



## **WHAT IS THE PREGNANT WORKERS FAIRNESS ACT?**

The Pregnant Workers Fairness Act (PWFA) is a new federal law that strengthens pregnant workers' access to time off or job modifications – a/k/a “accommodations” – that they need to continue working safely. It also gives employees a right to request and receive accommodation for childbirth and pre- and post-partum conditions related to pregnancy like infertility, abortion, and lactation. PWFA is modeled on the Americans with Disabilities Act (ADA), which has been in place for more than 30 years. PWFA goes into effect on June 27, 2023.

### **What right to accommodation do workers have under PWFA?**

Employees have a right to receive “reasonable accommodations” for limitations that their employer knows about stemming from their pregnancy, childbirth, or related medical condition. This means they have a right to request and receive changes to how, where, or when their job is done when they need those changes because of:

- Physical changes that one may experience during pregnancy, like back pain, “morning sickness,” swelling, fatigue, or bladder control issues
- Medical conditions or disabilities caused or made worse by pregnancy, like gestational diabetes, preeclampsia, or depression
- “Related medical conditions” also has been recognized to include conditions that are related to the capacity to become pregnant, like fertility treatment or menstruation, as well as abortion, miscarriage, and post-pregnancy conditions like lactation and depression

Employers must provide reasonable accommodation unless doing so would impose an “undue hardship” on their business operations, which has been interpreted under the ADA to mean a significant difficulty or expense.

### **Which employers are required to comply with the new law?**

In general, employers that are required to comply with federal anti-discrimination laws are also required to comply with PWFA, including:

- private employers with 15 or more employees;
- state and local governments with 15 or more employees;
- Congress and federal agencies;
- employment agencies; and
- labor organizations

## What types of accommodations are employers required to provide?

Employers are required to provide reasonable accommodations that would allow an employee to protect their health and well-being when they are impacted by pregnancy, childbirth, or related medical conditions. This will depend on the circumstances of the pregnant worker's job and health needs, and may include:

- Providing a chair at the person's workstation;
- Allowing the pregnant person to carry a water bottle or eat a snack at their workstation;
- Permitting the pregnant person to take more frequent or longer breaks;
- Switching their workstation to a location nearer to the restroom;
- Providing appropriately-sized uniforms and safety gear;
- Excusing the pregnant worker from performing certain strenuous or hazardous activities, or temporarily transferring them to a different job assignment;
- Changing their schedule, *e.g.*, to allow for prenatal visits, delayed arrival due to "morning sickness," or to avoid overtime or night shifts;
- Allowing them to work from home to avoid exposure to hazards like COVID-19;
- Providing break time and a private place to pump breast milk;
- Providing time off, including leave to recover from childbirth or to treat post-partum conditions, like depression; and
- Any other creative solutions the employer and employee can identify that allow the pregnant person to continue working safely and comfortably. For a more comprehensive list, see the Center for WorkLife Law's [Guide](#).

## What does PWFA say about the process for obtaining reasonable accommodations?

The condition necessitating accommodation must be "**known**" to the employer, meaning that the employee or a representative has communicated it to the employer. However, the pregnant employee need not use legal terms or "magic words" to trigger the right to accommodation.

- For instance, the employee need not say, "I have a pregnancy-related condition that requires reasonable accommodation under the PWFA."
- Rather, it is sufficient to say, "I am pregnant" and "I have been vomiting and feeling nauseous in the morning, and it is making it difficult to get to work on time," "having to stand for 3 hours at a time is causing me back pain," or "my doctor says I should avoid overtime and overnight work."

Once the worker's limitation is known to the employer, the employer must either grant the requested accommodation, or initiate an "**interactive process**" to identify another reasonable accommodation that meets the employee's needs. Employers likely already are familiar with the interactive process, a concept borrowed from the ADA. The process typically includes one or more conversations with the employee about what they can and cannot do, what kinds of changes would allow the employee to do their job tasks (or to do them in the near future), and consideration of the employee's preferred accommodation.

An employer is not required to provide an accommodation if it would create an **undue hardship** on the employer to do so. PWFA states that the definition of undue hardship is the same as under the ADA, which defines undue hardship as “an action requiring significant difficulty or expense, when considered in light of” certain factors, such as cost to the employer, the employer’s resources, and the employer’s operations.

The PWFA includes a limited exception for religious employers, who are permitted to give preference to employees who share the employer’s faith. That exception does not allow religious employers to discriminate in other ways or to deny accommodations altogether.

### **What other protections does PWFA provide?**

Under PWFA, it is also unlawful for an employer to:

- Require the employee to accept an accommodation that they did not request and do not want (*e.g.*, take the employee off the schedule so they “can focus on their health,” when the employee did not request time off);
- Deny employment or opportunities based on the employee’s actual or perceived need for a reasonable accommodation of pregnancy, childbirth, or a related medical condition (*e.g.*, refuse to hire a visibly pregnant person based on the assumption that they will request time off for childbirth);
- Require the employee to go on leave if another accommodation may be provided without an undue hardship on the business;
- Interfere with an employee’s rights under PWFA (*e.g.*, telling an employee that they can have their requested accommodation, but “it will not look good when the time comes to consider promotions”); or
- Retaliate against an employee for exercising their rights under the law (*e.g.*, fire, demote, reduce the pay or responsibilities, harass, or take other negative action against an employee because they requested an accommodation, received an accommodation, opposed employer conduct that was believed to be unlawful under PWFA, assisted another person in opposing such conduct, or participated in an employer or government investigation for violations of PWFA).

### **Does PWFA require accommodation of abortion?**

Yes. An employee who needs accommodation for abortion healthcare is seeking accommodation for a limitation “related to, affected by, or arising out of pregnancy,” as required by PWFA. For more information about abortion and work, visit WorkLife Law’s [FAQ](#).

### **How does PWFA change federal law?**

Prior to PWFA, employees impacted by pregnancy, childbirth, or related medical conditions had a right to receive accommodation in certain situations, but the area of law granting those rights was complex and inconsistently interpreted by courts, employers, and attorneys.

Specifically, under the Pregnancy Discrimination Act (PDA), workers needing accommodation of pregnancy-related conditions are entitled to such changes, but only to the same extent that

their employer accommodates non-pregnant people “similar in their ability or inability to work.” Likewise, the ADA provides a right to accommodation, but only for pregnancy-related “disabilities,” a definition that does not include many pregnancy symptoms. Now, under PWFA, workers are entitled to reasonable accommodation regardless of how their employer treats non-pregnant coworkers, and regardless of whether their pregnancy symptoms are severe enough to constitute a disability.

Therefore, PWFA not only strengthens employees’ entitlement to pregnancy accommodations, but also provides much-needed guidance to employers and employees alike about the steps to take in addressing pregnant workers’ need for accommodation.

### **How does PWFA interact with state and local laws?**

PWFA protects workers nationwide. State and local laws that provide greater protections – such as laws that cover employers with fewer than 15 workers – remain unchanged by PWFA.

### **How is PWFA enforced?**

Employees or job applicants who believe that they have been unlawfully denied reasonable accommodations under PWFA can initiate legal action in the same manner that they would for other employment discrimination claims. For employees/applicants of private employers with 15 or more employees, this means they must file a charge with the U.S. Equal Employment Opportunity Commission (EEOC). The EEOC will investigate and may assist in reaching a settlement with the employer; alternatively, the EEOC may give the employee a “right to sue” letter that will entitle them to file a legal action in court.

The remedies available under PWFA are the same as for other federal employment discrimination laws, which means that in addition to recovery of lost income, the employee may receive “compensatory” damages, including emotional distress damages, and punitive damages, up to a statutory cap that is based on employer size. A plaintiff’s attorneys’ fees and costs of the lawsuit are also available.

### **How can workers learn more about PWFA, and get help?**

The EEOC enforces PWFA. Find information about the statute [on EEOC’s website \(www.eeoc.gov\)](#). Once the agency issues regulations implementing PWFA in late 2023, more detailed information about the law’s protections will be available.

Your state and/or your city may have legal protections that exceed those of PWFA (such as by applying to smaller employers). Check with your state and local civil rights agencies to find out about the full range of laws that may protect you. A complete list of those agencies can be found at <https://www.usccr.gov/files/pubs/crd/stateloc/all.htm>.

The Center for WorkLife Law operates a free and confidential legal helpline for employees who need assistance related to their legal rights at work during pregnancy and postpartum. Services are provided in English and Spanish, and other languages on request: Email [hotline@worklifelaw.org](mailto:hotline@worklifelaw.org) or call 415-703-8276 (leave a message).

Workers can also learn more by visiting the ACLU’s website at <https://www.aclu.org/know-your-rights/sex-discrimination#im-experiencing-pregnancy-related-discrimination-at-my-job> and may submit a request for legal assistance at <https://action.aclu.org/legal-intake/sex-discrimination-employment>.

[PregnantAtWork.org](https://www.pregnantatwork.org) provides information for workers – including information on “How to Talk to Your Boss About Your Bump” – as well as healthcare providers, employers, and advocates on pregnancy and work.

Note that PWFA as well as state and local accommodation laws have **strict time limitations for filing a complaint**, so do not delay. To find out what time limitations apply to you, consult an attorney or consult the government agency websites. For a comprehensive list of federal and state limitations periods, see <https://www.workplacefairness.org/>.

**For attorneys:** The ACLU and Center for WorkLife Law, in partnership with the National Employment Lawyers Association (NELA), offer an overview of the statute in a webinar [Introduction to the Pregnant Workers Fairness Act](#).

