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A Tale of Two Rulings: This Week's Conflicting Decisions on the Pregnant Workers Fairness Act

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Today, June 18, 2024, marks the effective date of the Pregnant Workers Fairness Act (PWFA) Final Rule, which is now effective in 48 states. The path to implementing the PWFA has been fraught with lawsuits, culminating in this week's starkly opposing court decisions.

First, U.S. District Judge D. P. Marshall Jr. (Arkansas) dismissed a motion for preliminary injunction filed in April by attorneys general from 18 states against the Equal Employment Opportunity Commission (EEOC) challenging the provisions of the PWFA related to employers being required to provide reasonable accommodations for employees seeking elective abortions. Judge Marshall held the attorneys general lacked standing to sue and that the states could not show a likelihood of irreparable harm, an element required for a preliminary injunction to be successful. Because of the lack of standing and failure to meet a required element of a preliminary injunction, the Court denied the preliminary injunction as moot and ordered dismissal of the Complaint without prejudice.

Interestingly, not even a week later, U.S. District Judge Davis Joseph (Louisiana) granted a preliminary injunction filed by the attorneys general of Louisiana and Mississippi and four religious organizations led by the U.S. Conference of Catholic Bishops, blocking the EEOC's PWFA Final Rule. Judge Joseph held that the plaintiffs in fact had standing to challenge the Rule and that the EEOC exceeded its powers by expropriating the authority of congress and encroaching upon the sovereignty of the states. The injunction now pauses the implementation of the Rule with respect to "purely elective abortions" against the named plaintiffs, which includes any covered entity with respect to all employees whose primary duty station is located in Louisiana and Mississippi.

While these conflicting rulings may provide some avenue for appeal, currently, the Rule goes into effect today. Unless something changes, employers with employees in states other than Louisiana or Mississippi must comply with the Rule in its entirety. The Rule is not effective in Louisiana or Mississippi with respect to purely elective abortions but applies in all other respects. See our blog post [here](#) for more information on the PWFA.

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