

The Federal Pregnant Workers Fairness Act of 2023

What is the newly enacted “Pregnant Workers Fairness Act (PWFA)”?

Effective June 27, 2023, the PWFA mandates that employers provide “reasonable accommodations” to a worker's "known limitations" related to pregnancy, childbirth, or related medical conditions unless the accommodation causes the employer an "undue hardship on the operation of the business." The PWFA defines a worker's "known limitation" as a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related "medical conditions." These conditions include but are not limited to women undergoing fertility treatment, morning sickness, hyperemesis, gestational diabetes, mastitis, individuals experiencing postpartum depression, and those who have had an abortion or pregnancy loss.

The PWFA was one of two new federal laws passed as part of the Consolidated Appropriations Act of 2023 to protect workers during nursing and pregnancy. The other law, the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP for Nursing Mothers Act), expands protections for nursing mothers, requiring break time and appropriate facilities for workers to express breast milk.

What does the PWFA provide?

PWFA declares it an unlawful employment practice to fail to provide "reasonable accommodations" to qualified employees affected by pregnancy, childbirth, or related "medical conditions," but it also prohibits the following employment practices:

- Requiring an employee to accept an accommodation without a discussion about the accommodation between the worker and the employer;
- Denying a job or other employment opportunities to a qualified employee or applicant based on the person's need for a reasonable accommodation;
- Requiring an employee to take leave if another reasonable accommodation can be provided that would let the employee keep working;
- Retaliating against an individual for reporting or opposing unlawful discrimination under the PWFA or participating in a PWFA proceeding (such as an investigation); or
- Interfering with any individual’s rights under the PWFA.

Who does PWFA apply to?

The PWFA applies to all private and public sector employers with 15 or more employees, including hourly workers. According to the Equal Employment Opportunity Commission (EEOC), which enforces the law, Congress, federal agencies, employment agencies, and labor organizations are also covered.

What possible examples of reasonable accommodations should be covered under this law?

The PWFA has left the term "reasonable accommodations" undefined so that it is broad enough to be applied to a variety of scenarios based on an employee's needs, as long as it does not place "an undue hardship" on the employer.

The House Committee on Education and Labor Report on the PWFA provides several examples of possible reasonable accommodations, including the ability to sit or drink water; receive closer parking; work flexible hours; receive appropriately sized uniforms and safety apparel; receive additional break time to use the bathroom, eat, and rest; take leave or time off to recover from childbirth; and be excused from strenuous activities and/or activities that involve exposure to compounds not safe for pregnancy.

What Agency is responsible for regulating the PWFA?

The EEOC is required to issue regulations to carry out the new law. EEOC has published a statement that it plans on issuing proposed PWFA regulations so employers and the public can offer comments before the regulations become final.

If you have any questions, please contact your Local or Unit President and/or Labor Relations Specialist.