



Navigating Confusing and Complex Pregnancy Leave and Accommodation Requirements




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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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Pregnant Workers Fairness Act (PWFA)

A true game changer




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The Pregnant Workers Fairness Act (PWFA)

- Included in the 2022 year-end federal omnibus legislation
- Creates nationwide rights to accommodation for pregnant workers at ERs with 15 or more EEs
- The obligations under the PWFA became effective on 6/27/23



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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 essential 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.



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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:
[Know Your Rights: Workplace discrimination is illegal \(eeoc.gov\)](https://www.eeoc.gov/know-your-rights-workplace-discrimination-is-illegal)



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On 8/7/23, the EEOC released draft PWFA regulations!

- The publication is more 275 pages long!
- There is a 60 day comment period.
- We have the top 10 take-aways.
- We have also brought copies of an article that describes these take-aways in more detail.



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Top 10 Take-aways from EEOC draft regulation

1. EEs only need to show a limitation which can be a "modest, minor and/or episodic impediment or problem."
2. The definition of "related conditions" is to be interpreted broadly and includes pre-existing conditions that are aggravated by pregnancy or childbirth.
3. An employee must ask for an accommodation but the standard is low and the request can be made to any employer representative and in any format.
4. Medical documentation should not be needed for certain common accommodations including:
 - a) Allowing an employee to carry water and drink water as needed in the employee's work area
 - b) Allowing an employee additional restroom breaks
 - c) Allowing an employee whose work requires standing to sit and whose work requires sitting to stand
 - d) Allowing an employee breaks, as needed, to eat and drink
5. The EEOC explains the interactive process under the PWFA and how it differs from the ADA, including that in many cases both the medical condition and the accommodation needed will be obvious and that the focus should be on undue hardship and not whether the accommodation relieves an EE of an essential job function.



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Top 10 Take-aways from EEOC draft regulation

- 6. The EEOC defines "the near future" as up to 40 weeks per accommodation needed.
 - That is, if they need an accommodation during pregnancy, the 40 weeks starts counting then.
 - If they need an accommodation after delivery and they return to work, the 40 weeks starts counting again from the beginning.
- 7. Leave on account of pregnancy or childbirth receives special recognition by the EEOC and does not count toward the 40 weeks
- 8. Leave under the PWFA (and the ADA!) is job protected.
- 9. The EEOC advises ERs to be cautious in requiring medical documentation.
- 10. The EEOC warns ERs not to delay in providing accommodations for known limitations of pregnancy, childbirth and related conditions, emphasizing that these medical conditions are all temporary and time is of the essence.
 - The EEOC recommends allowing accommodations on an interim basis pending approval



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Common Examples of Reasonable Accommodations

Telecommuting 	Light Duty 	Modified schedules <ul style="list-style-type: none"> ▪ Part time ▪ Flex time ▪ Additional Breaks 
Job restructuring or modification <ul style="list-style-type: none"> ▪ Elimination or reassignment of nonessential job functions 	Job transfer <ul style="list-style-type: none"> ▪ To vacant position for which EE is qualified 	Modify equipment <ul style="list-style-type: none"> ▪ Office furniture ▪ Hardware ▪ Software 
Places to sit <ul style="list-style-type: none"> ▪ Stool ▪ Chair 	Leaves of Absence <ul style="list-style-type: none"> ▪ Beyond FMLA's 12 weeks ▪ For FMLA ineligible EEs 	And much more! 



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Why is the PWFA necessary?

Because there were huge gaps in protection for pregnant women under federal law



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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 7th 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 pregnancy-related 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 EE to keep working



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**State and Local
Pregnancy Accommodation Laws**



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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"



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State & Local Pregnancy Accommodation Laws

States

- California
- Colorado
- Connecticut
- Delaware
- Hawaii
- Illinois
- Kentucky
- Louisiana
- Maine
- Maryland
- Massachusetts
- Minnesota
- Nebraska
- Nevada
- New Jersey
- New Mexico
- New York
- North Carolina
- North Dakota
- Oklahoma
- Oregon
- Pennsylvania
- Rhode Island
- South Carolina
- Tennessee
- Utah
- Vermont
- Virginia
- Washington
- West Virginia

Cities

- Washington D.C.
- Pittsburgh, PA
- Providence, RI
- Central Falls, RI
- New York, NY

[Interactive state map: Employment Issues Related to Pregnancy, Birth and Nursing | U.S. Department of Labor \(dol.gov\)](#)



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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 it.
 - 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

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State and Local Laws with Limits on Requests for Medical Documentation

Minnesota

- 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

Utah

- 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:
 - 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 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 EEs 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 pregnancy.
- 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.



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City of Pittsburgh Pregnancy Accommodation 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
- Pregnancy-induced hypertension
- Pregnancy-related anemia
- Pregnancy-related sciatica
- Preeclampsia
- Complications requiring bed rest
- Post-partum depression
- 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.
- | | | |
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| <ul style="list-style-type: none"> • California • Colorado • Connecticut • Delaware • Illinois • Kentucky • Massachusetts | <ul style="list-style-type: none"> • Minnesota • Nebraska • Nevada • Oregon • South Carolina • Utah • Vermont • Virginia | <ul style="list-style-type: none"> • District of Columbia • New York City • City of Philadelphia, PA • City of Pittsburgh, PA • Central Falls, RI • Providence, RI |
|--|--|--|



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FMLA and State and Local Pregnancy/Bonding Leave Laws



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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

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Pregnancy Disability Leave Laws

CA	HI	IA	KS	LA
MN	MT	NH	WA	VT

- Entitlement and applicability varies
- These laws 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

MA	MD	MN	TN
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- 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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State Disability laws: 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
New Jersey (benefits began 1948/2009)	DI/PFL	No
New York (benefits began 1949/2018)	DI/PFL	Yes for PFL + No for DI
Rhode Island (benefits began 1942/2014)	DI/PFL	Yes for PFL + No for DI
Hawaii (benefits began 1969)	DI	No
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
Connecticut (leaves began 1/1/2022)	PFML	Yes
Oregon (leaves begin 9/3/2023)	PFML	Yes
Colorado (leaves begin 1/1/24)	PFML	No
Maryland (leaves begin 1/1/24)	PFML	Yes
Delaware (leaves begin 1/1/24)	PFML	Yes
Minnesota (leaves begin 7/1/2025)	PFML	Yes
Maine (leaves begin 1/1/2024)	PFML	Yes

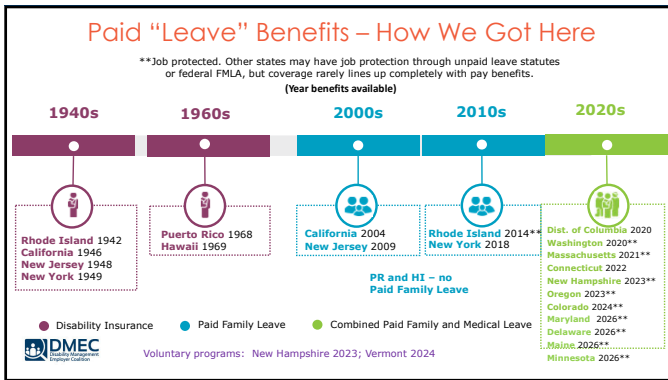
State Paid Disability/Medical and Family Leave Laws

NOTE: NH and VT, have voluntary ER-sponsored PFL plans (not mandated).

AR, AL, VA, FL, TN, and TX each has a law allowing insured paid family leave independent of any state program.

[Statutory Disability and Paid Family Leave Laws | Reliance Matrix](#)

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Pregnant CA-based EE goes out on bedrest for 4 weeks (followed by Caesarian delivery)

BIRTH


Weeks	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
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)	E	P	P	P	P																								
CA Statutory Disability (4 weeks prior to the due date with HCP certification + childbirth recovery – 6 or 8 weeks)	E	P	P	P	P																								
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)													U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U
CA Paid Family Leave (CA provides up to 8 weeks for bonding)													P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P

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Pregnant MA-based EE goes out on bedrest for 4 weeks (followed by Caesarian delivery)

BIRTH

Weeks	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
Short Term Disability	E	P	P	P	P																								
MA PFML (medical leave)	E	P	P	P	P																								
Federal FMLA	U	U	U	U	U	U	U	U	U	U	U	U																	
MA PFML (family leave)													P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
MA Parental Leave				U	U	U	U	U	U	U	U	U																	



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Pregnant New York-based EE goes out on bedrest (followed by Caesarian delivery)

BIRTH

Weeks	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
Short Term Disability (4 weeks prior to due date with HCP certification)	E	P	P	P	P																								
NY Statutory Disability (4 weeks prior to the due date with HCP certification + childbirth recovery – 6 or 8 weeks)	E	P	P	P	P																								
Federal FMLA (up to 12 weeks)	U	U	U	U	U	U	U	U	U	U	U	U																	
NY Paid Family Leave (NY provides up to 12 weeks for bonding)													P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P

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Pregnant D.C. based EE goes out on bedrest for 4 weeks (followed by Caesarian delivery)

BIRTH


Weeks	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
Short Term Disability (4 weeks prior to due date with HCP certification)	E	P	P	P	P	P	P	P	P	P	P	P																	
D.C. Universal Paid Leave (12 weeks own medical, COFM, or bonding + 2 weeks prenatal leave - PN)	P PN	P PN	P	P	P	P	P	P	P	P	P	P	P	P															
Federal FMLA (unpaid leave up to 12 weeks)	U	U	U	U	U	U	U	U	U	U	U	U																	
D.C. FMLA (up to 16 weeks medical plus 16 weeks family w/in 24 months)	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U	U

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Pregnant Chicago-based EE goes out on bedrest for 4 weeks

BIRTH


Weeks	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
Short Term Disability (4 weeks prior to due date with HCP certification)	E	P	P	P	P	P	P	P	P	P	P	P																	
Federal FMLA (unpaid leave up to 12 weeks)	U	U	U	U	U	U	U	U	U	U	U	U																	



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PUMP Act



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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 local law



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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
- Many states also have laws requiring lactation breaks for nursing mothers
 - As a standalone law or as part of the state's pregnancy accommodation law
 - The most generous law (state or federal) will apply
 - Difference may include longer covered period (e.g., 2 years) and applicability to smaller ERs (e.g., 1 or more EEs)
- Don't forget the PWF! The EEOC draft regulations describes the need for an accommodation for lactation as being "obvious"



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Questions?

Thank you!

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RESOURCES – Pregnancy Accommodations

- [Regulations to Implement the Pregnant Workers Fairness Act](#)
- [What You Should Know About the Pregnant Workers Fairness Act | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#)
- [PWFA Infographic \(eoc.gov\)](#)
- [Enforcement Guidance on Pregnancy Discrimination and Related Issues | U.S. Equal Employment Opportunity Comm \(issued before PWFA enacted – expect updates\)](#)
- [Employment Issues Related to Pregnancy, Birth and Nursing | U.S. Department of Labor \(dol.gov\)\(eoc.gov\) \(interactive state map\) \(issued before PWFA enacted – expect updates\)](#)




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RESOURCES – PUMP Act

- [FLSA Protections to Pump at Work](#)
- [DOL Field Assistance Bulletin - PUMP Act](#)
- [FLSA Workplace Poster - updated with PUMP Act](#)



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