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LEGAL EXPERTISE FOR THE BUSINESS COMMUNITY

AUGUST 18 - 24, 2023

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POSTNUPTIAL AGREEMENTS NOW EFFECTIVE IN OHIO

As of March 23, 2023, a postnuptial agreement can now be legally valid in Ohio. Thanks to Senate Bill 210, which was signed into law at the start of the year, married couples can now enter into a postnuptial agreement. Additionally, the new law further allows a married couple to amend or even entirely revoke or terminate a previously agreed upon prenuptial agreement.

With the recent change, Ohio joins 48 other states which already allow such agreements. The new law requires that an agreement be in writing and signed by both parties, entered freely by both parties, and without fraud or duress.



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Further, the contract cannot be overreaching according to the new law. As with prenuptial agreements a complete and thorough disclosure of the parties' assets must also be done.

What is a prenuptial or postnuptial agreement?

A prenuptial or postnuptial agreement is a contract entered into between the two parties. It is not entirely dissimilar from any other contract that can be entered into by two competent and consenting adults. The added flexibility to enter a new agreement after the marriage or to alter the prior agreement is in line with the ability to validly and effectively amend, alter or revoke many other types

of contracts under Ohio law. Prenuptial or premarital agreements can contain a number of provisions. Common terms often relate to the disposition of property in the event of divorce or death, as well as provisions defining separate and marital property. It is common for such agreements to contemplate support, including spousal support or alimony and even child support.

This new tool provides flexibility for a married couple when it comes to their estate and other family planning. Prior to this change, it was not enforceable to enter into an agreement after marriage. Further, a premarital agreement, even if it had become outdated after decades, could not be altered, amended or revoked until this new law took effect. One can

only imagine how much a marriage could change over time, and the flexibility to go back and alter the premarital agreement could avoid disputes or even save marriages.

If you have questions about postnuptial agreements or would like to revisit an existing prenuptial agreement, contact your attorney at Carlile Patchen and Murphy or any member of the Family Wealth & Estate Planning Group.

About Geoffrey S. Kunkler

Geoffrey Kunkler joined Carlile Patchen & Murphy LLP in 2014 and was elected Partner in 2018. He steers individuals and business owners through all aspects of estate planning and asset protection planning for retirees.

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NEW PROTECTIONS FOR WORKING MOMS REQUIRE QUICK ACTION BY EMPLOYERS

Ohio's pregnant workers and those who've recently given birth have gained two new federal protections in the workplace, changes that carry new responsibilities for Central Ohio employers.

In late April, moms nursing at work received expanded rights under the PUMP Act, short for Providing Urgent Maternal Protections for Nursing Mothers. The new law gives all exempt and non-exempt nursing mothers the right to pump at work and provides monetary remedies for employer violations.

Then, in late June, the Pregnant Workers Fairness Act (PWFA) went into effect. The law guarantees pregnant workers get reasonable accommodations and the right to engage in the interactive process with their employer. Essentially, PWFA offers pregnant employees the same rights and protections a person with a disability receives under the Americans with Disabilities Act (ADA).

Yet this new law goes further than the ADA



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and the Pregnancy Discrimination Act, the latter of which required employees seeking accommodation to specifically identify other similarly situated people in their workplace that received accommodations. Under the new rules that became enforceable June 27, employers must engage in the interactive process and provide reasonable accommodation

during pregnancy and postpartum, even if the condition does qualify as a pregnancy-related disability under the ADA. This means the pregnancy-related condition does not need to substantially limit a major life activity.

The law also prohibits employers from requiring the employee take paid or unpaid leave if there is another reasonable accommodation available. However, the law's protections only apply during the temporary period that the employee is pregnant or experiencing a related medical condition.

Thus, PWFA broadens the scope of pregnancy-related conditions that must be accommodated and requires adaptation to the "how can we make this work" mindset established by the ADA.

The PUMP Act requires the employer to permit their employees nursing a child to take reasonable break(s) — each time the employee needs to express the milk — for one year after a child's birth. Employers must compensate nursing employees for pumping breaks if the employee is not completely relieved from their duties and requires them to provide a functional, private pumping place that is shielded from view, free from intrusion from co-workers and the public, and not a bathroom.

The PUMP Act does, however, provide an exemption for small businesses. Employers with less than 50 employees may be exempt if the employer can prove compliance with the break time and space requirements impose an undue hardship on them.

Employers should already be gearing up for both laws. For the PUMP Act, they should be discussing with their payroll division the most efficient way to comply with the new break requirements, identifying how they will provide the necessary private spaces for nursing employee(s) considering the circumstances, creating a process/procedure for nursing employees to use when seeking reasonable breaks, and updating their policies

and employee handbook accordingly. A "Lactation Policy" is highly encouraged and should include such topics as who is entitled to reasonable lactation breaks. Employers also should educate their employees in leadership roles (such as managers and supervisors) of the new PWFA accommodations and PUMP Act requirements.

For PWFA, employers should be working with their human resources department to create appropriate procedures and processes for employees seeking this accommodation. Additionally, employers should update their company policies and employee handbooks to include the new accommodations, including a "Pregnancy Related Accommodations" section that includes who is entitled to these temporary accommodations.

The new laws will certainly be welcomed by working moms, but Central Ohio employers need to act quickly to ensure compliance and avoid potential violations.

Jeffrey Stankunas is a partner at Isaac Wiles and leads the firm's Labor and Employment Law practice.

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