.

“Congress sought to help pregnant workers, not force employers to facilitate abortions,” ADF senior counsel Julie Marie Blake said in a [press release](#). “The Biden administration is hijacking a bipartisan law that doesn’t even mention abortion to forcibly require every employer in America to provide ‘reasonable accommodations’ for their workers’ elective abortions. The administration’s unlawful proposal violates state laws protecting the unborn and employers’ pro-life and religious beliefs.”



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Of course, had Congress instead sought to abide by the document that every representative and senator is sworn to uphold — a document that does not authorize the federal government to regulate private employers — it would never have passed the PWFA in the first place, and pro-life employers would not now be facing the possibility of having to choose between faith and fines.



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