

THE PREGNANT WORKERS FAIRNESS ACT: WHAT YOU SHOULD KNOW

The [Pregnant Workers Fairness Act \(PWFA\)](#) went into effect on June 27, 2023. The PWFA is a new federal law which requires covered employers to provide “reasonable accommodations” to a worker’s known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an “undue hardship.”

The U.S. Equal Employment Opportunity Commission (EEOC) will now start accepting PWFA charges (based on events that occurred on or after June 27).

Whom does the Law Affect?

The PWFA protects employees and applicants of covered employers who have known limitations related to pregnancy, childbirth, or related medical conditions. To qualify, the following three things must be true: the employee’s inability to perform an essential function is for a temporary period, the essential function could be performed in the near future, and the inability to perform the essential function can be reasonably accommodated.

“Covered employers” include the United States Congress, Federal agencies, employment agencies, labor organizations, and private and public sector employers with at least fifteen (15) employees.

What are Examples of Reasonable Accommodations?

[The House Committee on Education and Labor Report on the PWFA](#) provides some examples of potential reasonable accommodations within the workplace environment.

Examples include:

- Ability to sit while on the job or drink water when necessary.
- Receive a closer parking spot.
- Have flexible work hours.
- Receive appropriately sized uniforms and safety apparel.

- Reassignment from strenuous activities or activities which involve exposure to compounds not safe for pregnancy.
- Take leave or time off to recover from childbirth.

Employers are required to provide reasonable accommodations unless they would cause an “undue hardship” on the employer’s operations. An “undue hardship” is a significant difficulty or expense for the employer. Important factors to consider in assessing “undue hardship” include the employer’s size and financial resources compared to the type and/or form of accommodation requested by the employee.

What does the PWFA Prohibit?

Under the PWFA, covered employers cannot:

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

What other Laws may apply to Pregnant Workers?

Other laws applicable to workers affected by pregnancy, childbirth, or related medical conditions include:

- Title VII of the Civil Rights Act of 1964 (enforced by EEOC)
 - Protects an employee from discrimination based on pregnancy, childbirth, or related medical conditions;
 - Requires covered employers to treat a worker affected by pregnancy, childbirth, or related medical conditions the same as other workers with similar ability or inability to work.
- The Americans with Disabilities Act (ADA) (enforced by the EEOC)*
 - Protects an employee from discrimination based on disability;
 - Requires covered employers to provide reasonable accommodations to a person with a disability if the reasonable accommodation would not cause an undue hardship for the employer;
 - *While pregnancy is not a disability under the ADA, some pregnancy-related conditions may be disabilities under the law.

- The Family and Medical Leave Act of 1993 (enforced by the U.S. Department of Labor)
 - Provides covered employees with unpaid, job-protected leave for certain family and medical reasons.
- The PUMP Act (Providing Urgent Maternal Protections for Nursing Mothers Act) (enforced by the U.S. Department of Labor)
 - Broadens workplace protections for employees to express breast milk at work.

Next Steps

We are still waiting on exact guidance from the EEOC as to what constitutes a reasonable accommodation, which should be issued by the end of the year. In the interim, employers can look to the examples provided in this article as guidance, as well as the related laws referenced above.

We will reach out to our applicable clients if and when a revision to an employee handbook is necessary. The creation of a separate policy is not presently needed because we design the EEOC and ADA policies to ensure most new legislation would not affect the policy's compliance. As always, please reach out to us with any questions, comments, or concerns.

For More Information

If you have any questions, please contact our HR team at **210-775-6082**, toll-free at **1-888-757-2104**, or HRmanagement@BFGonline.com.



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