



2024 COMPLIANCE
DMEC CONFERENCE
DALLAS, TX | MARCH 25-28, 2024

The good, the bad, and the ugly of the ADA interactive process

March 27, 2024



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PWFA Training

Polling question

Which of the following is considered a related medical condition that is covered under PWFA?

- A) Miscarriage, stillbirth, abortion
- B) Anxiety
- C) Nausea or vomiting
- D) Changes in hormone levels
- E) All of the above



Answer

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- A) Miscarriage, stillbirth, abortion
- B) Anxiety
- C) Nausea or vomiting
- D) Changes in hormone levels
- E) All of the above**



Pregnant Workers Fairness Act (PWFA) Basics

AGENCY:

Equal Employment Opportunity Commission.

ACTION:

Proposed rule.

SUMMARY:

The Equal Employment Opportunity Commission is issuing a proposed rule to implement the Pregnant Workers Fairness Act, which requires a covered entity to provide reasonable accommodations to a qualified employee's or applicant's known limitation related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause an undue hardship on the operation of the business of the covered entity.

DATES:

Comments regarding this proposal must be received by the Commission on or before October 10, 2023. Please see the sections below entitled **ADDRESSES** and **SUPPLEMENTARY INFORMATION** for additional information on submitting comments.

ADDRESSES:

You may submit comments, identified by RIN number 3046-AB30, by any of the following methods:

• *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

Printed version:

[PDF](#)

Publication Date:

08/11/2023

Agency:

[Equal Employment Opportunity Commission](#)

Dates:

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Comments Close:

10/10/2023

Document Type:

Proposed Rule

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88 FR 54714

Page:

54714-54794 (81 pages)

CFR:

29 CFR 1636

RIN:

[3046-AB30](#)

Document Number:

2023-17041

- PWFA is a federal law that enables pregnant applicants and employees to access **accommodations** for known limitations related to **pregnancy, childbirth, or related medical conditions**
- Draft regulations available [here](#)





Commuter Accommodations

Commuter Accommodations: Case Law



Commuter-related accommodations are nuanced

Commuter Litigation (7th Cir. 2023)

- Generally, employers have no duty to accommodate employees with their commute
- **Exception:** if disability interferes with getting to work and commuting is a prerequisite to an essential job function (i.e., attendance), employers may need to accommodate
- This is a **fact-intensive** inquiry
 - Court considered these factors: benefits of the accommodation, alternatives, cost to the employer, and consequences for others
- Summary judgment reversed; case awaiting trial



Commuter Accommodations: More Case Law

Cab Case Law

S.D. MS Nov. 9, 2023

- Employee asked employer to pay for cab or ride-share service, because she couldn't drive
- Court dismissed ADA claim, because driving was not an essential job function
- **“ADA does not require an employer to provide assistance in getting an employee to and from work as a form of reasonable accommodation”**

Transfer to a Longer Commute

E.D. MI Mar. 31, 2023

- Employer transferred employee to new worksite, but employee asked to stay, because of driving restrictions from eye issues
- Court held:
 - **request to stay at original worksite** evidenced accommodation request &
 - fact that **another employee could've transferred** to the new site created questions of fact for trial
- Litigation later settled



Commuter Accommodations: EEOC Trends

Commuting with Service Dogs

M.D. GA 2023

- Employee with visual impairments applied for a job and relied on **service dog for his commute** and asked for an accommodation
- Employer hired employee, but denied request for accommodation and retracted job offer
- Employer settled for \$175,000

More Ride Share Litigation

E.D. MI 2023

- Employee provided in-home Occupational Therapy services to patients and had epilepsy, seizure disorder, and brain tumor disorder
- **Request for accommodation:** employee willing to pay for **ride-share** or to have family member drive her to patients
- Employer allegedly denied request
- Litigation is currently pending





Work from home accommodations

Polling question

As you heard, Jane requested remote work, but her employer offered alternatives. How do you think the employer responded?

A) Subjected Jane to retaliation by denying multiple work from home requests

B) Appropriately engaged with Jane regarding her continued accommodation requests and offered reasonable alternatives

C) Should have provided Jane with more flexibility and remote options



Answer

As you heard, Jane requested remote work, but her employer offered alternatives. How do you think the employer responded?

A) Subjected Jane to retaliation by denying multiple work from home requests

B) Appropriately engaged with Jane regarding her continued accommodation requests and offered reasonable alternatives

C) Should have provided Jane with more flexibility and remote options



Work From Home Accommodations: Case Law



Close calls could
go to a jury

Work from Home Litigation

E.D. PA Apr. 19, 2023

- This employer **engaged in the interactive process** and offered alternative accommodations to the employee's request to work from home
- Court held there was a **question of fact** about the essential duties of her position and the reasonableness of the employer's proposed accommodations
- The fact that the employer let the employee work from home in the **past** was a factor in the decision
- Case settled within two months of summary judgment decision



Work From Home Accommodations: More Case Law

Indefinite Telework

M.D. FL Aug. 30, 2023

- Manager had discretion to allow employee to telework
- Employee worked from home for weeks before employer asked for medical support
- Court held **indefinite telework** without medical support is not a reasonable accommodation
- Court granted summary judgment for employer

Undue Burden

S.D. GA Sep. 30, 2023

- Employer ultimately allowed employee to work from home as an accommodation
- Employee argued he needed a new chair while teleworking due to his morbid obesity
- Court held providing telework accommodation was an **undue burden** and granted summary judgment for employer

Job Descriptions Help!

E.D. VA Sep. 7, 2023

- School principal requested 6-month work from home accommodation
- School declined request
- Holding: the school established that **physical presence was an essential function** of the principal's job and reiterated that temporary changes during COVID need not be permanent



Work From Home Accommodations: More Case Law

Employer's Judgment

11th Cir. Nov. 7, 2023

- Court found that in-person work was an essential job function because: (1) Job description required “regular and consistent attendance and timeliness”; (2) Employee and boss testified that in-person work was important; (3) Little evidence that others could telework; & (4) Telework would require someone else to do the employee's job
- Employer's judgment was entitled to “**substantial weight**”

Disputes About Duties

W.D.N.Y. June 14, 2023

- Employer argued that worker in Accounts Payable couldn't work remotely because printing, scanning, and direct contact is needed and the employer **wasn't equipped** for telework
- Employee argued the function could be done remotely with **periodic visits** to the office, especially post COVID
- Court denied employer's summary judgment motion and case later settled

Risks of Working Remotely

E.D. PA Jan. 23, 2024

- Employer denied remote work accommodation because of **fraud and security risk**
- Employer not required to remove essential job functions or reallocate them to other employees
- Employee failed to show how these job duties are not essential or not required to be performed on site
- Court granted summary judgment for employer



Work From Home Accommodations: EEOC Trends

In Person Training

M.D. GA 2023

- Employee was a web designer and alleged she could perform her job duties remotely
- Employer denied employee's request to work remotely three days per week
- Employer claims employee needed to be in person to help and train other employees and monitor workflow
- Litigation by EEOC pending

EEOC Settlement

N.D. GA 2022

- After employees teleworked during COVID, employee asked to stay remote two days per week, along with frequent breaks, due to pulmonary condition
- Employer allegedly allowed other employees to work from home, but denied the employee's request
- EEOC litigation settled for \$47,500

Another EEOC Settlement

N.D. OH 2023

- Employee with breast cancer requested work from home accommodation for several months while she was undergoing radiation treatments and was immunosuppressed
- Employee returned to the office, but eventually felt forced to resign due to the risk of COVID exposure
- EEOC litigation settled for \$32,371



Questions?



Thank you

