



# The Pregnant Workers Fairness Act (PWFA): What You Need to Know

April 25, 2023



# Overview of this Training

- ▶ Important dates and current laws
- ▶ PWFA
  - Key definitions
  - Examples of reasonable accommodations
  - Prohibited practices
  - Retaliation and coercion
  - Procedures
  - Available relief
- ▶ Resources for employers



# Pregnancy Accommodation – Current Laws

- ▶ In certain circumstances, Title VII and the ADA may entitle workers to benefits or accommodations based on pregnancy, childbirth, or related medical conditions.
- ▶ Under the ADA, an individual must have a pregnancy-related disability to be entitled to an accommodation.



# PWFA – Important Dates

June 2023						
SU	MO	TU	WE	TH	FR	SA
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	1
2	3	4	5	6	7	8

- ▶ Law goes into effect **June 27, 2023**.
- ▶ This means that employers must comply with the PWFA starting on June 27, 2023.
- ▶ The EEOC is directed to issue final regulations by December 29, 2023.



# PWFA – Basic Provisions

- ▶ The PWFA requires a **covered entity** to provide a **reasonable accommodation** to a **qualified employee** or applicant with a **known limitation** related to **pregnancy, childbirth, or related medical conditions, absent undue hardship.**
- ▶ The PWFA uses many terms and concepts from Title VII and the ADA.



# PWFA – Covered Entity & Employee

- ▶ The PWFA covers the same entities and employees that are covered under Title VII and the Government Employee Rights Act (GERA).
  - Private employers, states, and localities with at least 15 employees
  - Federal agencies
  - Unions
  - Employment agencies
  - Entities covered under GERA

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# PWFA – Reasonable Accommodation

- ▶ In general, an accommodation is any change in the work environment or in the way things are customarily done.
- ▶ An accommodation is reasonable if it seems plausible or feasible.
- ▶ An accommodation has to be effective – it has to help the worker overcome the problem they are facing.
- ▶ Same definition as the ADA.

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# PWFA – Qualified Employee or Applicant Part 1

- ▶ An employee or applicant who, with or without reasonable accommodation, can perform the essential functions of the employment position
- ▶ Same definition as the ADA.



The PWFA requires a **covered entity** to provide a **reasonable accommodation** to **a qualified employee or applicant** with a **known limitation** related to **pregnancy, childbirth, or related medical conditions**, absent **undue hardship**.





# PWFA – Qualified Employee or Applicant Part 2

- ▶ Under the PWFA, an employee who cannot do one or more essential functions of a job will also be considered qualified if:
  - Any inability to perform an essential function is for a temporary period;
  - The essential function could be performed in the near future; and
  - The inability to perform the essential function can be reasonably accommodated.

The PWFA requires a **covered entity** to provide a **reasonable accommodation** to **a qualified employee or applicant** with a **known limitation** related to **pregnancy, childbirth, or related medical conditions**, **absent undue hardship**.



# PWFA – Known Limitation

- ▶ A 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 a disability from the ADA.



The PWFA requires a **covered entity** to provide a **reasonable accommodation** to a **qualified employee** or applicant with **a known limitation** related to **pregnancy, childbirth, or related medical conditions**, **absent undue hardship**.



# PWFA – Pregnancy, Childbirth or Related Medical Conditions

- ▶ Term that has been defined by the EEOC and courts in Title VII.
- ▶ Examples in EEOC’s Enforcement Guidance on Pregnancy Discrimination and Related Issues.

The PWFA requires a **covered entity** to provide a **reasonable accommodation** to a **qualified employee** or applicant with a **known limitation** related to **pregnancy, childbirth, or related medical conditions**, absent undue hardship.



# PWFA – Undue Hardship

- ▶ Significant difficulty or expense
  - Focuses on the resources and circumstance of the particular employer in relationship to the cost or difficulty of providing a specific accommodation.
- ▶ Same definition as the ADA.

The PWFA requires a **covered entity** to provide a **reasonable accommodation** to a **qualified employee** or applicant with a **known limitation** related to **pregnancy, childbirth, or related medical conditions**, absent **undue hardship**.



# PWFA – Interactive Process

- ▶ An informal interactive process between the employer and the employee or applicant. This can be a discussion or any interactive communication. The purpose is to figure out, if it is not obvious, if the employee has a known limitation and what types of reasonable accommodations are available.
- ▶ Same definition as the ADA.



# PWFA – Examples of Reasonable Accommodations

- Additional, longer, or more flexible breaks to drink water, eat, rest, or use the restroom
- Changing food or drink policies to allow a worker to have a water bottle or food
- Changing equipment, devices, or workstations such as providing a stool to sit on, or a way to do work while standing
- Changing a uniform or dress code or providing safety equipment that fits
- Changing a work schedule, such as having shorter hours, part-time work, or a later start time
- Telework
- Reassignment
- Leave for medical appointments
- Light duty or help with lifting or other manual labor
- Leave to recover from childbirth



# PWFA – Leave as a Reasonable Accommodation

- ▶ May be needed for
  - Medical Appointments
  - Recovery from childbirth
  - Other reasons related to pregnancy, childbirth, or related medical conditions
- ▶ A worker may have protection under other laws (FMLA, state laws allowing for maternity leave) or under employer policies.
  - If the worker has a right to leave (for example, under FMLA, state laws, or an employer policy) there may be no need for a reasonable accommodation.



# PWFA – Prohibited Employment Practices



- ▶ An employer must not
  - Deny a reasonable accommodation to a qualified employee or applicant absent undue hardship.
  - Require a qualified employee or applicant affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process.
  - Deny an employment opportunity to a qualified employee or applicant because it will have to provide a reasonable accommodation.
  - Require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided to the known limitations under the PWFA.
  - Take an adverse action in terms, conditions, or privileges of employment against a qualified employee or applicant on account of the employee requesting or using a reasonable accommodation.





# PWFA – Retaliation and Coercion



## ▶ Retaliation

- Protects workers who participate in the EEO process, and workers who reasonably oppose actions made unlawful under the PWFA.
- Same protections as Title VII and the ADA.

## ▶ Coercion

- Protects individuals from coercion, intimidation, threats, or interference in exercising their rights or helping others to exercise their rights.
- Same as an ADA interference claim

## ▶ **Important**

- ▶ These anti-retaliation provisions are broad.
- ▶ They apply to all employees, applicants, and former employees.
- ▶ The person does not have to be someone seeking an accommodation, nor does the person have to meet the definition of “qualified.”



# PWFA – Procedures and Relief

- ▶ Procedures: Same as Title VII and GERA
- ▶ Relief under the PWFA is the same as under Title VII, the ADA, and GERA



# PWFA – Fact Pattern

- ▶ A new call center employee needs time off to attend therapy appointments for postpartum depression. The employee has not earned enough sick leave yet to cover the time away for the appointments.
  - Known Limitation
  - Qualified
  - Undue Hardship



# PWFA – Tips for Employers

- ▶ Train first level supervisors about the PWFA.
- ▶ There are no magic words needed to request an accommodation or in the interactive process.
- ▶ The worker does not have to have a disability or have something severe, and the accommodations can be simple.
- ▶ The worker may need different accommodations as the pregnancy progresses, they recover from childbirth, or the related medical condition improves or gets worse.
- ▶ Use the interactive process.
- ▶ Consult the Job Accommodation Network - <https://askjan.org/>.



# Resources

- ▶ PWFA: <https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act>.
- ▶ Pregnancy - Title VII & the ADA: <https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues>.
- ▶ Small businesses: <https://www.eeoc.gov/employers/small-business>.
- ▶ What You Can Expect After a Charge is Filed: <https://www.eeoc.gov/employers/what-you-can-expect-after-charge-filed>
- ▶ FMLA: <https://www.dol.gov/agencies/whd/fmla>.
- ▶ PUMP Act: <https://www.dol.gov/agencies/whd/pump-at-work>.
- ▶ State or local laws: <https://www.dol.gov/agencies/wb/pregnant-nursing-employment-protections>.
- ▶ Job Accommodation Network: <https://askjan.org/>.

