

### Agenda

- Pregnant Workers Fairness Act (PWFA): A true game changer
- State and local accommodation laws
- Leave laws for pregnancy
- FMLA
- State and local leave laws
- PUMP Act

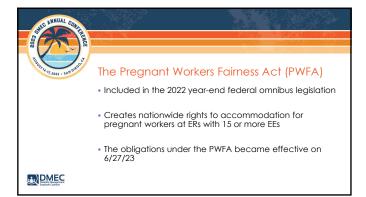






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### **PWFA** Definitions

The PWFA requires ERs with 15 or more EEs to provide reasonable accommodation for "qualified EEs" due to "known limitations" impacting their ability to perform the essential functions of their jobs due to pregnancy, childbirth, or related medical condition, absent undue hardship.

- "Qualified EE" means an EE or an applicant who, with or without reasonable accommodation, can perform the assential functions of their role EXCEPT that an EE or applicant is still considered "qualified" if:
- An inability to perform an essential function is for a temporary period; and
  The essential function could be performed in
- the near future; and
- The inability to perform the essential function can be reasonably accommodated

"Known Limitations" means a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth or related medical conditions that the EE (or applicant) has communicated to the ER

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### The PWFA is broader than the ADA

- The condition does not have to be disabling.
- The EE is entitled to an accommodation that relieves her from performing an essential job function so long as
  - it is temporary and
  - it does not cause an undue hardship.
- ERs may not require acceptance of an accommodation other than any reasonable accommodation arrived at through the interactive process.
- ERs may not require a qualified EE to take leave, whether paid or unpaid, if another reasonable accommodation can be provided.



### Additional PWFA ER Obligations

- ERs may not deny employment opportunities to a qualified EE if the denial is based on the need to make reasonable accommodations.
- ERs may not take adverse action in terms, conditions, or privileges of employment on account of the EE requesting or using a reasonable accommodation for the known limitations related to pregnancy, childbirth or related conditions.
- There are NO specific ER requirements for notice to EEs or posting information about the PWFA.
- Updated federal antidiscrimination poster:



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### **PWFA Question & Answer**

Answer: The Equal Employment Opportunity Commission (EEOC) will create regulations to enforce the PWFA no later than one year from enactment (by Dec 22, 2023) and will be responsible for enforcing the PWFA.

### Question: What happens if an ER violates the PWFA?

Answer: If an ER violates the PWFA. EEs have the same rights they would have under

- An EE can bring a lawsuit and recover:

  Past and future lost wages

  Emotional Distress

- Punitive Damages Attorney's fees

EEOC can also conduct an investigation and prosecute an action

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### PWFA Question & Answer (continued)

### Question: Is PWFA job protected?

**Answer:** The PWFA does not expressly state that an EE has "job protection" in the same way as the FMLA but job protection can be reasonably inferred.

Question: How long must an EE be employed before receiving PWFA protections?

**Answer:** EEs have the right to an accommodation regardless of the EE's length of service. In fact, the PWFA's protections extend to applicants.



### PWFA Question & Answer (continued)

Question: What are pregnancy-related conditions?

**Answer:** The PWFA does not define but we expect the EEOC regulations will address. Some examples of conditions that may be considered pregnancy-related:

- Morning sickness
- Bed rest, lifting restrictions, and other orders by health care provider
- Recovery from miscarriage, stillbirth or other termination of pregnancy
- Limitations and/or appointments associated with Infertility
- Limitations from menopause



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Common Accommo		oles of Reas ns	onable	Э	
Telecommuting	A 22	Light Duty		Modified schedules Part time Flex time Additional Breaks	
Job restructuring or modification  Elimination or reassignment of nonessential job functions	£5.00	Job transfer  To vacant position for which EE is qualified		Modify equipment  Office furniture  Hardware  Software	\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\\
Places to sit  Stool Chair	<b>≣ ©</b>	Leaves of Absence Beyond FMLA's 12 weeks For FMLA ineligible EEs	e e	And much more!	

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# Why is the PWFA necessary?



### The PWFA Fills Large Gaps in Prior Federal Law

- Americans with Disabilities Act (ADA): "Routine pregnancy" is not a disability though a pregnancy with complications may rise to the level of a disability.
- Recent 11th Circuit Court of Appeal case: pregnancy with complications including two blood transfusions was not a disability under the ADA, and the claim for failure to permit telework was dismissed (EE worked in Georgia – no pregnancy accommodation law)
- Pregnancy Discrimination Act (PDA): PDA does not require ERs to accommodate pregnant women.
- SCOTUS ruled that PDA only prohibits negative action against pregnant women and, therefore, if accommodations are made for others and there is not a nondiscriminatory reason for excluding pregnant women, not unlawful.
   Recent Th Circuit Case concluding that Walmart did not violate PDA when it provided light duty to those injured at work but not pregnant women. (EE worked in Texas no pregnancy
- accommodation law)

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### More on Why the PWFA was Needed

Family and Medical Leave Act (FMLA) considers pregnancy a "serious health condition". Therefore, FMLA leave is available for pregnancyrelated conditions, including recovery from childbirth.

- However, FMLA has high eligibility requirements:
- Only 12 weeks allotment per year
- Must have worked for ER for at least 12 months at time of leave
- Must have worked at least 1,250 hours in the 12 months before the leave
- Must work at a worksite that has 50 or more EEs w/in 75 miles.
- FMLA provides leave only
- FMLA does not require on-the-job accommodations to enable a pregnant



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**DMEC** 

### State & Local Pregnancy Accommodation Laws Yes, they still exist following enactment of PWFA. To the extent they create greater rights for EEs, they are still in full force and effect. **Example:** Some states laws prohibit ERs from requiring medical documentation for certain accommodations, such as: Restroom breaks Limits on lifting · A stool or other place to sit Private spaces for lactation The PWFA is silent about medical documentation, but this issue will probably be addressed in the EEOC regulations Under the ADA, ERs can require medical documentation unless both the disability and the need for an accommodation at work is "obvious" DMEC

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### State and Local Laws with Limits on Requests for Medical Documentation Connecticut CHRO Bluepaper: Request can be informal and ER cannot require medical documentation to accompany

Most requests for reasonable accommodations, such as more frequent or longer breaks, light duty or time-off to attend prenatal appointments, may reasonably be granted without the need for a doctor's note.

### Massachusetts

- ER may **not** require medical documentation for the following accommodations:
  - More frequent restroom, food or water breaks
- Seating
  Limits on lifting more than 20 pounds
- Private no-bathroom space for expressing breast milk

### State and Local Laws with Limits on Requests for Medical Documentation

- Pregnant EE shall not be required to obtain advice of her health care provider or doula nor may ER claim undue hardship for following accommodations:

  More frequent restroom, food or water breaks

  Seating

  Limits on lifting over 20 pounds

An ER may not require an EE to obtain a certification from EE's health care provider for more frequent restroom, food, or water breaks.

### **Washington State**

- ER may not require medical certification for:

- k may not require medical certification for:
  Providing more frequent, longer or flexible restroom breaks
  Modifying food or drink policy
  Providing seating or allowing EE to sit more frequently if her job requires her to stand
  Limits on lifting over seventeen pounds
  Providing reasonable break time for an EE to express breast milk for two years after the child's birth

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### State and Local Laws with Limits on Requests for Medical Documentation

### City of Pittsburgh

- ER may not require EE to provide medical documentation or confirmation of EE's or their

- ER may not require EE to provide medical documentation or confirmation of EE's or their partner's pregnancy, childbirth, or related medical condition.

  Medical documentation may be requested only when:

  EE has requested time off from work, including for medical appointments, other than presumptive period for recovering from childbirth, or

  EE has requested to work from home on either intermittent or longer-term basis; and

  ER requires such documentation from Es who request time off or permission to work at home for reasons other than pregnancy, childbirth, or related medical conditions.

  Subject to requirements above, ER may also request documentation confirming that EE who is partner of pregnant individual attended appointment with pregnant individual.
- However, ER may not require that such documentation confirm the pregnancy or childbirth, or confirm or describe related medical condition which was basis of appointment.

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### City of Pittsburgh **Pregnancy Accommodation Law**

- Has some of the most generous protections.
- · Gives right to partners of a pregnant woman to:
- Take time off to attend medical appointments and procedures with the pregnant person and to attend the birth;
- Take leave to emotionally recover from a miscarriage or termination of a
- · A "partner" is defined as a person of any gender with whom a pregnant person or person with a related medical condition has a relationship of mutual emotional and/or physical support.



City of Pittsburgh	
<b>Pregnancy Accommodation</b>	Law

Defines a "related medical condition" as any medical condition or event that is related to or caused by pregnancy or childbirth, including but not limited to:

- Infertility
- Gestational diabetes
- Gestational adabetes
   Pregnancy-induced hypertension
   Pregnancy-related anemia
   Pregnancy-related sciatica
   Preeclampsia
   Complications requiring bed rest

- Post-partum depression

- Nos-partial deplession
   Miscarriage
   Lactation
   Recovery from childbirth
   Termination of pregnancy
   Subsequent appointments, testing and procedures



Will the EEOC include these conditions under the PWFA regulations?

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### Special Written Notice Requirements for ERs in State and Local Pregnancy Accommodation Laws

Some jurisdictions require ERs to:
Post notice of law

- Have a policy summarizing the law in their Handbooks
   Provide written notice to EE (1) at time of hire and/or (2) as soon as the EE discloses pregnancy.

  - California Minnesota
  - Colorado
  - Connecticut Delaware
  - Illinois

  - Kentucky
     Massachusetts
- Minnesota
   Nebraska
- Nevada
   Oregon
   South Carolina
   Utah
- VermontVirginia

- District of Columbia
  New York City
  City of Philadelphia, PA
  City of Pittsburgh, PA
  Central Falls, RI

- Providence, RI

**DMEC** 

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### FMLA Pregnancy and Bonding Leave

- · Up to 12 weeks of leave total per leave year
- · Can be used for
  - · Prenatal care
  - · Prenatal complications (e.g., bed rest)
  - Delivery and recovery
  - Bonding (does not have to follow birth and recovery immediately)
- Bonding leave may have to be split with other parent if employed by same ER – dependent on ER policy



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## Paid and Unpaid Leave Laws can be Confusing!

- Sometimes the state leave laws run concurrently with the FMLA, but not always
- Some of the PFML laws do not have job protection
- Some states (like CA, CT, MA, and OR) have multiple leave laws that apply
- We prepared some charts to show you!



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### State and Local FMLA-Like Laws

- The following states have unpaid leave laws that fall into this category:
- California Family Rights Act (CFRA) and CA Pregnancy Disability Leave
- Colorado Family Care Act
- Connecticut Family and Medical Leave Act (CT FMLA)
- District of Columbia Family and Medical leave Act (DC FMLA)
   Hawaii Family & Medical Leave Act (HI FMLA)
- Maine Family Medical Leave Act (ME FMLA)
- New Jersey Family Leave Act
- Oregon Family Leave Act (OFLA)
- Rhode Island Parental and Family Medical Leave
- Vermont Parental and Family Leave Act
- Wisconsin Family and Medical Leave Act (WI FMLA)
- The following other jurisdictions have their own FMLA-like laws:
  - Florida Miami-Dade County Family and Medical Leave
- Guam Family and Medical Leave

### Pregnancy Disability Leave Laws

CA	HI	IA	KS	LA
MN	MT	NH	WA	VT

- Entitlement and applicability varies
- These leaves often provide leave when the pregnant EE is disabled during the pregnancy or during the period of childbirth recovery.
- Example: in NH, ERs with 6+ EEs must permit a female EE to take leave
  of absence for the period of temporary physical disability resulting
  from pregnancy, childbirth or related medical conditions.



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### Parental Leave Laws



- Parental Leaves typically provide FMLA-like leaves for the sole reason of bonding with a newborn or newly placed child through adoption or foster care placement.
- Example: MA provides up to 8 weeks per child for the purpose of bonding or the placement for adoption or intention to adopt.



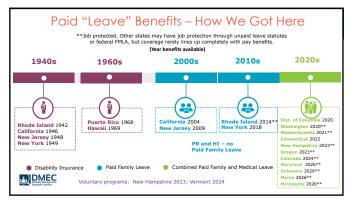
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<u>State Disability laws</u>: These are NOT leave laws. Income replacement only.

State	Statutory Disability insurance
RI	1942
CA	1946
NJ	1948
NY	1949
HI	1969

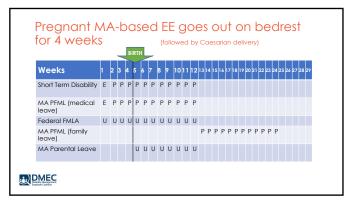
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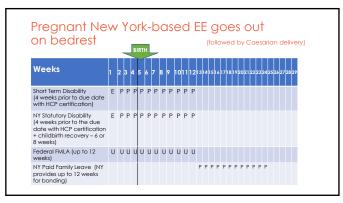
State/Jurisdiction	Benefits	Job protection	
California (benefits began 1946/2004)	DI/PFL	No	State Paid
New Jersey(benefits began 1948/2009)	DI/PFL	No	Disability/Medica
New York (benefits began 1949/2018)	DI/PFL	Yes for PFL + No for DI	and Family Leave
Rhode Island (benefits began 1942/2014)	DI/PFL	Yes for PFL + No for DI	Laws
Hawaii (benefits began 1969	DI	No	Lavis
Washington (leaves began 1/1/20)	PFML	Yes	
D.C. (leaves began 7/1/2020)	PFML	Yes	
Massachusetts (leaves began 1/1/2021)	PFML	Yes	NOTE: NH and VT, have
Connecticut (leaves began 1/1/2022)	PFML	Yes	voluntary ER-sponsored PFL plans (not
Oregon (leaves begin 9/3/2023)	PFML	Yes	mandated).
Colorado (leaves begin 1/1/24)	PFML	No	AR, AL, VA, FL, TN, and
Maryland (leaves begin 1/1/26)	PFML	Yes	TX each has a law allowing insured paid
Delaware (leaves begin 1/1/26)	PFML	Yes	family leave independent of any
Minnesota (leaves begin 7/1/2025)	PFML	Yes	state program.
Maine (leaves begin 1/1/2026)	PFML	Yes	

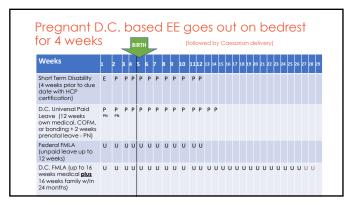


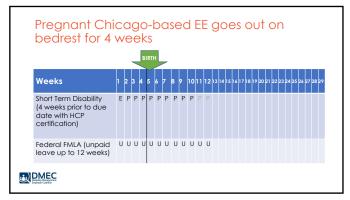


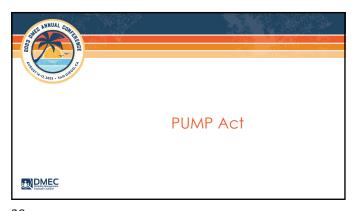
4 weeks			(fo	(followed by Caesarian delivery)																						
Weeks	1	2	3	4	5	6	7	8	9	10	11	12	13	141	5 1	6 1	711	3 1 9	20	21	22	23	243	25 2	627	28
CA Pregnancy Disability Leave	U	U	U	U	U	U	U	U	U	U	U	U														
Short Term Disability (4 weeks prior to due date with HCP certification)	Е	Р	Р	Р	Ρ	Ρ	Р	Р	Р	Ρ	Ρ	Р														
CA Statutory Disability (4 weeks prior to the due date with HCP certification + childbirth recovery – 6 or 8 weeks)	Е	Р	Р	Р	Р	Р	Р	Р	Р	Р	Р	Р														
Federal FMLA (up to 12 weeks)	U	U	U	U	U	U	U	U	U	U	U	U														
CA Family Rights Act (up to 12 weeks for bonding)				Ì									U	U	U	U	UI	JL	U	U	U	U	U			
CA Paid Family Leave (CA provides up to 8 weeks for bonding)													Ρ	Р	Р	PΙ	PI	P	Р							











### **PUMP** Act

Providing Urgent Maternal Protections for Nursing Mothers Act:

- PUMP expands existing ER obligations under the federal Fair Labor Standards Act (FLSA) to all EEs, not just non-exempt workers
- ERs must provide EEs with reasonable break time to express breast milk for the EE's nursing child for 1 year after the child's birth
- · Break location must be other than a bathroom, shielded from view and intrusion from coworkers and the public
- Non-exempt EEs must be paid during an otherwise paid break period or if not completely relieved of duty during the break
- Exempt EEs must be paid their full weekly salary as required by federal, state, and



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### **PUMP** Act

- Exemptions:
  - ERs with fewer than 50 EEs may be exempt if compliance with PUMP would cause undue hardship because of significant difficulty or expense Air carrier crewmembers are exempted from PUMP Some exceptions apply for rail carriers and motorcoach service operators
- Effective December 22, 2022; enforcement by U.S. DOL began April 28,
- · Many states also have laws requiring lactation breaks for nursing
- Difference may include longer covered period (e.g., 2 years) and applicability to smaller ERs (e.g., 1 or more EEs)

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