



The Federal Pregnant Workers Fairness Act **2022-2023**

Purpose

To eliminate discrimination and promote women’s health and economic security by ensuring reasonable workplace accommodations for workers whose ability to perform the functions of a job are limited by pregnancy, childbirth, or a related medical condition.

Nondiscrimination with regard to reasonable accommodation related to pregnancy

- The PWFA requires employers to make reasonable accommodations for employees who have limitations stemming from pregnancy, childbirth, or related medical conditions, unless the accommodation would impose an undue hardship on the employer.
- Under the PWFA an employer cannot force a qualified employee to accept an accommodation other than an accommodation arrived at through an interactive process that takes place between an employer and employee.
- Under the PWFA an employer cannot deny employment opportunities to a qualified employee who needs a reasonable accommodation.
- The PWFA prohibits employers from forcing a pregnant employee to take paid or unpaid leave when another reasonable accommodation would allow the employee to continue to work.
- The PWFA prohibits employers from discriminating against employees because they need this sort of reasonable accommodation. In other words, an employer would not be allowed to fire a pregnant employee to avoid making any job modifications, or to retaliate against an employee who had asked for an accommodation.

Some key definitions

- The term “known limitation” means physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or employee’s representative has communicated to the employer whether or not such condition meets the definition of disability specified in section 3 of the Americans with Disabilities Act of 1990;
- The term “qualified employee” means an employee or applicant who, with or without reasonable accommodation, can perform the essential functions of the employment position, except that an employee or applicant shall be considered qualified if—
 - (A) any inability to perform an essential function is for a temporary period;
 - (B) the essential function could be performed in the near future; and
 - (C) the inability to perform the essential function can be reasonably accommodated;

- The terms “reasonable accommodation¹” and “undue hardship²” have the meanings given such terms in section 101 of the Americans with Disabilities Act of 1990.
- The term “employee” includes applicant.

Remedies and enforcement

- Private sector employees are covered by Title VII of the Civil Rights Act of 1964³, legislative branch employees are covered by the Congressional Accountability Act of 1995, and executive branch employees are covered by Chapter 5 of Title 3 U.S.C. and Section 717 of the Civil Rights Act of 1964. In addition, staff and advisors to state and local elected and appointed officials are covered under Government Employee Rights Act of 1991.
- The Act prohibits retaliation against employees who oppose unlawful behavior under the Act or participate in proceedings related to the Act.
- It is unlawful to coerce, intimidate, threaten or interfere with an individual exercising rights under this Act.
- If an employer makes a good faith effort in consultation with employee with known limitations to identify and make accommodation, they may be exempt.

Practical pointers

- The Act makes it possible for pregnant women to remain active members of the workforce.
- Employers should be prepared to make accommodations for pregnant women, such as allowing for high stools at cashier checkouts for women, bathroom breaks, water breaks, assigning light-lifting duties, modifying no-food or drink policy where needed.

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¹ Reasonable accommodation

The term "reasonable accommodation" may include-

- (A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and
- (B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

² Undue hardship

(A) In general

The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered

In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include-

- (i) the nature and cost of the accommodation needed;
- (ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;
- (iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
- (iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

³ The Civil Rights Act 1964 provides for right of recovery and compensatory and punitive damages in the event of intentional discrimination in employment.