

Alert | Labor & Employment



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Pregnant Workers Fairness Act Requires Employers to Provide Reasonable Accommodations Effective June 27

Go-To Guide:

- The PWFA goes into effect on June 27, 2023, and the EEOC will start accepting PWFA charges the same day.
- Employers are required to provide reasonable accommodations for known limitations related to pregnancy, childbirth, or related medical conditions.

The federal **Pregnant Workers Fairness Act** (PWFA or the Act) will take effect June 27, 2023. The Act requires “covered employers” to provide “reasonable accommodations” to a worker’s known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an “undue hardship.” The Equal Employment Opportunity Commission (EEOC) **will start accepting PWFA charges** June 27, 2023. Charges submitted to the EEOC must be based on events that occurred on or after June 27, 2023.

The PWFA defines “covered entity,” “employee,” and “person” consistent with the definitions of those terms under Title VII of the Civil Rights Act of 1964. Likewise, the terms “reasonable accommodation” and “undue [h]ardship” are to be “construed as such terms are construed under [the Americans with Disabilities Act (ADA)].” However, employers should be aware that the definition of “known limitation”

explicitly goes beyond the ADA, stating: “[T]he term ‘known limitation’ means physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or employee’s representative has communicated to the employer *whether or not such condition meets the definition of disability specified in section 3 of the Americans with Disabilities Act...*” Emphasis added.

Quick Points for Compliance

- **Who is a “covered employer”?** The PWFA applies to private and public sector employers with at least 15 employees, including Congress, federal agencies, employment agencies, and labor organizations.
- **What are “reasonable accommodations”?** Employers are required to provide reasonable accommodations for known limitations related to pregnancy, childbirth, or related medical conditions. The PWFA directs the EEOC to issue regulations within one year of the date the law is enacted that provide examples of reasonable accommodations that address known limitations related to pregnancy, childbirth, and related medical conditions. Examples of reasonable accommodations under the PWFA include:
 1. Ability to sit or drink water;
 2. Access to closer parking;
 3. Flexible hours;
 4. Appropriately sized uniforms and safety apparel;
 5. Additional break time to use the bathroom, eat, and rest;
 6. Ability to take leave or time off to recover from childbirth; and
 7. Exemption from strenuous activities and/or activities that involve exposure to compounds not safe for pregnancy.
- **Under what circumstances does a pregnant employee qualify to receive “reasonable accommodations”?** Pregnant employees will be qualified for “reasonable accommodations” if “any inability to perform essential functions is for a temporary period; the essential function could be performed in the near future; and the inability to perform the essential function can be reasonably accommodated.”
- **Does PWFA replace or preempt federal, state, or local laws that provide more protection to workers affected by pregnancy, childbirth, or related medical conditions?** No. All other federal, state, and local laws remain in place, so employees may still pursue rights under Title VII, the ADA, Family and Medical Leave Act, or other state and local laws. The PWFA seeks to fill the gap between Title VII and the ADA, and it goes further than the Pregnancy Discrimination Act of 1978 (PDA). Employers may be in violation of the PDA if they refuse to grant a reasonable accommodation to a pregnant worker when the same accommodation would have been granted to some other disabled employee.

- **What employer conduct is prohibited?**
 - Requiring covered employees to “accept an accommodation other than any reasonable accommodation arrived at through the interactive process”;
 - Denying “employment opportunities” to covered employees “based on the need” to “make reasonable accommodations”;
 - Requiring covered employees “to take leave, whether paid or unpaid, if another reasonable accommodation can be provided”; and
 - Taking “adverse action in terms, conditions, or privileges or employment against” covered employees for requesting reasonable accommodations.
- **Are there defenses available to employers?** Yes. The PWFA provides a defense for employers that work with employees in good faith to identify alternative accommodations that are equally effective to the accommodation requested by the employee, and do not cause an undue hardship. An “undue hardship” exists where the accommodation would involve significant difficulty or expense for the employer.
- **What damages can employees seek?** Aggrieved private-sector employees are afforded the same relief provided under Title VII, including reinstatement, back pay, front pay, compensatory damages, punitive damages, and the right to recover reasonable attorneys’ fees and costs.

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