



JacksonLewis

The Pregnant Workers Fairness Act: Compliance, Challenges, and Change

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Pregnant Workers Fairness Act

Effective June 27, 2023, employers must comply with the Pregnant Workers Fairness Act, which requires employers to provide reasonable accommodations to employees and applicants with known temporary limitations on their ability to perform the essential functions of their jobs based on a physical or mental condition related to pregnancy, childbirth, and related medical conditions

This is broader than what is required under the Americans with Disabilities Act



Pregnant Workers Fairness Act

Employers cannot:

- Require an employee to accept an accommodation without a discussion about the accommodation between the worker and the employer;
- Deny a job or other employment opportunities to a qualified employee or applicant based on the person's need for a reasonable accommodation;
- Require an employee to take leave if another reasonable accommodation can be provided that would let the employee keep working;
- Retaliate against an individual for reporting or opposing unlawful discrimination under the PWFA or participating in a PWFA proceeding (such as an investigation); or
- Interfere with any individual's rights under the PWFA.



Pregnant Workers Fairness Act

- Undue hardship is a high burden, and will be more difficult than ADA given temporary nature of pregnancy and related conditions
- Leave is the last resort if employee is able to continue working
- Protections don't end at birth (limitations related to childbirth and related medical conditions also protected)
- When determining whether an accommodation presents an undue hardship, consider whether similar accommodations are provided for religion or disability
- Remember difference between leave for medical reasons and bonding reasons



Where Things Stand at the EEOC

- Early in his administration, President Trump fired two Democratic commissioners along with then-EEOC general counsel Karla Gilbride, leaving the position vacant and the EEOC without a quorum.
- Andrea Lucas (first appointed by Trump in 2020) is now Chair of the Commission.
- Senate confirmed Brittany Panuccio on October 7 restoring a quorum at the EEOC and giving Republicans a majority on the Commission.
- Trump nominated M. Carter Crow as GC. As former president of the Houston Bar Association and global head of employment litigation at Norton Rose Fulbright, the EEOC GC's office will be led by an experienced litigator who is likely familiar with employers' perspectives on many employment law issues.



Already in 2026 . . .

- **Rescinded voting procedures.** January 14, EEOC rescinded prior voting procedures, shifting procedural control to Chair Andrea Lucas to set agendas, call public meetings, and decide when matters will be voted on without public discussion.
- **Resolution on litigation.** January 22, EEOC adopted a resolution “concerning the commission’s authority to commence or intervene in litigation.”
- **Rescinded 2024 Enforcement Guidance on Harassment in the Workplace.** January 22, the EEOC rescinded the entire guidance – not just the portions regarding sexual orientation and gender identity that a Texas federal court declared unlawful and vacated in May 2025.
- **Issued FAQs to federal agencies on telework to accommodate disabilities.** On February 11, the EEOC issued FAQs that address many of the remote work issues faced by private employers. How much private employers can rely on the FAQs is an open question.
- **Next Up:** Pregnant Workers Fairness Act Regulations.

Expect Changes to PWFA Regulations

- Now that the EEOC has a quorum . . . expect changes to the Final Rule.
A federal district court in Louisiana vacated a portion of the EEOC's Final Rule interpreting the PWFA as requiring employers to accommodate what the court refers to as "elective abortions" and ordering the EEOC to revise the PWFA Final Rule.
- 5th Cir. will reconsider whether the PWFA was constitutionally enacted.



Chair Lucas' Position on PWFA Regulations

Lucas supports the PWFA, but issued a public statement on April 3, 2024, that she believes the final regulations go too far.

According to the statement, the rule's interpretation is overly broad and conflates accommodations related to pregnancy and childbirth with accommodations related to female biology and reproduction in general.

Lucas specifically disagreed with the inclusion of abortion within the scope of **"related medical conditions"**.

According to Lucas, menstruation, infertility, menopause, and the like are not caused or exacerbated by a particular pregnancy or childbirth—but rather the functioning, or ill-functioning, of the female worker's underlying reproductive system—and so are not subject to accommodation under the PWFA.



Beyond PWFA: State Laws Expanding

Many states and even some local jurisdictions have their own long-standing pregnancy accommodation laws.

States are expanding those laws.

Rhode Island is the first state to expressly require employers to provide workplace accommodations for job applicants and employees who are experiencing menopause and menopause-related medical conditions.

Philadelphia employers must accommodate menopause, perimenopause and menstruation beginning Jan. 2027.

- When the EEOC changes the PWFA Final Rule, watch for states and local governments to respond with their own new laws.



Beyond the PWFA: Some Jurisdictions May Limit When You Can Request Medical Information For Pregnancy Accommodations

- California
- Connecticut
- District of Columbia
- Illinois
- Maryland
- Massachusetts
- Minnesota
- Nebraska
- New York
- Pittsburgh
- Tennessee
- Utah
- Washington



Beyond the PWFA: Some Jurisdictions May Require Paid Lactation Breaks

- Georgia
- New York
- NYC
- Minnesota
- Illinois
- Puerto Rico
- Washington (eff. Jan. 1, 2027)



EEOC



What can we learn from EEOC's enforcement efforts?

Accommodating Requests to Sit

The EEOC sued an employer claiming a pregnant front desk clerk requested the ability to sit at the front desk rather than stand due to medical needs related to her pregnancy. Although a coworker initially provided her with a suitable chair, company management later took it away, replaced it with a small, backless stool, and discouraged her from using it. Shortly thereafter, the company discharged her in retaliation for requesting an accommodation, according to the suit.

Would you do anything differently?



Accommodating Inability to Do Job Functions

The EEOC filed suit against a heavy equipment industry employer claiming an experienced equipment operator needed to avoid working on the most physically jarring machinery as an accommodation during her high-risk pregnancy. Instead of temporarily allowing her to do other work within her job description, the employer placed her on an involuntary leave for several weeks.

When the employer let her come back to work, it first assigned her to work inconsistent with her medical restrictions and then removed her from her normal role altogether.

She spent the rest of her pregnancy in a menial office job with reduced earning potential.

Would you do anything differently?



Accommodations in Hiring

The EEOC's suit alleges the employer extended a conditional employment offer to an applicant for a customer service agent at a large transportation facility. The company required passing a physical agility test so the applicant who was in the early stages of her pregnancy submitted a medical release from her doctor. The third party who handled the tests turned her away because she was pregnant.

Would you do anything differently?



Accommodating Driving

EEOC suit claims a nurse whose job involved visiting patients at their homes and virtually requested a temporary limit on her assignments to patients closer to her home and/or to virtual visits as an accommodation for her pregnancy symptoms.

EEOC claims the employer refused and the employee was forced to resign.

Would you do anything differently?



Accommodating Lifting Restrictions

A pregnant truck driver and a pregnant employee at an assisted living facility both requested accommodations due to 20-pound lifting restrictions.

The EEOC's suits claim the truck driver was forced to take leave and the assisted living employee was terminated.

Would you do anything differently?



Accommodating with Light Duty

EEOC's filed suit against a residential care facility claiming that a pregnant employee submitted documentation from her doctor that temporarily restricting her from lifting patients due to risks in her pregnancy.

The company's policy only offered light duty to employees injured on the job.

The company terminated the employee and told her to reapply after her pregnancy.

Would you do anything differently?



Accommodating Applicants Who Disclose Need For Future Time Off

- EEOC filed suit against employer under the ADA because the company allegedly told an applicant that she should expect a job offer next week. However, the employer decided not to hire her because she revealed that she has endometriosis requiring her to potentially be absent 1-2 days a month due to painful periods.
- June 2025: EEOC secured a consent decree requiring payment settling the case.
- **Would you do anything differently?**



Accommodating Time Off and Relief from Mandatory Overtime

- In one of the earliest PWFA cases, the EEOC alleged that a manufacturing company refused to excuse an employee's absences for pregnancy-related conditions and medical appointments and required her to work mandatory overtime despite knowing that her physician had restricted her from working over 40 hours per week during her pregnancy.
- Because of her pregnancy-related absences, the company assessed attendance points against the employee and warned that she would be terminated if she acquired another point. As a result, the employee resigned to avoid termination and protect her pregnancy.
- July 2025: The EEOC and the employer entered into a consent decree.
- What could you do differently?



Accommodating Post-Birth Recovery

The EEOC sued a healthcare entity claiming that it terminated a patient services coordinator who just after giving birth, asked for accommodations including leave and schedule change to permit her to physically recover and facilitate lactation. The EEOC says the company terminated the employee.

Would you do anything differently?



Accommodating Leave

EEOC claims that when employee tried to return to work following maternity leave, she was told that no work was available. However, the employer hired new, non-pregnant employees before and after her attempted return.

Would you do anything differently?



Accommodating With Leave Always OK?

Medical assistant at clinic asked to sit, take short breaks or work part-time as recommended by her doctor during the final trimester of her high-risk pregnancy. EEOC's suit claims the clinic instead forced her to take unpaid leave. When she sought to return, the clinic said it could not guarantee her job and could not guarantee pump breaks and fired her.

February 2025: The EEOC and the clinic entered a consent decree.

Would you do anything differently?



Accommodating Absences During Mandatory New Hire Training

- Shortly after the PWFA became effective, the EEOC sued an employer claiming that it terminated a recently hired employee who had to miss some of the mandatory new hire training classes because she requested time off to have an emergency ultrasound related to her pregnancy. The employer allegedly told her she would need to reapply once she knew she could “100% attend.” The suit alleged claims under Title VII and ADA, not the PWFA.
- August 2025: Consent decree entered settling the case. In addition to monetary payment, employer must also post a link, email address, and phone number on its careers pages website to enable applicants to file complaints about unlawful failure to hire.
- **Would you do anything differently?**



Accommodating Pump Breaks

EEOC sued a security firm claiming it removed a security officer from her assignment because the client did not want a pregnant security officer.

EEOC also said the company failed to provide time for pump breaks and a place to pump forcing her to pump in her car causing her to miss work which led to discipline.

February 2026: Resolved through consent decree.

Would you do anything differently?



Accommodating Pregnancy Loss

EEOC sued a resort after it terminated an employee shortly after requesting leave to recover and grieve following a stillbirth during the 5th month of pregnancy.

The parties settled.

Would you do anything differently?



A Not-So-Subtle Training Reminder

The EEOC announced in December 2025 that it has conciliated 2 PWFA charges noting **“Despite being in effect for more than two years, the EEOC continues to find that many employers have not yet provided adequate training on the PWFA.”**

1. EEOC claims employer terminated a pregnant employee after she requested 2 ½ months of unpaid leave as an accommodation. The employer will pay a sum to charging party and “provide robust injunctive relief, including implementation of a new policy allowing employees to request leave as a reasonable accommodation under the PWFA, even if they do not qualify for leave under the [FMLA].”
2. EEOC claims employer refused to engage in the required interactive process and instead fired a pregnant employee on the same day she requested an accommodation. The employer will pay a sum, provide EEO training to all employees, and report annually on discrimination complaints received by the organization.



EEOC's PWFA Subpoena Enforcement Action

The EEOC sued a transportation company to enforce a subpoena that the agency issued during their investigation of a PWFA charge.

The employee alleges the company failed to accommodate her pregnancy-related restrictions and put her on involuntary leave.

The EEOC claims the company failed to provide:

- List of employees (with their contact information) who worked at the same location from 2023 to the present

- List of those who held same position as CP in 6 states who requested accommodations for pregnancy-related restrictions from June 27, 2023 to the present.



EEOC: Making Accommodations Effective

If an accommodation involves a pause in work (break, a part-time or other reduced work schedule, or leave):

An employee cannot be penalized for failing to perform work during such a non-work period.

Policies that monitor workers for time on task (whether through automated means or otherwise) and penalize them for being off task may need to be modified to avoid imposing penalties.

Production standards may need to be prorated to account for the reduced amount of time the employee worked.

The employee's pay for the time off work could be reduced too so long as it does not violate the state and federal wage and hour laws.

OR

The employee can be permitted (NOT REQUIRED) to make up the work on a different time.



Courts

What can we learn from the early court decisions?

Well, now that you're a mom . . .

Administrative employee says that supervisor frequently belittled her especially in connection with 2 pregnancies and subjected her to extensive scrutiny beyond what other employees experienced. Among other things, supervisor said "It will be harder for you to do this job now that you're a mom."

She experienced sciatica during her pregnancy and requested to wear tennis shoes to help alleviate that back pain. She also requested to work from home for 3 months following her delivery.

Employer denied both requests and employee sued.

You be the judge!



Let's Hit the Road

Employee was a truck driver whose job included delivering heaving products weighing over 20 pounds. Due to her pregnancy, she could not lift more than 20 pounds and she needed frequent restroom and water breaks.

Company says it offered to explore re-assignment but employee did not complete the requested vacant-position search form. Company placed employee on leave.

After giving birth, the Company says employee did not respond to repeated requests for employee to ask for additional leave or confirm return to work so plaintiff was terminated.

Employee sued.

You be the judge!





Challenges

What would you do?

How Long Do You Have To Accommodate By Removing Essential Functions Postpartum?

First Question: Which Employee Is Temporarily Limited Postpartum?

- A) Due to her postpartum depression, Alice is experiencing an inability to sleep, severe anxiety, and fatigue. Her anti-depressant medication also is causing dizziness and blurred vision, which make it difficult to drive. Alice seeks the temporary suspension of the essential function of patrolling the park for **12 weeks**.
- B) During her final trimester, the employer accommodated Betty by eliminating the essential functions of folding and putting away clothing due to her carpal tunnel. When she returns to work after she gives birth, Betty continues to experience carpal tunnel symptoms, which her doctor believes will cease in approximately **16 weeks**.
- C) After she returns from giving birth, Carol develops postpartum thyroiditis, which has made her extremely sensitive to heat, and has contributed to muscle weakness and fatigue. She seeks the accommodation of a **7-month temporary suspension** of the essential function of working outdoors in hot weather.

Second Question: Would eliminating the EJF impose an undue hardship and if so, what are the alternative accommodations?



Requests To Work From Home In Order to Breastfeed Under PWFA

Gerry says she wants to just work remote from home because her baby will not take a bottle.

Do you have to consider allowing Gerry to WFH under the PWFA?

You deny Gerry's request to work from home. Gerry tries to continue to come to work and pump, but she develops anxiety and depression over concerns related to the baby's failure to thrive. Her anxiety is causing her to have problems pumping and now pumping is painful. Gerry renews her request to work from home.

Can you continue to deny Gerry's request to WFH under the PWFA?



Pregnancy/Pumping Puzzle

Holly is returning to work on Monday after taking time off work due to the birth of a baby. She anticipates that she will need to pump every 4 hours. The store, which is located inside an indoor mall, does not have a private office that could be used for pumping. The mall has a mother's room where visitors can pump, however it's a 5-10 minute walk to the mother's room so that means each pump break will take at least 40 minutes. To accommodate Holly's pumping needs, the store will have to staff an additional key holder in the store every day Holly works. Is this an undue hardship that would permit the store to deny Holly's request for pump breaks?

Are there any alternatives?

How Do You Accommodate Pumping When There Is No Private Area To Pump?

- Remember—bathrooms are never an option.
- If you are located in a mall or shopping center, does the venue offer a nursing room?
- Wearable, hands-free pumps may be the best solution for employees who are willing to use them, and your group health insurance plan might subsidize the cost.
- There is an app that can be downloaded that allows users to find the nearest public pumping location/pod—there are 1000s. <https://www.mamava.com/>
- The Office on Women’s Health has some ideas categorized by industry—for instance: [Retail and personal services](#).
- Consider purchasing portable lactation room divider screens to create a private lactation space. Ask the vendor incorporate family friendly images/corporate branding on the privacy screens. [Lactation Privacy Screens | Lactation Room Dividers - Rolascreen](#)
- Consider purchasing a portable pod. [Lactation Pods | Mamava](#)



Can a Policy Impose Extra Requirements For Pregnancy Related Absences Only?

Leave Without Pay Policy

An employee may request unpaid leave for any personal reason. Leave is approved at the discretion of the appointing authority.

Unpaid Pregnancy-Related Leave Policy

After exhausting accrued sick or vacation leave, an employee may request unpaid leave for pregnancy-related purposes. Within 30 days of childbirth, the employee must provide a written medical certification confirming her inability to work.

Is there a potential problem with these two policies?



Can a Policy Impose Extra Requirements For Pregnancy Related Absences Only?

- Court (S.D. Ohio) says the extra requirements violate the PDA.
- "A leave policy that facially discriminates on the basis of pregnancy constitutes direct evidence of discrimination."
- According to the Court, since the Unpaid Pregnancy-Related Leave Policy places an additional burden for leave on pregnant employees, requiring that employees provide within 30 days from childbirth a written note regarding when they may return to work, the policy is facially discriminatory under the PDA.
- July 2025: The case was settled.



Final Thoughts . . .

- Keep in mind that if another federal, state, or local law provides greater protection or different requirements, those laws will also apply.
- For requests for additional breaks, time off (intermittent, reduced schedule or block) *always* coordinate with FMLA and PSL.
- At least 13 state and local jurisdictions limit an employer's ability to obtain medical information to support a pregnancy related accommodation request.
- PUMP Act and PWFA both require accommodations for lactation. PWFA is broader. Some state laws, such as Minnesota, Georgia, New York, Illinois and Puerto Rico require pump breaks to be paid.
- Make sure you are asking about limitations arising out of pregnancy, childbirth or related medical condition, not disabilities.
- Employers who demonstrate good faith efforts to work with employees to identify and make reasonable accommodations have an affirmative defense to money damages.



Questions?





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