



HR Toolkit:

Pregnant Workers Fairness Act

Provided by Nulty Insurance

Table of Contents

Introduction	4
PWFA Overview.....	5
Covered Entities	5
Qualified Individual	5
Essential Functions.....	6
Pregnancy, Childbirth and Related Medical Conditions.....	7
Interactive Process.....	8
Reasonable Accommodation	9
Reasonable Accommodation Examples	9
Choosing Among Possible Accommodations	10
Denying Reasonable Accommodation Requests.....	11
Undue Hardship	11
Predictable Assessments	12
Prohibited Actions.....	13
Documentation	13
Confidentiality.....	14
Related Laws	15
Federal Laws	15
State Laws	15
Summary	16
Managing PWFA Accommodations	17
Recognizing PWFA Requests.....	17
Determining Whether an Individual Is Qualified.....	18
Engaging in the Interactive Process.....	19
Steps for Identifying Accommodations	19
Making Interim Accommodations	20
Obtaining Medical Information	20
Complying with Notice Obligations	21
Maintaining Confidentiality	21
Summary	21
Organizational Considerations	22
Clear Policies	22
Create Procedures for Responding to Accommodation Requests.....	22
Communicate Policies	23
Review and Update Policies.....	23
Physical Workplace Assessments	23

Pregnant Workers Fairness Act

Manager Training24

Documentation Restrictions24

Leave as Accommodation25

Managing Production Standards and Workloads.....26

Flexibility in Work Arrangements26

Summary27

Conclusion28

Appendix29

Request for Accommodation for Pregnancy, Childbirth or Related Medical Conditions.....30

Pregnant Workers Fairness Act (PWFA) Policy.....32

Complying With the Pregnant Workers Fairness Act.....34

 Covered Employers34

 Poster Requirement.....35

 Administering PWFA Accommodation Requests35

Introduction

As an increasing number of pregnant workers are working later into their pregnancies—over 80% of first-time mothers who worked during their pregnancy worked into the last three months before their child’s birth—a lack of accommodations for pregnancy, childbirth or related medical conditions has meant that individuals could be faced with an impossible choice: their job and a necessary paycheck or their health and the health of their pregnancy. Without accommodations, pregnant workers too often may find that they must quit their jobs or face being fired, which can also mean losing employer-sponsored health insurance at a time when they especially need it. Other pregnant workers may be forced to take leave, which can mean that they have no time off left to recover from childbirth later. The Pregnant Workers Fairness Act (PWFA) was enacted to protect applicants and employees who need accommodations related to or arising out of pregnancy, childbirth or related medical conditions. By providing a clear path to accommodations, the PWFA aims to protect these workers’ ability to earn, remain in the workforce and advance in their careers.

Employers can better support their workforce by recognizing situations where employees may need accommodations because of or related to pregnancy, childbirth and related medical conditions. Employers can also help protect maternal health, ensure equality, boost productivity and enhance their overall reputation through voluntary compliance with the PWFA. In contrast, employers that do not comply with the PWFA can find themselves in difficult and costly legal situations. The U.S. Equal Employment Opportunity Commission (EEOC) is authorized to investigate PWFA complaints. If employer violations cannot be satisfactorily resolved, the EEOC may bring court action against the employer to compel compliance. An employee may also initiate a private civil action against their employer for PWFA violations, which can be particularly costly and result in orders to pay back pay, front pay, compensatory damages, punitive damages and other costs. During fiscal year 2023, the EEOC filled 493 positions, of which 388 were frontline positions (investigators, mediators and attorneys), signaling a potential increase in enforcement activities in 2024 and beyond. This means now is the time for employers to review their PWFA policies and practices to ensure they comply with all relevant laws.

Employers can use this HR Toolkit to help establish PWFA policies and practices and improve their compliance efforts. It provides an overview of the PWFA, including employer and employee requirements, and explores workplace strategies employers can implement to improve their internal PWFA practices, helping to improve organizational compliance efforts. This toolkit also provides several valuable resources, but they are only a sampling of those that are offered. For additional resources, employers can contact Nulty Insurance.

By understanding the PWFA requirements detailed in this toolkit, employers can better support their workforce and avoid potential violations. In many situations, employees may be entitled to protections under other federal employment laws, state employment laws and collective bargaining agreements. This HR Toolkit provides a broad overview of the PWFA and should not be construed as legal advice. Employers are encouraged to seek legal counsel to address specific concerns or issues.

PWFA Overview

Before addressing how organizations can best manage their PWFA accommodation processes, it's valuable to have an understanding of the law. The PWFA is a federal law that requires private employers with 15 or more employees, and other covered entities, to provide reasonable accommodation for the known limitations of a qualified individual related to pregnancy, childbirth or related conditions unless it would cause undue hardship. The PWFA also imposes other requirements and prohibitions, all of which are aimed at strengthening existing workplace protections under federal law, as summarized below, and enabling employees who need temporary accommodations related to pregnancy, childbirth or related medical conditions to continue working. This section provides an overview of the PWFA, including covered entities, qualified individuals, essential functions and the existing federal protections the PWFA strengthens.

This HR Toolkit should not be construed as legal advice, and requirements may vary by state, so employers are encouraged to seek legal counsel to address specific issues and concerns. In addition, the EEOC, which enforces the PWFA and other federal fair employment laws, has issued a [proposed rule to implement the PWFA](#) that interprets the law and provides more detailed guidance on what employers must do or avoid doing in order to comply. The information in this section comes from the proposed rule and the EEOC's most current guidance for employers. Employers can find out more on the EEOC's [website](#).

Covered Entities

The PWFA only applies to "covered entities." A covered entity may be a private or public employer with at least 15 employees, a federal agency, an employment agency or a labor organization.

A private sector employer is covered under the PWFA if it employs 15 or more employees in 20 or more workweeks in the current or previous calendar year. An employee is considered employed each working day of the calendar week if the employee works any part of the week, and workweeks do not have to be consecutive.

Covered entities must provide PWFA protections and accommodations to qualified individuals and comply with other responsibilities required under the law.

Qualified Individual

To be eligible for accommodations under the PWFA, an employee or applicant must be "qualified." The PWFA has two definitions of "qualified individual." First, the PWFA adopts the Americans with Disabilities Act's (ADA) definition of a qualified individual—that is, an individual who can perform the essential functions of the job with or without reasonable accommodation. Second, the PWFA extends its

Pregnant Workers Fairness Act

protections to employees or applicants even if they cannot perform one or more essential functions of a job under certain circumstances. Specifically, under the second part of the PWFA’s definition of a qualified individual, an employee or applicant affected by pregnancy, childbirth or related medical conditions who is not able to perform essential functions will nevertheless be entitled to PWFA accommodations absent undue hardship where:

The inability to perform an essential function is for a temporary period (defined as lasting for a limited time, not permanent and may extend beyond “in the near future”);

The essential function could be performed in the near future (defined as generally within 40 weeks); and

The inability to perform the essential function can be reasonably accommodated.

This second definition differs from the ADA since the PWFA protects employees who are temporarily unable to perform an essential job function due to pregnancy, childbirth or a related condition.

Essential Functions

Under the PWFA, covered entities may be required to reasonably accommodate qualified individuals who can perform the essential functions of a job. However, as stated above, employers may also be required to temporarily relieve pregnant employees of essential job duties if needed. “Essential functions” are the fundamental job duties an individual holds or desires. This term comes from the ADA and does not include the marginal functions of a position. A job function may be considered essential for any of several reasons. For example:

A function may be essential because the reason the position exists is to perform that function;

A function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; or

A function may be highly specialized so that the incumbent in the position is hired for their expertise or ability to perform the particular function.

The weight these factors receive depends on the specific facts of a situation. Evidence of whether a particular function is essential may include but is not limited to:

- The employer’s judgment as to which functions are essential;
- Written job descriptions prepared before advertising or interviewing applicants for the job;
- The amount of time spent on the job performing the function;
- The consequences of not requiring the incumbent to perform the function;
- The terms of a collective bargaining agreement;
- The work experience of past incumbents in the job; and
- The current work experience of incumbents in similar jobs.

Pregnancy, Childbirth and Related Medical Conditions

The PWFA ensures reasonable workplace accommodations for workers whose ability to perform the functions of a job is limited by pregnancy, childbirth or a related medical condition. The law protects workers with known physical or mental conditions related to, affected by or arising out of pregnancy, childbirth or related medical conditions. This may include a need or problem related to maintaining the individual's health or the health of their pregnancy or seeking health care related to pregnancy, childbirth or a related medical condition itself. To qualify as a known limitation, the employee or applicant (or their representative) must have communicated the limitation to the covered entity.

While pregnancy and recent pregnancy are among the conditions that fall under the PWFA's protection, some covered conditions or limitations may occur even if a person is not or has not been pregnant. For example, an individual may qualify for PWFA accommodation because of:

- Potential pregnancy;
- Lactation, including breastfeeding and pumping;
- Use of birth control;
- Menstruation;
- Infertility and fertility treatments;
- Endometriosis;
- Miscarriage;
- Stillbirth; and
- Having or choosing not to have an abortion.

“Related medical conditions” are medical conditions that relate to, are affected by, or arise out of pregnancy or childbirth as applied to the specific employee or applicant in question. These may include conditions such as dehydration, loss of balance or high blood pressure.

An employee or applicant does not have to specify any particular condition or use medical terms to describe a condition in order to be eligible for reasonable accommodation. However, a condition must relate to pregnancy or childbirth as applied to the specific individual requesting accommodation to qualify. If an individual has a condition that is listed above or that the individual otherwise claims to be covered under the PWFA, but the condition does not relate to pregnancy or childbirth in that individual's particular situation, the condition is likely not covered under the law. For example, if an employee has high blood pressure unrelated to pregnancy or childbirth, any limitation arising from that condition would not be eligible for PWFA accommodation.

Interactive Process

The interactive process is a method from the ADA to help the employer and the worker figure out a reasonable accommodation. Generally, it means a discussion or two-way communication between an employer and an employee or applicant to identify a reasonable accommodation. Under the PWFA, an employer that receives a request for accommodation for pregnancy, childbirth or related medical conditions must begin an informal, interactive process with the applicant or employee making the request. The EEOC's [proposed regulations](#) to implement the PWFA include a step-by-step process that employers can reference to address requests for reasonable accommodations under the law. This is also addressed in more detail [later](#) in this HR Toolkit.

A request for accommodation has two parts. First, the employee or applicant (or their representative) must identify a limitation that is the physical or mental condition and that is related to, affected by or arising out of pregnancy, childbirth or related medical conditions. Second, the employee or applicant (or their representative) must indicate that they need an adjustment or change at work. Under the PWFA, a request for a reasonable accommodation doesn't need to be in writing or use any specific words or phrases. Instead, employees or applicants may request accommodations in conversation or use another mode of communication to inform the employer.

The purpose of the interactive process is to help an employer and the individual determine whether any reasonable accommodation can be made to effectively allow the individual to perform the essential functions of the position without causing undue hardship on the employer. The interactive process should start as soon as possible and does not have to follow any particular format. Instead, it should be an informal dialogue between the employer and the individual requesting a change. The discussion may cover the nature of the problem generating the request, how a disability is prompting a need for accommodation, and whether any alternative accommodations may be effective in meeting the individual's needs. The PWFA prohibits an employer from requiring a qualified employee or applicant to accept an accommodation other than one that has arrived through the interactive process.

During this process, the employer may ask the individual relevant questions that will enable it to make an informed decision about the request. For accommodations that require more information, an employer may need to analyze the essential functions of the job and, under limited circumstances, request reasonable supporting medical documentation. Specifically, an employer may require medical documentation for a PWFA request only if it is reasonable to do so under the circumstances for the employer to determine whether to grant the accommodation. PWFA documentation itself must also be reasonable. This is defined as confirming only the physical or mental condition; the relation to pregnancy, childbirth or related medical conditions; and the need for a change at work.

Reasonable Accommodation

The term “reasonable accommodation” has the same general meaning as it does under the ADA. Generally, reasonable accommodations are changes to the work environment or the way things are usually done. Accordingly, like accommodations for disability under the ADA, reasonable accommodations under the PWFA include:

- Modifications or adjustments to a job application process that enable a qualified applicant with a known limitation to be considered for a position;
- Modifications or adjustments to a work environment or to the manner or circumstances under which a position is done to allow a person with a known limitation to perform the essential functions of the job; and
- Modifications or adjustments to the way things usually are done that enable an employee with a known limitation to enjoy equal benefits and privileges of employment.

Because the PWFA also provides for reasonable accommodations when an individual temporarily cannot perform one or more essential functions of a position but could do so in the near future, reasonable accommodation under the PWFA also includes modifications or adjustments that allow an employee with a known limitation to temporarily suspend one or more essential functions of the position.

Under the law, a modification or adjustment is reasonable if it “seems reasonable on its face” or appears to be “feasible” or “plausible.” An accommodation must also be effective in meeting the needs of the employee or applicant, meaning it removes a workplace barrier and provides the individual with equal opportunity. Thus, an employer may be required to provide reasonable accommodation for any need or problem an individual may have related to personal health or the health of the individual’s pregnancy, regardless of severity. For example, PWFA accommodations may include allowing time off to attend medical appointments during and after pregnancy, even if the condition does not meet the more limited definition of a “disability” under the ADA.

The PWFA allows a qualified individual to obtain a reasonable accommodation in order to alleviate increased pain or risk to health that is attributable to pregnancy, childbirth or related medical conditions. When dealing with this type of request, the goal is to provide an accommodation that allows the worker to alleviate the identified increase in pain or risk to health. For example, if exposure to chemicals in a particular work area increases health risks for a worker’s pregnancy, the employer may need to move that worker away from that work area for the duration of their pregnancy. However, the PWFA would not require this if the employee requested removal from the area for reasons not related to pregnancy or childbirth.

Reasonable Accommodation Examples

Types of reasonable accommodation that a worker may seek under the PWFA include but are not limited to:

- Job restructuring;
- Part-time or modified work schedules;
- More frequent breaks;
- Acquisition or modification of equipment, uniforms (including safety apparel) or devices;

Pregnant Workers Fairness Act

- Seating for jobs that require standing or standing in jobs that require sitting;
- Appropriate adjustment or modification of examinations or policies;
- The use of paid leave (whether accrued, short-term disability or another type of employer benefit) or the provision of unpaid leave, including to attend health care-related appointments and to recover from childbirth (regardless of whether an employer provides these as a benefit);
- Assignment to light duty;
- Telework; and
- Accommodation of an individual's inability to perform one or more essential functions of a job by temporarily suspending the requirement that the employee perform one or more essential functions of a job if the inability to perform the essential function is temporary and the employee is expected to be able to perform the function again in the near future.

If an employer offers a neutral reason or policy to explain why employees affected by pregnancy, childbirth or related medical conditions cannot access a specific benefit of employment, the employee with a known limitation under the PWFA still may ask for a waiver of that policy as a reasonable accommodation. For example, if an employer denies a pregnant worker's request to join its light duty program as a reasonable accommodation when it allows other injured workers to join the program, arguing that the program is for workers with on-the-job injuries, it may be difficult for the employer to prove that allowing the worker with a known limitation under the PWFA to use that program is an undue hardship.

Choosing Among Possible Accommodations

If there is more than one effective accommodation available, the requesting individual's preference should be given primary consideration. However, the employer providing the accommodation has the ultimate discretion to choose between reasonable accommodation options and may choose, for example, the less expensive accommodation, the accommodation that is easier for it to provide or the accommodation that imposes the least hardship.

This "ultimate discretion" to choose a reasonable accommodation is limited by certain other considerations. First, an accommodation must provide an equal employment opportunity. Thus, if there is more than one accommodation that does not impose an undue hardship but does not provide the employee with an equal employment opportunity, the employer must choose an accommodation that provides the worker with equal employment opportunity.

In addition, the PWFA prohibits employers from requiring a qualified individual with known limitations to:

- Accept a reasonable accommodation other than one arrived at through the interactive process;
- Take leave if there is a reasonable accommodation that will allow the employee to continue to work, absent undue hardship;
- Accept an accommodation that results in the employer taking adverse action in terms, conditions or privileges of employment when other reasonable accommodation options that are effective and do not impose an undue hardship are available.

Pregnant Workers Fairness Act

Finally, the law's prohibitions against retaliation and coercion also limit an employer's ultimate discretion over the choice of reasonable accommodation. Employers may violate these prohibitions if they penalize an employee for failing to meet production standards due to receipt of a reasonable accommodation.

Denying Reasonable Accommodation Requests

In a situation where an employer is choosing between reasonable accommodations and does not provide the worker's preferred accommodation, the employer does not have to show that it is an undue hardship to provide the worker's preferred accommodation. Also, if leave or another temporary suspension of essential functions would pose an undue hardship due to the length, frequency or unpredictable nature of the time off that was requested, an employer may lawfully deny the request without proving undue hardship.

In other cases involving denial of a reasonable accommodation, however, an employer must demonstrate that no accommodation among any of those considered can be made without causing undue hardship.

Relatedly, a covered entity that receives numerous requests for the same or similar accommodation at the same time (for example, parking spaces closer to the factory) cannot deny all of them simply because processing the volume of current or anticipated requests is, or would be, burdensome or because it cannot grant all of them as requested. Rather, the covered entity must evaluate and provide reasonable accommodations unless or until doing so imposes an undue hardship. The covered entity may point to past and cumulative costs or burden of accommodations that have already been granted to other employees when claiming the hardship posed by another request for the same or similar accommodation.

Undue Hardship

"Undue hardship" is a term from the ADA, and the PWFA uses a similar definition. The PWFA defines undue hardship as an action requiring significant difficulty or expense when considered in light of several specified factors. To prove undue hardship, an employer must show an accommodation would cause significant difficulty or expense for the employer. Under the PWFA, proving undue hardship requires an individualized assessment of current circumstances and the consideration of several specified factors. Factors that employers should consider when determining whether an accommodation request causes an undue hardship include:

- The nature and cost of the accommodation needed;
- The overall financial resources of the facility;
- The number of employees at the facility;
- The effect on expenses and resources of the facility;
- The overall financial resources, size, number of employees and, if applicable, the type and location of the employer's overall facilities;
- The type of operation of the employer; and
- The accommodation's impact on the operation of the facility.

If an employer determines that a reasonable accommodation will cause undue hardship, it must consider whether there are other reasonable accommodations it can provide absent undue hardship.

Pregnant Workers Fairness Act

Additional factors must be considered if the adjustment needed is a temporary suspension of an essential job function. These additional factors include:

- The length of time the individual will be unable to perform the essential function;
- Whether, through the interactive process for potential reasonable accommodations related to the temporary suspension of essential functions or otherwise, there is work for the employee or applicant to accomplish;
- The nature of the essential function, including its frequency;
- Whether the covered entity has provided other employees or applicants in similar positions who are unable to perform essential function(s) of their positions with temporary suspensions of those functions and other duties;
- Whether there are other employees, temporary employees or third parties who can perform or be temporarily hired to perform the essential function(s) in question, if necessary; and
- Whether the essential function(s) can be postponed or remain unperformed for any length of time and, if so, for how long.

When accommodating a worker's temporary suspension of an essential function would impose an undue hardship if extended beyond a certain time, an employer would only be required to provide that accommodation for the period that it does not impose an undue hardship.

Predictable Assessments

Many accommodations sought under the PWFA will be for modest or minor changes in the workplace for limitations that will be temporary. To increase efficiency and decrease the time that it takes for workers to receive certain accommodations, the EEOC has determined that four types of modifications, known as "predictable assessments," will, in virtually all cases, be found to be reasonable accommodations that do not impose an undue hardship when sought by a pregnant worker. These include allowing the individual to:



1. **Carry and drink water as needed;**



2. **Take additional restroom breaks;**



3. **Sit for those whose work requires standing and stand for those whose work requires sitting; and**



4. **Take breaks as needed to eat and drink.**

The identification of these modifications as predictable assessments does not change the definition of undue hardship or mean that employers will not have opportunities to bring forward facts to demonstrate a proposed accommodation imposes an undue hardship under its own particular circumstances. Likewise, it does not change the requirement for employers to conduct an individualized assessment when determining whether a modification will impose an undue hardship. Instead, the EEOC

Pregnant Workers Fairness Act

explains that, for these specific and simple modifications, the agency expects that individualized assessments will virtually always result in a finding that the modification is a reasonable accommodation that does not impose an undue hardship when requested by an employee due to pregnancy.

Prohibited Actions

The PWFA explicitly prohibits certain actions. To help avoid violations under the law, employers can familiarize themselves with these prohibited actions. Specifically, the PWFA prohibits covered employers from:

- Requiring an employee to accept an accommodation not determined through an interactive process;
- Denying a job or other employment opportunities based on the worker’s need for a reasonable accommodation;
- Requiring or directing an employee to use leave where another reasonable accommodation can be provided that would let the employee keep working;
- Failing to provide a reasonable accommodation for a qualified individual with a known limitation when the accommodation does not impose an undue hardship;
- Unnecessarily delaying responding to an individual’s request for a reasonable accommodation;
- Denying a reasonable accommodation due to a lack of supporting documents;
- Retaliating against an individual for requesting or using a reasonable accommodation, opposing unlawful discrimination or participating in a proceeding under the PWFA; and
- Interfering with an individual’s rights under the law.

Employers are also prohibited from disclosing medical information, including the existence of a pregnancy, they may receive about an individual.

Documentation

Employers are not required to seek supporting documentation from a worker who requests accommodation under the PWFA. In fact, the PWFA restricts employers’ ability to require documentation. An employer is only permitted to require supporting documentation, including from a health care provider, if it is reasonable to require documentation under the circumstances for the employer to determine whether to grant the accommodation.

When requiring documentation is reasonable, an employer is also limited to requiring documentation that itself is reasonable. The PWFA defines “reasonable documentation” as documentation that describes or confirms:

- The physical or mental condition;
- That the condition is related to, affected by or arising out of pregnancy, childbirth or related medical conditions; and
- That a change or adjustment at work is needed for that reason.

Pregnant Workers Fairness Act

For example, if an employee asks for leave as a reasonable accommodation to attend therapy appointments due to anxiety early in the employee's pregnancy, the employer could but is not required to ask for documentation confirming that there is a physical or mental condition that is related to, affected by or arising out of pregnancy as well as information about how frequent and long the leave would need to be.

Examples of when it would **not** be reasonable for an employer to require documentation are:

- When both the limitation and the accommodation need are obvious;
- When the employer has sufficient information to substantiate that the individual has a limitation and needs an adjustment at work;
- When a pregnant employee seeks certain modifications, such as carrying and drinking water as needed, taking more restroom or snack breaks as needed, and alternating sitting and standing; and
- When the limitation for which an accommodation is needed involves lactation.

If the covered entity meets the requirements laid out above to request documentation and does so, the covered entity may request documentation from an appropriate health care provider in the particular situation. An appropriate provider may vary depending on the situation.

Confidentiality

The PWFA does not include a provision specifically requiring employers to maintain the confidentiality of medical information obtained in support of accommodation requests under the PWFA. However, individuals covered by the PWFA are also covered by the ADA, which requires employers to keep medical documentation of applicants, employees and former employees confidential, with limited exceptions.

These ADA rules on keeping medical information confidential apply to all medical information, including any provided voluntarily as part of the reasonable accommodation process, and, therefore, include medical information obtained under the PWFA. For example, the fact that someone is pregnant or has recently been pregnant is medical information about that person, as is the fact that they have a medical condition related to pregnancy or childbirth. Thus, disclosing that the individual is pregnant, has recently been pregnant or has a related medical condition would violate the ADA unless an exception applies. Disclosing that someone is receiving or has requested an accommodation under the PWFA or has limitations for which they requested or are receiving a reasonable accommodation under the PWFA would also likely violate the ADA (because revealing this information discloses that the person is pregnant, has recently been pregnant, or has a related medical condition).

Finally, releasing medical information, threatening to release medical information, or requiring an employee or applicant to share their medical information with individuals who have no role in processing a request for reasonable accommodation may also violate the PWFA's prohibitions against retaliation and coercion.

Related Laws

Federal Laws

In addition to the PWFA, employers may need to consider other federal laws that provide protection to an individual who is affected by a pregnancy, childbirth or related medical conditions. These other laws may interact with or affect an employer's compliance with the PWFA in various ways. For example, if an employer determines that an individual is not qualified for accommodations under the PWFA, the employer would still need to consider whether the individual qualifies for accommodations or leave under other applicable federal laws, such as those listed below. Employers may also be subject to overlapping requirements under various federal laws, including the following:

The Family and Medical Leave Act (FMLA) requires employers with 50 or more employees to provide covered workers with up to 12 weeks of job-protected unpaid leave for, among other things, a serious health condition, the birth of a child and bonding with a newborn within one year of birth. Employers are encouraged to review the DOL's [Employer's Guide to FMLA](#) for additional resources.

The ADA prohibits employers with 15 or more employees (along with the federal government, joint employment agencies and employment agencies) from discriminating against qualified individuals with disabilities in all employment practices—such as recruitment, compensation, hiring and firing, job assignments, training, leave and benefits—and requires employers to reasonably accommodate the known physical or mental limitations of qualified applicants or employees with a disability. This was amended by **the ADA Amendments Act** to broaden the definition of a disability to include conditions related to pregnancy, such as gestational diabetes or preeclampsia, and require reasonable accommodations for pregnant employees with qualifying disabilities unless they impose undue hardship. Employers are encouraged to review the EEOC's [Facts About the Americans with Disabilities Act](#) for additional information.

Title VII of the Civil Rights Act (Title VII) prohibits employers with 15 or more employees (along with the federal government, joint employment agencies and employment agencies) from discriminating against an individual based on race, color, religion, national origin or sex. This includes discrimination based on pregnancy, childbirth and related medical conditions.

The Pregnancy Discrimination Act amended Title VII to require employers to treat pregnant employees in the same manner as other employees with similar abilities or limitations. This includes providing reasonable accommodations, such as modified duties, flexible scheduling or time off for medical appointments. For additional information, employers may review the EEOC's [Facts About Pregnancy Discrimination](#).

State Laws

In addition to federal laws and regulations, many states have their own pregnancy accommodation laws that provide additional protections for employees and applicants. These laws vary in scope and requirements, but they all generally aim to provide broader coverage and more explicit guidance. Many of them also apply to smaller employers that do not meet the PWFA's 15-employee threshold for

Pregnant Workers Fairness Act

coverage. In addition, some state laws have differing or more expansive requirements or guidance than the PWFA and related laws. For example:



In **California**, employers with five or more employees must provide reasonable accommodations, modified work duties, schedule adjustments or temporary transfers to less strenuous positions to individuals disabled by pregnancy to the same extent as those with similar temporary disabilities unless doing so would impose an undue hardship.



In **Illinois**, all employers must provide reasonable accommodations to pregnant individuals with work-related limitations unless they impose an undue hardship. Accommodations may include light-duty assignments, extra restroom breaks, temporary transfers or modified work schedules.



In **Ohio**, employers with four or more employees must allow a reasonable period of maternity leave and return an employee on leave to the same or similar position afterward.



In **Maryland**, an employee with a disability that is caused or contributed to by pregnancy may request reasonable accommodation, and the employer must explore all possible means of providing reasonable accommodation.

It is important to keep in mind that state laws merely supplement the PWFA and other federal laws in this area. Federal laws still apply if a state has no law on pregnancy discrimination in employment. If a state law and the PWFA conflict, an employer must apply the law that is more protective of the employee or applicant.

Summary

Pregnancy accommodations are becoming increasingly more common, so it's vital that employers understand their obligations under the PWFA. Understanding PWFA accommodation requirements can help employers comply with the law, develop their own policies and practices for providing reasonable accommodation, better support their workforce, and avoid costly penalties and lawsuits. Employers' voluntary compliance with the PWFA also provides numerous benefits, such as improved maternal and infant health, worker productivity, and attraction and retention efforts.

Accommodating employees' physical and mental conditions or limitations arising out of pregnancy, childbirth and related medical conditions can be complex and challenging. Taking a holistic approach to understanding the PWFA and providing pregnancy accommodations can help employers ensure compliance with evolving legal requirements, mitigate potential legal risks and strengthen workforces. Because laws vary greatly depending on location, employers should consider conferring with local legal counsel to ensure compliance with all applicable laws and requirements. Violating the PWFA can be extremely costly. Complaints can not only result in significant awards and attorneys' fees, but they can negatively impact employee morale and productivity, increasing turnover and injuring an employer's reputation or brand. Therefore, understanding laws and establishing equitable accommodation practices can help employers remain compliant and better support their workforce. Because laws vary greatly depending on location, employers should consider conferring with local legal counsel to ensure compliance with all applicable laws and requirements.

Managing PWFA Accommodations

The PWFA allows qualified individuals with known limitations to obtain reasonable accommodations related to, arising out of or related to pregnancy, childbirth or related medical conditions. This may seem straightforward, but many employers struggle with navigating the PWFA. Following PWFA requirements can be difficult and labor-intensive, and failing to precisely adhere to those requirements can expose employers to legal liabilities. PWFA violations can result in costly penalties for employers, including but not limited to the reimbursement of lost wages and benefits, damages, reinstatement of employment or duties, and reasonable attorneys' fees and costs.

This section aims to provide employers with important information to aid them in managing their PWFA accommodation processes and improving their compliance efforts. It explores how employers can recognize requests for PWFA accommodation, determine whether an individual is qualified, engage in the interactive process, obtain medical documentation, provide reasonable accommodations (including leave and temporary suspensions of essential functions), and notice obligations. The information covered in this section comes from the EEOC's most current guidance for employers. Employers may consider consulting with local legal counsel to review their PWFA procedures and policies to ensure they comply with federal law as well as any applicable state pregnancy laws.

Recognizing PWFA Requests

Under the PWFA, an employer has an obligation to determine whether an accommodation may be made any time an applicant or employee who is otherwise qualified for a position requests an adjustment or change to the workplace for a reason related to pregnancy or childbirth. This request may come directly from the individual or a representative of the individual, such as a family member, friend or health care provider. Employers that fail to recognize and properly respond to PWFA accommodation requests may face liability for failing to provide reasonable accommodation as required under the law.

The PWFA specifies that a request for accommodation is made when an individual makes it known to an employer that they have a limitation related to, affected by or arising out of pregnancy, childbirth or related medical conditions. This may be done by:

- Communicating with a supervisor, manager, someone who has supervisory authority for the employee (or the equivalent for an applicant), or HR personnel; or
- Following the employer's policy to request an accommodation.

A request for PWFA accommodation does not have to be in writing or include any specific language or reference to the law. In addition, an individual does not have to identify any specific accommodation in a request. Instead, a PWFA request must describe problems posed by a workplace barrier that impedes the individual from participating in the job application process, performing the essential functions of a job, or enjoying benefits and privileges of employment equal to those enjoyed by employees who are not affected by pregnancy, childbirth or related conditions.

Pregnant Workers Fairness Act

Examples of accommodation requests that would trigger an employer's responsibilities under the PWFA include:

- *"I'm having trouble getting to work at my scheduled starting time because of morning sickness"; and*
- *"I need an hour off once a week for treatments to help with my back problem that started during my pregnancy."*

Examples of accommodation requests that would **not** necessarily trigger an employer's responsibilities under the PWFA include:

- *"It would be nice to have a new chair; this one is uncomfortable"* (no link to a pregnancy, childbirth or related medical conditions); and
- *"This pregnancy is making me so tired I can hardly stay awake in the afternoons"* (no change to a workplace barrier identified).

Determining Whether an Individual Is Qualified

An employee or applicant may meet the definition of "qualified" in the PWFA in one of two ways. First, an individual is qualified if they can perform the essential functions of their job with or without reasonable accommodation. "Reasonable" has the same meaning as under the ADA on this topic: an accommodation that "seems reasonable on its face, or ordinarily or in the run of cases," "feasible" or "plausible." Many workers seeking reasonable accommodations under the PWFA will meet this part of the definition. For example, a pregnant cashier who needs a stool to perform the job will be qualified with the reasonable accommodation of a stool. A teacher recovering from childbirth who needs additional bathroom breaks will be qualified with a reasonable accommodation that allows such breaks.

Second, an employee who needs leave or temporary suspension of an essential function as a reasonable accommodation meets the definition of "qualified" if the employee would be able to perform the essential functions of the position, with or without reasonable accommodation (or, if not, if the inability to perform the essential function(s) is for a temporary period, the essential function(s) could be performed in the near future, and the inability to perform the essential function(s) can be reasonably accommodated), with the benefit of a period of intermittent leave, after a period of part-time work, or at the end of a period of leave or time off. Thus, an employee who needs some form of leave or other temporary suspension of an essential function to recover from a known limitation caused, for example, by childbirth or a miscarriage, can meet the definition of "qualified" because it is reasonable to conclude that once they return from the period of leave (or during the time they are working if it is intermittent leave), they will be able to perform the essential functions of the job, with or without additional reasonable accommodations, or will be qualified under the second part of the PWFA definition.

If an employer can demonstrate that leave or other temporary suspension of an essential function would pose an undue hardship—for example, due to the length, frequency or unpredictable nature of the time off that was requested—it may lawfully deny the request. By contrast, the following examples describe situations in which an individual would likely be entitled to a temporary suspension of an essential function as reasonable accommodation:

- A pregnant construction worker is told by their health care provider to avoid lifting more than 20 pounds during the second through ninth months of pregnancy. An essential function of the worker's job requires lifting more than 20 pounds, and there is no reasonable accommodation that will allow the worker to perform that function without lifting more than 20 pounds; and

Pregnant Workers Fairness Act

- A pregnant police officer is unable to perform patrol duties during the third through ninth months of the pregnancy, but patrol duties are an essential function of the job, and there is no reasonable accommodation that will allow the worker to perform the essential functions of the patrol position.

Engaging in the Interactive Process

As mentioned above, a PWFA request triggers an employer’s responsibility to work with the requesting individual in an informal, interactive process. The purpose of this process is to determine whether an accommodation can be made without causing undue hardship. There are no rigid steps that must be followed when engaging in the interactive process under the PWFA. As with the ADA, an employer must respond expeditiously to a request for reasonable accommodation and act promptly to provide reasonable accommodation.

In many instances, the appropriate reasonable accommodation may be obvious to either or both the employer and the individual with the known limitation. To increase efficiency and decrease the time that it takes for workers to receive accommodations in these circumstances, the EEOC has identified certain modifications (“predictable assessments”) that will virtually always be considered reasonable accommodations that do not impose an undue hardship. These include allowing an individual to:



Drink and carry water regularly during the workday;



Take additional restroom breaks;



Sit or stand as needed; and



Take extra breaks to eat and drink.

There may be other accommodations that are equally easy to provide as well, so it is important to consider all possibilities for effectively removing workplace barriers for individuals with limitations related to pregnancy, childbirth or related medical conditions.

Steps for Identifying Accommodations

In some circumstances, neither the individual requesting the accommodation nor the employer may be able to readily identify an appropriate accommodation. For example, an applicant who needs an accommodation may not know enough about the employer’s equipment or the exact nature of the work site to suggest an appropriate accommodation. Similarly, an employer may not know enough about an employee’s known limitation and its effect on the performance of the job to suggest an appropriate accommodation. In these situations, the employer can take the following steps:

- Analyze the particular job involved and determine its purpose and essential functions;
- Consult with the employee with a known limitation to ascertain what kind of accommodation is necessary given the known limitation;
- In consultation with the employee with the known limitation, identify potential accommodations and assess the effectiveness each would have in enabling the employee to perform the essential functions of the position.

Pregnant Workers Fairness Act

- If the employee’s limitation means that they are temporarily unable to perform one or more essential functions of the position, the employer must also consider whether suspending the performance of one or more essential functions may be a part of the reasonable accommodation if the known limitation is temporary in nature and the employee could perform the essential function(s) in the near future (within generally 40 weeks); and
- Consider the preference of the employee to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the employer.

Consulting with outside resources, such as state or local entities, non-profit organizations, or the Job Accommodation Network, can provide employers with additional ideas regarding potential reasonable accommodations.

Making Interim Accommodations

Given that pregnancy-related limitations are frequently temporary, a delay in providing an accommodation may mean that the period necessitating the accommodation could pass without action simply because of the delay. Thus, providing an interim reasonable accommodation is a best practice under the PWFA in certain circumstances. For example, a pregnant employee may experience vaginal bleeding, which may indicate a more serious problem. Upon discovering the bleeding, the employee may ask for immediate leave to see their health care provider. The employee then may need additional leave, telework, rest breaks, or a later start time, beginning immediately. In this situation, it would be a best practice—though not necessarily a requirement—for the employer to provide an interim reasonable accommodation that meets the employee’s needs while the interactive process is conducted.

Obtaining Medical Information

When an employer has questions about an individual’s condition, the employer may seek supporting documentation, including from a health care provider, but only if it is reasonable under the circumstances for the employer to determine whether to grant the accommodation. This generally requires an analysis of all the details of a particular situation.

If an employer does require documentation, the documentation itself must be reasonable.

The PWFA defines “reasonable documentation” as documentation that describes or confirms nothing other than the physical or mental condition, the fact that the condition is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions; and the fact that a change or adjustment at work is needed for that reason.

For example, if an employee asks for leave as a reasonable accommodation to attend therapy appointments due to anxiety early in their pregnancy, the employer could, but is not required to, ask for documentation confirming that there is a physical or mental condition that is related to, affected by, or arising out of pregnancy, and information about how frequent and long the leave would need to be.

Pregnant Workers Fairness Act

In general, it would **not** be reasonable for an employer to require documentation when:

- Both the limitation and the accommodation need are obvious;
- The employer has sufficient information to substantiate that the individual has a limitation and needs an adjustment at work;
- A pregnant employee seeks certain modifications, such as carrying and drinking water as needed, taking more restroom or snack breaks as needed, and alternating sitting and standing (“predictable assessments”); or
- The limitation for which an accommodation is needed involves lactation.

Complying with Notice Obligations

The PWFA requires covered entities to display the “Know Your Rights” posters ([English version](#) and [Spanish version](#)), which were updated in 2023 to include information about the PWFA, in conspicuous locations in the workplace where employees and applicants can readily see them.

Employers are also encouraged to display the notices on their websites and may use the following for this purpose:

- [PDF English version, Optimized for Screen Readers](#)
- [HTML English version](#)
- [HTML Spanish version](#)

Maintaining Confidentiality

With limited exceptions, the PWFA requires employers to keep medical documentation of applicants, employees, and former employees confidential. Thus, respecting employees’ privacy is critical and legally required when managing pregnancy accommodation requests. To this end, employers can establish protocols to:

- Ensure the confidentiality of medical information shared by employees and applicants;
- Limit access to sensitive documents to authorized personnel only, such as the human resources department;
- Train staff responsible for handling accommodation requests on the importance of confidentiality and the proper handling of personal health information.

Summary

Effective management of PWFA accommodations requires employers to become familiar with new law’s requirements and prohibitions and to ensure that managers, supervisors, and other relevant personnel can recognize and appropriately respond to qualifying requests. Because the PWFA aims to increase the speed and efficiency with which certain accommodations are provided to individuals affected by a pregnancy, childbirth or related medical conditions, the process for determining reasonable accommodations under the PWFA generally requires flexibility and certain common-sense changes to support workers’ health.

Organizational Considerations

Complying with PWFA requirements can be challenging and time-consuming. For example, ensuring that employees are accommodated may require organizations to revise their policies and regularly review job postings and worker responsibilities. This can create or increase employers' operational and financial burdens. Additionally, managing PWFA accommodations effectively requires employers to address ongoing challenges, such as physical workplace assessments, manager training, leave management and more. Failing to provide reasonable accommodations or otherwise violating the PWFA can lead to even more expensive legal issues. However, being aware of common PWFA-related challenges can help organizations better implement strategies to improve their PWFA operations and compliance efforts.

This section addresses common challenges employers face when implementing practices and discusses effective strategies to address operational challenges when implementing pregnancy accommodations for employees, offering insights into how organizations can overcome potential obstacles and create a positive and inclusive workplace for individuals affected by pregnancy, childbirth or related medical conditions. Best practices can assist an organization in functioning more efficiently and achieving better results. When done effectively, they can guide an employer's course of action in a particular situation or in response to an issue or problem. Best practices will likely vary for each employer, but employers can rely on these guiding principles to develop their own PWFA-compliant policies.

The following are some steps employers can take to develop robust policies and implement best practices for providing accommodations to individuals affected by pregnancy, childbirth or related medical conditions.

Clear Policies

Establishing clear and written policies and procedures for pregnancy accommodations is a best practice for employer consistency and transparency. These policies should:

- Articulate the employer's commitment to assisting employees;
- Outline the employer's process for requesting accommodations,
- Specify available accommodations; and
- Provide guidelines for assessing requests.

Employers must also ensure that these policies align with not only all provisions of the PWFA but also those of all applicable federal, state and local laws to support legal compliance.

Create Procedures for Responding to Accommodation Requests

Under the PWFA, a request for reasonable accommodation does not need to be in writing or use any specific words or phrases. Instead, employees or applicants may request accommodations in conversation or may use another mode of communication to inform an employer. An individual may also have another person—such as a family member, friend or health care professional—request accommodations on the individual's behalf. Nevertheless, employers can establish a general procedure to help guide employees, managers, supervisors and HR personnel through the process.

Pregnant Workers Fairness Act

For example, employers can:

- Designate a point of contact, such as a HR representative, to receive and handle any requests;
- Provide clear instructions on what information employees should include in their requests; and
- Establish reasonable time frames for assessing and responding to accommodation requests.
- Use standardized forms and proactive communication to streamline the request process and help ensure transparency and consistent application of accommodations;
- Write a memorandum or letter confirming a request; and
- Ask an individual to fill out a form or submit a request in written form.

Communicate Policies

Once a workplace policy is in place, ensuring employees are aware of the available accommodation options and how to request them can help support workers and ensure organizational compliance. This may involve developing a comprehensive list of potential accommodations, such as flexible work schedules, modified duties, additional breaks or temporary reassignments.

This information can be shared with employees and applicants through postings, employee handbooks (which may be acknowledged by having employees sign them), intranet portals and direct communication. Employers should be careful to emphasize that accommodations will be evaluated on a case-by-case basis to meet individual needs while considering business requirements.

Review and Update Policies

Providing individuals with PWFA accommodations is generally an ongoing process. As a result, employers can review their accommodation practices and policies regularly and make adjustments as needed. Regular review helps ensure workplace policies remain in line with legal requirements and the evolving needs of employees. Employers should also stay informed about all changes in federal, state and local laws pertaining to pregnancy accommodations. Employers can also seek input from employees, supervisors, and HR personnel regarding the effectiveness of existing policies and areas for improvement.

Physical Workplace Assessments

While developing PWFA-friendly workplace policies, employers can conduct a detailed assessment of their workplace environments and practices to identify potential barriers or areas that may require modification for workers affected by pregnancy or related conditions. This can help ensure the safety and well-being of employees and avoid having to provide costlier accommodations in certain circumstances. Employers can consider numerous factors, such as seating arrangements, workplace accessibility, policies on breaks, lifting restrictions and other physical aspects that may impact pregnant employees. Adjustments can be made as needed to remove obstacles and ensure a safe and comfortable working environment.

By addressing these issues, employee productivity and morale can be boosted, as pregnant workers can continue working comfortably and efficiently. Furthermore, conducting a workplace assessment demonstrates a commitment to inclusivity and a supportive work environment, fostering a positive organizational culture that values the well-being of its employees.

Manager Training

Employers are often forced to rely on managers and supervisors to administer accommodation requirements, which can lead to issues if training is incomplete or inconsistent. Despite employers' best efforts, training managers can be challenging due to limited time, high turnover and lack of support from upper management. This can be further complicated by the fact that employees often do not mention the PWFA or other laws in their requests for workplace modifications or time off, and sometimes an employee's request for accommodation may be difficult to identify as PWFA-qualifying. However, employers are still required to begin the PWFA interactive process and provide reasonable accommodation, absent undue hardship, whenever they have become aware of an employee or applicant's:

- Limitation related to, affected by or arising out of pregnancy, childbirth or related medical conditions; and
- Need for accommodation for that limitation.

Proper and thorough training allows managers to recognize and respond to PWFA and other accommodation requests. Despite the time and resources required to train managers, organizations can save time and money in the long run by prioritizing it. Employers can train managers to:

- Recognize PWFA accommodations requirements;
- Identify employee or applicant requests that trigger the responsibility to engage in an interactive process;
- Know how the PWFA interactive process works;
- Comprehend current laws and guidelines regarding PWFA accommodations; and
- Understand how to manage workloads in the event of accommodations involving temporary suspension of essential functions or leave.

Managers are often in the best position to identify when leave requests may be covered by the PWFA because they tend to know why employees are requesting time off. Therefore, properly training managers can drastically improve an organization's compliance efforts.

An organization can make sure its managers are sufficiently trained by establishing regular and frequent classes or workshops. At a minimum, employers can train managers on PWFA requirements at the time of hire and once yearly thereafter. Employers can also provide managers with guides and resources to help improve their knowledge and understanding of the PWFA. There are many resources and training services employers can use to assist them in their training efforts, including those found on the EEOC's [website](#).

Documentation Restrictions

Under the PWFA, an employer may require supporting documentation for an accommodation request only if it is reasonable to do so under the circumstances for the employer to determine whether to grant the accommodation. PWFA documentation itself must also be reasonable. This is defined as only confirming the physical or mental condition, the relation to pregnancy, childbirth or related medical conditions, and the need for a change at work.

Pregnant Workers Fairness Act

Specifically, employers may **not** require documentation when:

- Both the limitation and the accommodation need are obvious;
- The employer already has sufficient information to substantiate that the individual has a limitation and needs an adjustment at work;
- A pregnant employee seeks certain modifications, such as carrying and drinking water as needed, taking more restroom or snack breaks as needed, and alternating sitting and standing; or
- When the limitation for which an accommodation is needed involves lactation.

If an employee or applicant provides documentation that is sufficient, an employer's continued efforts to require that the individual provide more documentation could violate the PWFA. However, if an employer requests additional information based on a good faith belief that the documentation the employee submitted is insufficient, it likely would not be liable for retaliation or coercion.

These document restrictions can make it challenging to administer PWFA requests, especially for employers that have grown accustomed to automatically requiring medical certification when evaluating accommodation requests. Employers may address this challenge by focusing on when it would not be reasonable to require documentation, as listed above, and on training managers, supervisors and HR personnel on the law's documentation restrictions and requirements.

Leave as Accommodation

Under the PWFA, leave—including intermittent leave—may be a reasonable accommodation even if:

- The employer does not offer leave as an employee benefit;
- The employee is not eligible for leave under the employer's leave policy; or
- The employee has exhausted the leave that the employer provides as a benefit (including leave exhausted under a workers' compensation program, the FMLA, or similar state or local laws).

These factors can lead to challenges in administering leave as an accommodation, especially for employers without established leave policies. The PWFA's two-tiered definition of a qualified individual can also make it difficult for employers to understand how the law applies in certain circumstances.

If an employee requests leave as a PWFA accommodation or if there is no other reasonable accommodation that does not cause an undue hardship, the employer must consider providing it. This includes paid leave to which an employee may be entitled under an employer policy, but otherwise, the law only requires unpaid leave. Employers unfamiliar with processes for administering leave may need to become familiar with applicable requirements, prepare any necessary questions or forms for compliance, and incorporate them into their written policies.

Another situation that can pose challenges under the PWFA is one in which an employee takes leave as an accommodation under the PWFA and then later requests leave to recover from childbirth. In this type of situation, the employer should consider the request for reasonable accommodation of leave to recover from childbirth in the same manner that any other request for leave would be considered reasonable accommodation. This requires first considering whether the employee will be able to perform the essential functions of the position with or without a reasonable accommodation after the period of leave, or, if not, whether, after the period of leave, the employee will meet the second definition of "qualified" under the PWFA.

Managing Production Standards and Workloads

A reasonable accommodation cannot excuse an employee from complying with valid production standards that are applied uniformly to all employees. However, when the reasonable accommodation is leave, the employee may not be able to meet a production standard during the period of leave or, depending on the length of the leave, meet that standard for a defined period of time.

Thus, if the reasonable accommodation is leave, the production standard may need to be prorated to account for the reduced amount of time the employee worked. For example, if a call center employee with a known limitation requests and is granted two hours of leave in the afternoon for rest, the employee's required number of calls may need to be reduced proportionately, as could the employee's pay. Alternatively, the accommodation could allow the employee to make up the time at a different time during the day so that their production standards and pay would not be reduced.

Accommodating pregnant employees may also require redistributing workloads among team members, potentially impacting productivity, morale and work-life balance. Co-workers may feel burdened or resentful due to increased responsibilities. Employers can plan and communicate workload adjustments effectively, balancing the needs of pregnant employees with the capabilities of remaining team members. Temporary or permanent reassignments and realignments to maintain productivity and prevent burnout may be necessary. Employers can also encourage open dialogue among team members to address concerns and ensure mutual support and understanding.

In addition, assignment to light duty or placement in a light-duty program is a potential reasonable accommodation under the PWFA, even if the employer's light-duty positions are normally reserved only for those with work-related injuries or others.

Flexibility in Work Arrangements

Each pregnancy and individual is unique, and flexibility is key to accommodating diverse needs. Employers can explore all potential options for accommodating individuals affected by pregnancy or related conditions. These may include options such as flexible work hours, modified schedules and remote work arrangements, where feasible, to accommodate pregnant employees. This flexibility allows employees to manage medical appointments and rest and achieve work-life balance while maintaining productivity at work.

Employers can also consider engaging with health care professionals and seeking their expertise to better understand the specific needs of pregnant employees. Physicians, midwives and other specialists can provide insights into potential accommodations and offer recommendations tailored to individual circumstances. This collaboration ensures that the accommodations provided are in line with medical advice and best practices.

Summary

Addressing operational challenges surrounding the implementation of pregnancy accommodations is crucial for organizations to create an inclusive and supportive work environment. Employers can successfully navigate these challenges by developing clear policies, educating employees, fostering a supportive culture, assessing workplace practices, and collaborating with health care professionals. By doing so, they can support pregnant employees in their journeys while maintaining operational efficiency and cultivating a positive organizational culture that values the well-being of all employees.



Conclusion

This HR Toolkit provides a general overview of the PWFA and related laws. Since this is an ever-evolving area, employers should regularly review their accommodation practices and policies to evaluate how well they adhere to applicable laws and requirements and align with organizational values. This can help employers address issues before they become costly problems and improve their bottom line. The benefits of prioritizing PWFA compliance and administration for employers include the higher retention of workers affected by pregnancy, childbirth or related medical conditions as employees, which can result in cost savings from otherwise having to train new employees. Efficiently providing accommodations can also help decrease other costs, increase employee productivity and boost workplace morale.

Ensuring compliance requires employers to implement effective internal processes and procedures, which vary depending on an organization's unique needs. However, understanding the operational challenges associated with implementing best practices and solutions may enable employers to allocate their resources more efficiently, improve compliance and better support workers. These efforts can reduce employers' overall operational costs, limit their potential legal exposure, and improve employee productivity and morale.

Successful practices will differ based on the organization and applicable legal requirements, and developing and refining them is an ongoing process. Regularly reviewing and evaluating compensation practices are essential to ensure compliance with accommodation requirements. Due to the complexities of these requirements, employers are encouraged to discuss specific questions with an employment attorney.

Appendix

Complying with requirements under the PWFA may be complex and time-consuming. This section removes some of that burden by offering valuable resources you can print or email and use for your organization. This appendix features a checklist, forms, sample policy language and more. Please review these resources when implementing PWFA policies or accessing your organization's PWFA practices. The information included in this section may require some customization, and it should only be used as a guideline. Due to the complex nature of PWFA compliance, organizations are encouraged to seek legal counsel to discuss and address specific issues and concerns.

The resources included in this appendix are just a small sampling of the materials that are available to employers. By contacting Nulty Insurance, employers may have access to an entire library of PWFA-related materials. Please speak with Nulty Insurance if you have any questions about these materials or any other content in this HR Toolkit.

Printing Help

There are many printable resources in this appendix. Please follow the instructions below if you need help printing individual pages.

1. Choose the "Print" option from the "File" menu.
2. Under the "Settings" option, click on the arrow next to "Print All Pages" to access the drop-down menu. Select "Custom Print" and enter the page number range you would like to print, or enter the page number range you would like to print in the "Pages" box.
3. Click "Print." For more information, please visit the Microsoft Word [printing support page](#).

Contact Nulty Insurance today for more information.

Request for Accommodation for Pregnancy, Childbirth or Related Medical Conditions

provides reasonable accommodation to individuals with known limitations relating to, arising out of or affected by pregnancy, childbirth or related medical conditions as required by the Pregnant Workers Fairness Act upon request of the individual. Please complete this form to request any type of accommodation for a limitation associated with pregnancy, childbirth or related medical conditions. may request supporting documentation for a request for a reasonable accommodation relating to, arising out of or affected by pregnancy, childbirth or related medical conditions if it is necessary to determine whether to grant the accommodation.

considers the following requests:

- Accommodations required to ensure equal opportunity in the hiring process
- Accommodations that enable employees with limitations associated with pregnancy, childbirth or related medical conditions to perform the essential functions of their jobs
- Accommodations involving temporary suspension of essential functions of an employee's job under certain circumstances
- Accommodations that provide employees with limitations associated with pregnancy, childbirth or related medical conditions equal benefits and privileges of employment

All information relating to requests for accommodation will be maintained by HR and are considered confidential medical records. As such, they will only be accessible to supervisors or managers, first-aid personnel and government officials (regarding compliance with applicable laws) on a need-to-know basis.

NOTE: may require supporting medical documentation if it's necessary to confirm a physical or mental condition; that the condition is related to, affected by or arising out of pregnancy, childbirth or related medical conditions; and that the change or adjustment at work is needed for that reason.

Name of individual requesting accommodation:

Date of Request

--	--

Address

Telephone Number

--	--

Email Address

--

Employment Status

Applicant Employee

Current position and department OR position(s) applied for:

--

Direct supervisor of the individual requesting accommodation (for current employees only):

--

Name and job title of the individual to whom the request for accommodation was made:

--

Reasonable accommodation needed for (select all that apply):

- Pregnancy Childbirth
 Related medical conditions (please specify):

--

Describe your limitation:

--

Describe the aspect of your limitation that requires accommodation:

--

Explain the reasonable accommodation(s) you are requesting
(actions, changes, equipment, etc.):

--

Employee Signature

Date

--	--

Pregnant Workers Fairness Act (PWFA) Policy

The Pregnancy Workers Fairness Act (PWFA) is a federal law that requires employers with 15 or more employees to provide reasonable accommodations for the known limitations of a qualified individual related to pregnancy, childbirth or related conditions, unless it would cause undue hardship.

complies with all applicable laws requiring accommodating individuals with known limitations related to pregnancy, childbirth or related conditions in accordance with regulations and guidance issued by the Equal Employment Opportunity Commission. The company does not discriminate against qualified individuals with known limitations related to pregnancy, childbirth or related conditions in regard to application procedures, hiring, advancement, discharge, compensation, training and other terms, conditions and privilege of employment.

will reasonably accommodate qualified individuals with known limitations related to pregnancy, childbirth and any medical condition related to the employee's pregnancy or childbirth (including, but not limited to, lactation or the need to express breast milk for a nursing child) unless the requested accommodation results in an undue hardship to .

Examples of reasonable accommodations for pregnancy, childbirth or related medical conditions may include, but are not limited to:

- Allowing for job restructuring;
- Instituting part-time or modified work schedules;
- Allowing for more frequent breaks;
- Acquiring or modifying equipment, uniforms (including safety apparel), or devices;
- Allowing seating for jobs that require standing or standing in jobs that require sitting;
- Implementing appropriate adjustments to or modifications of examinations or policies;
- Permitting the use of paid leave (whether accrued, short-term disability, or another type of employer benefit) or providing unpaid leave, including to attend health care-related appointments and recover from childbirth;
- Assigning an individual to light duty;
- Allowing for telework; and
- Accommodating an individual's inability to perform one or more essential functions of a job by temporarily suspending the requirement that the employee perform one or more essential functions of a job, if the inability to perform the essential function is temporary and the employee is expected to be able to perform the function again in the near future.

Qualified individuals may be entitled to reasonable accommodations under the PWFA even if they are not experiencing a pregnancy-related disability, as defined under the Americans with Disabilities Act.

will not take retaliatory action against an individual who requests or receives a reasonable accommodation related to pregnancy, childbirth or related conditions.

Human resources is responsible for implementing this policy, including the resolution of reasonable accommodation, safety and undue hardship issues. Contact them with any questions or requests for accommodation.

CHECKLIST

Complying With the Pregnant Workers Fairness Act

Presented by Nulty Insurance

The Pregnant Workers Fairness Act (PWFA) is a federal law that requires covered employers to provide reasonable accommodations to an employee or applicant's known limitations related to pregnancy, childbirth or related medical conditions unless it would cause undue hardship on the operation of the employer's business.

A reasonable accommodation is a modification or adjustment to a job, the work environment or the operations of the hiring process. These modifications enable an individual with known limitations related to pregnancy, childbirth or related medical conditions to have an equal opportunity not only to get a job but also to successfully perform their job responsibilities and tasks to the same extent as others.

This checklist outlines key steps to help employers comply with the PWFA's prohibitions and requirements. Other federal laws may also apply and overlap with some of these requirements, including Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), and the Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act .

In addition to the PWFA, many states have their own laws that provide additional employment protections to employees and applicants with known limitations related to pregnancy, childbirth and related medical conditions. Accordingly, employers are encouraged to seek legal counsel to address specific issues and concerns.

Covered Employers

Is Your Company Subject to the PWFA?	Yes	No
<p>Is your organization subject to the PWFA?</p> <p>Select "Yes" if your organization is any of the following:</p> <ul style="list-style-type: none">• A private sector employer with 15 or more employees for at least 20 weeks in the current or preceding calendar year;• A state or local government agency with 15 or more employees for at least 20 weeks in the current or preceding calendar year;• An employment agency (such as a temporary staffing agency or recruitment company) of any size; or• A labor organization that operates a hiring hall or has at least 15 members. <p><i>If you answer "no," you can stop here. However, be sure to check any state employment laws that may apply to your organization.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>

Poster Requirement

Display Updated Notices	Completed
<p>Display the “Know Your Rights” posters (English version and Spanish version), which were updated in 2023 to include information about the PWFA, in conspicuous locations in the workplace where employees and applicants can readily see them.</p> <p>Employers are also encouraged to display the notices on their websites and may use the following for this purpose: PDF English version, Optimized for Screen Readers, HTML English version and HTML Spanish version.</p>	<input type="checkbox"/>

Administering PWFA Accommodation Requests

A request for reasonable accommodation starts an informal, interactive process between an employee (or applicant) and your organization. This process often begins by examining whether the requesting individual is “qualified” for reasonable accommodations under the PWFA.

Qualified Individual	Yes	No
<p>Is the individual able to perform the essential functions of their job with or without reasonable accommodation?</p> <p>If the individual is not able to perform one or more essential functions with or without accommodation, or if you have questions about whether this is the case, select “no” and proceed to the next question.</p> <p><i>If you answer “Yes,” go to “Interactive Accommodation Process.”</i></p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Will the individual be able to perform the essential function(s), with or without reasonable accommodation, with the benefit of a period of intermittent leave, after a period of part-time work, or at the end of a period of leave or time off?</p> <p>Select “No” and proceed to the next question if:</p> <ul style="list-style-type: none"> • The individual is not requesting leave as a reasonable accommodation; or • The individual is not expected to be able to perform the essential functions with the benefit of a period of intermittent leave, after a period of part-time work, or at the end of a period of leave or time off. <p><i>If you answer “Yes,” go to “Interactive Accommodation Process.”</i></p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Is the individual’s inability to perform the essential function(s) expected to last only for a temporary period that will end in the near future?</p> <p>Select “Yes” if the individual’s inability to perform the essential function(s) is not permanent and the individual is expected to be able to perform the essential functions within the next 40 weeks. For example, an individual who is three months pregnant will meet the definition because the pregnancy will be over in less than 40 weeks. The</p>	<input type="checkbox"/>	<input type="checkbox"/>

<p>determination of “in the near future” must be made when the employee asks for each accommodation that requires the suspension of one or more essential functions.</p> <p><i>If you answer “No,” you can stop here. However, be sure to document the individual’s request and your finding that the individual is not qualified under the PWFA. Also, determine whether the individual qualifies for accommodations under the ADA or leave under the FMLA, and check any state employment laws that may apply to your organization.</i></p>		
<p>Can the temporary inability to perform the essential function(s) be reasonably accommodated?</p> <p>Depending on the situation, this may mean one or more essential functions are temporarily suspended, with or without reassignment to someone else, and the individual either:</p> <ul style="list-style-type: none"> • Continues to perform the remaining functions of the job; • Performs other assigned tasks to replace the suspended functions; • Performs another job to which you assign or transfer them; or • Participates in your organization’s light or modified duty program (this must be considered even if an existing policy limits these programs to those with work-related injuries or otherwise). <p>Select “Yes” if a temporary suspension of one or more essential functions can be reasonably accomplished without causing undue hardship.</p> <p>Throughout this process, as with other reasonable accommodation requests, an employer may need to consider more than one alternative to identify a reasonable accommodation that does not pose an undue hardship. Depending on how the temporary suspension is accomplished, the employer may also need to prorate certain production standards.</p> <p><i>If you answer “No,” you can stop here. However, be sure to document the individual’s request and your finding that the individual is not qualified under the PWFA. Also, determine whether the individual qualifies for accommodations under the ADA or leave under the FMLA, and check any state employment laws that may apply to your organization.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>

Interactive Accommodation Process	Yes	No
<p>Has a qualified individual communicated the need for an accommodation?</p> <p>A covered entity’s responsibility to engage in an interactive process with an employee or applicant is triggered if the individual (or a representative of the individual, such as a family member) communicates that the individual:</p> <ul style="list-style-type: none"> • Has a limitation related to pregnancy, childbirth or a related medical condition; and • Needs an adjustment or change at work. 	<input type="checkbox"/>	<input type="checkbox"/>

Interactive Accommodation Process	Yes	No
<p>Requests can be informal and do not need to be in writing or include any specific phrases or terms to start the interactive process under the PWFA.</p> <p><i>If you answer “No,” you can stop here.</i></p>		
<p>Provide any interim reasonable accommodations that meet the individual’s needs while the interactive process is conducted.</p> <p>An individual may have an urgent need for a reasonable accommodation due to the nature or sudden onset of a known limitation under the PWFA. For example, a pregnant employee may ask for immediate leave to see a health care provider upon experiencing a symptom that may indicate more serious problems. As a best practice, a covered entity should consider providing an interim reasonable accommodation that meets the individual’s needs while the interactive process is conducted.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Create and maintain separate confidential records of the individual’s request and the entire accommodation process.</p> <p>Start recordkeeping as soon as you receive an accommodation request. Keep documenting as long as the employee remains at your organization and for at least one year after the record is made or the personnel action is taken.</p> <p>You should document every step of the process, including how you:</p> <ul style="list-style-type: none"> • Analyzed the particular job involved and determined its purpose and essential functions; • Consulted with the employee with a known limitation to ascertain what kind of accommodation is necessary given the known limitation; • Identified potential accommodations and assessed the effectiveness of each; and • Considered the preference of the employee to be accommodated; and • Selected and implemented the accommodation that is most appropriate for both the employee and covered entity. <p>To comply with the PWFA, these records must be kept confidential and stored separately from the employee’s personnel file.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Gather information about the individual’s condition and limitations.</p> <p>When the individual’s limitations are not obvious or already known, an employer may ask the individual for more information and, in some cases, supporting documentation.</p> <p>Organizations may require medical documentation for a PWFA accommodation request only if it is reasonable to do so under the circumstances to determine whether to grant an accommodation. In addition, employers may only require the documentation to confirm or describe:</p> <ul style="list-style-type: none"> • The physical or mental condition; • The fact that the condition is related to, affected by or arises from pregnancy, childbirth or related medical conditions; and 	<input type="checkbox"/>	<input type="checkbox"/>

Interactive Accommodation Process	Yes	No
<ul style="list-style-type: none"> The fact that a change or adjustment at work is needed for that reason. <p>In general, employers should allow an individual affected by pregnancy, childbirth or a related medical condition to do the following without requiring the individual to submit medical documentation:</p> <ul style="list-style-type: none"> Carry and drink water; Sit or stand ; Take extra bathroom breaks; and Take extra breaks to eat or drink. <p>These requested modifications will virtually always be found to be reasonable accommodations that do not impose an undue hardship.</p>		
<p>Engage with the individual to identify options for an effective and reasonable accommodation.</p> <p>When an employee or applicant requests an accommodation, the appropriate accommodation may be obvious, or the individual may suggest a reasonable accommodation based upon their life or work experience. However, when the appropriate accommodation is not readily apparent, employers must make a reasonable effort to identify one. The best way to do this is to consult with the individual about potential accommodations that would enable them to participate in the application process or perform the essential functions of the job.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Evaluate whether the requested accommodation would create an undue hardship for your organization.</p> <p>An employer does not have to provide an accommodation that would cause an “undue hardship” to its organization. Undue hardship means that the accommodation would be significantly difficult or expensive when considered in light of several factors.</p> <p>In determining whether an accommodation would impose an undue hardship on a covered entity, some factors, with no one factor to be dispositive, include:</p> <ul style="list-style-type: none"> Nature and net cost of the accommodation; Overall financial resources of the facility or facilities involved in providing the reasonable accommodation, including the number of persons employed at such facility and the effect on expenses and resources; The overall financial resource and size of the covered entity with respect to the number of its employees and the number, type and location of its facilities; The type of operation or operations of the covered entity, including the composition, structure and functions of its workforce, the geographic separateness, and the administrative and fiscal relationship of the facility or facilities in question to the covered entity; and The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility’s ability to conduct business. 	<input type="checkbox"/>	<input type="checkbox"/>

Interactive Accommodation Process	Yes	No
<p>If a particular accommodation would create an undue hardship, a covered entity must try to identify another accommodation that will not pose such an undue hardship.</p> <p>Note that certain modifications will virtually always be considered reasonable and not undue hardship under the PWFA. These include allowing a qualified individual to:</p> <ul style="list-style-type: none"> • Carry and drink water as needed; • Sit or stand; • Have extra bathroom breaks; or • Have extra breaks to eat and drink as needed. 		
<p>Select an effective and reasonable accommodation for the individual.</p> <p>Employers may choose among reasonable accommodations as long as the chosen accommodation is effective, meaning it would remove a workplace barrier that is impeding the individual. If there are two possible reasonable accommodations, and one costs more or is more burdensome than the other, a covered entity may choose the less expensive or burdensome accommodation as long as it is effective. However, an employer’s ultimate discretion to choose an accommodation may also be limited by other factors.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Implement the selected accommodation and monitor its effectiveness.</p> <p>A covered entity’s duty to provide reasonable accommodation is ongoing. Some individuals require only one reasonable accommodation, while others may need more than one. Others may need one reasonable accommodation for a time and then, at a later date, require another type of reasonable accommodation. If a reasonable accommodation turns out to be ineffective and the employee with known limitations related to pregnancy, childbirth or related medical conditions remains unable to perform an essential function, employers must consider whether there would be an alternative reasonable accommodation that would not pose an undue hardship.</p>	<input type="checkbox"/>	<input type="checkbox"/>

Use this checklist as a guide when reviewing your company’s compliance with the PWFA. For assistance, contact Nulty Insurance.