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Understanding The Pregnant Workers Fairness Act in 2025 and Beyond

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1

Agenda

1. Status of the law and guidance
2. What requirements exist for healthcare organizations
3. Other laws that cover pregnant workers




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2

2

The Law

- 2022 Bipartisan Effort
- 2023 Took Effect
- 2024 Final Rule under Biden Administration
 - 3-2 Vote
- New administration  new approach

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3

3

Chairwoman Lucas

- Lucas agrees with protecting pregnant women
 - “The PWFA was a tremendous, bipartisan legislative achievement. Pregnant women in the workplace deserve regulations that implement the Act’s provisions in a clear and reliable way.”
 - Minor, simple, temporary accommodations for pregnant workers—such as water, food, and a place to sit while working—would allow women to remain working further into their pregnancies, if they wish to do so.
- BUT voted against final rule
 - Too broad in what it covers - not just pregnancy but “capacity for pregnancy”
 - “the scope of the accommodation requirement is not so broad as to require accommodation of any physical or mental conditions related to, affected by, or arising out of the female reproductive system.”

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4

4

Purpose of the Law

- Fill gaps in the Federal legal protections for workers affected by pregnancy, childbirth, or related medical conditions
- Pregnant workers should not have to choose between a healthy pregnancy and a paycheck
- “the sort of minor assistance that should be expected from common decency and good manners”

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5

5

23 % of moms have thought about leaving a job due to a lack of reasonable accommodations or a fear of discrimination from an employer during pregnancy

SOURCE: Bipartisan Policy Center: Morning Consult Poll, February 11, 2022

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6

6

- 2.8 million pregnant women per year in the U.S.
- 80 % of all first-time pregnant women work until their final month of pregnancy
- 72% of all working women will become pregnant while in the workforce



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- 78% of U.S. healthcare jobs are held by women
- 88% of registered nurses are women



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Which organizations are covered?

- Employing 15 or more employees
- Private and public (*other than Texas)
- For profit and non-profit

Which workers are covered?

- Pregnant employees
- Already employed or seeking employment
- Former employees?



Which conditions are covered during pregnancy?

- *Physical or mental condition related to, affected by, or arising out of **pregnancy** . . .*
 - Frequent urination
 - Gestational diabetes
 - Anxiety or Depression
 - Miscarriage
 - Abortion

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11

11

BUT WAIT: Cases challenging abortion

- *Tennessee v. EEOC*
 - 17 Republican Attorneys' General
 - Rules are illegal because abortion is not specifically mentioned in PWFA
 - Standing issue resolved at 8th Circuit on 2/20/25
 - EEOC seems less likely to defend these rules under the new administration
 - No defense = no rules

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12

12

BUT WAIT: Cases challenging abortion and IVF

- *Catholic Benefits Association v. EEOC* (9/23/24)
 - Injunction against enforcement of portions of PWFA regulations and EEOC's harassment guidance under Title VII
 - Including accommodations related to infertility treatments (such as IVF) and abortion
 - Pronoun usage, gender transition
- The first case to include a block on the leave mandate for infertility treatments too

Which conditions are covered post birth?

- Physical or mental condition related to, affected by, or arising out of . . . ***childbirth*** . . .
 - Delivery recovery
 - Anxiety or Depression
 - Lactation

Which, if any, additional conditions are covered?

- Physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or ***related medical condition***
 - Endometriosis
 - Fertility Treatment
 - Use of contraception
 - Depression or anxiety

What is the standard?

- Covered organizations must make **reasonable accommodations** to the **known limitations** related to the **pregnancy, childbirth, or related medical conditions** of a **qualified** employee,
 - unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity

What does reasonable mean?

- “Virtually all” cases: water & food, bathroom breaks, sitting/standing, breaks to eat & drink
- Leave
 - Cannot require employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided
- Suspending temporary job function

IRL - R&L Carriers Shared Services, LLC (1/16/25)

- Pending subpoena enforcement action filed by EEOC (allegations)
- Pregnant truck driver
- PWFA specifically forbids placing an employee on leave when another reasonable accommodation is available; the law mandates that employees should be able to continue working if possible
- Subpoena seeks information about other employees who requested accommodations for pregnancy-related restrictions in 6 states

IRL– Urology Specialists of Oklahoma (9/25/24)

- Pending lawsuit filed by EEOC involving high-risk pregnant medical assistant

Alleged Accommodation Request	Alleged Response
More frequent breaks	No guarantee; must align with patient schedules
Sit more	90-100% standing requirement; she could sit if there was time
Or full 30-minute meal breaks	Only if her assigned provider took break
Light duty and/or part-time	Forced unpaid leave of absence
Post-birth breaks to express breastmilk	No guarantee during clinic hours

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19

19

What is undue hardship?

- Same meaning as under ADA
- Significant difficulty or expense in light of factors:
 - Nature and net cost of the accommodation
 - Overall financial resources of the facility or facilities involved
 - Overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of its employees, and the number, type and location of facilities
 - Type of operation(s), including the composition, structure and functions of the workforce, and geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity
 - Impact of the accommodation upon the operation of the facility, including impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business

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20

20

Timing is everything

- Undue delay could amount to denial
- Consider temporary accommodation
- Available damages are limited if a claim involves the provision of a reasonable accommodation, and the organization made a good faith effort to meet the need for a reasonable accommodation

Hypothetical 1 – Baby on the Way

Molly is 27 weeks pregnant (second trimester). She applies online for a nurse practitioner (NP) position at Healthy Hospital. She is selected for an interview based on her strong credentials and arrives at the interview in her best maternity attire. She informs Healthy Hospital that she will not be able to start until 10 weeks after giving birth. The job posting does not include a start date.

IRL– Polaris Industries, Inc. (9/25/24)

- Pending lawsuit filed by EEOC (allegations)
- Limitations became “known” at new employee orientation
- Alleges employer refused to:
 - Excuse absences for pregnancy-related conditions and doctor visits
 - Relieve her temporarily from mandatory overtime despite physician restriction
 - Waive attendance points for probationary employee
- Employee resigned to avoid being fired

Hypothetical 2 – Papa Don't Preach

Samantha is a physical therapist at the community hospital. Her hourly rate is \$40/hr. She informs her employer that she is pregnant and requests not to lift more than 25 lbs. Samantha's job description expressly requires lifting and all her patients weigh more than 25 lbs. The community hospital would like to place Samantha in a light duty position as a receptionist, which pays \$26/hr. Alternatively, they can place her in a position that pays \$40/hr. but requires her to work overnight monitoring patients during sleep studies (she currently works days only).

No discrimination/retaliation/assumptions

- Organizations cannot take adverse action
 - in terms, conditions, or privileges of employment
 - on account of the employee requesting or using a reasonable accommodation to the known limitations related to the pregnancy, childbirth, or related medical conditions of the employee.
- Don't assume – per rule, cannot excuse a pregnant employee from overtime as an accommodation without the employee seeking an accommodation and the employer and the employee engaging in the interactive process

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25

25

Interactive Process

- CRITICAL to workplace dynamics and risk management
- Be sure to ask the employee her suggestion
- Evaluate options / what is reasonable
- Implement accommodation, documenting in writing

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26

26

IRL- Medical Documentation Pitfalls

- Pending EEOC v. Wabash National Corporation (9/10/24) (allegations)
- Pregnant assembler of semi-trailers
- Claims:
 - Title VII Sex Discrimination/PWFA - Failure to accommodate;
AND
 - ADA: Impermissible Medical Inquiry

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27

27

Medical Documentation - What CAN'T I ask for?

- Disability-related inquiries that are unnecessary to evaluate request under PFWA
 - physical or mental impairment?
 - limit major life activities?
 - what life activities?
- Limitation and need for accommodation are obvious
- "Virtually all" situations
- Employer already has sufficient documentation

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28

28

Medical Documentation - What CAN (or *should*) I ask for?

- Employer is not *required* to ask for anything
- If you do:
 - 1) Does the worker have physical or mental condition?
 - 2) Is it related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions?
 - 3) Is a change or adjustment at work needed for that reason?
 - 4) If yes, what?

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29

29



30

Helping Patients Deal with Pregnancy – and Childbirth – Related Limitations and Restrictions at Work Under the Pregnant Workers Fairness Act

- Key role of informing patients about PWFA, suggesting appropriate potential accommodations, and providing supporting documentation
- Provider does not need to be treating the condition at issue
- Do not provide a diagnosis
- Do not overstate the need for a particular accommodation
- Do not just provide medical records
- Do not fill out overly broad form



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CHILDBIRTH– RELATED LIMITATIONS AND RESTRICTIONS AT
WORK UNDER THE PREGNANT WORKERS FAIRNESS ACT | U.S.
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31

31



32

32

Other EEOC Settlements

- **\$50,000** EEOC v. ABC Pest Control, Inc. (9/11/24)
 - Terminated employee who requested accommodation for monthly medical appointments
- **\$92,080** EEOC v. Lago Mar (9/30/24)
 - Terminated employee who requested six weeks to recuperate and grieve after a stillbirth without engaging in the interactive process

Other EEOC Settlements

- **\$40,000** EEOC v. Kurt Bluemel, Inc.
 - Employee took leave from manual labor job for childbirth and anticipated recovery
 - Leave requested from August 2023 until January 2024
 - Falsely told “no work was available” upon her request to return
 - Defendant hired additional laborers anyway

Other laws applying to pregnant workers

1. Title VII/PDA
2. ADA
3. PUMP ACT
4. FMLA
5. State laws

Title VII – Pregnancy Discrimination Act

- Prohibits discrimination based on sex, which expressly includes pregnancy
- Not an accommodation statute
- Consider how we treat non-pregnant employees with the same limitation(s)
 - *Young v UPS*, 135 S. Ct. 1338 (2015)

ADA

- Requires reasonable accommodation absent undue hardship
- Only applies when there is a “disability”
 - Covers pregnancy-related disabilities
 - Does not cover pregnancy itself
- Not: Predictable Assessments
- Not: Removal of essential function
- Not: Accommodations in order to maintain health and healthy pregnancy
- Infertility?

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[HTTPS://WWW.EEOC.GOV/LAWS/GUIDANCE/ENFORCEMENT-GUIDANCE-PREGNANCY-DISCRIMINATION-AND-RELATED-ISSUES](https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues)

37

37

PUMP (Providing Urgent Maternal Protections) Act

- Applies to all organizations subject to the FLSA
- Requires organization to:
 - Provide reasonable break time to both exempt and non-exempt employees who need to pump at work for 1 year after child’s birth
 - Provide a space (other than a bathroom) that is shielded from view, free from intrusion from coworkers and the public, and that may be used to pump breast milk

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38

38

PUMP Act v. PWFA

- What happens if employee wants to pump longer than 1 year?
- What happens if employee needs 3 40-minute breaks to pump in a 10-hour shift?
- What if employee requests curtains or other barrier installed rather than using a separate space?

FMLA

- Leave and job protection only
- Does not apply to smaller employers or new employees
 - PFWA may require leave anyway
- Run concurrently with leave as an accommodation under PWFA
- Beware of state law

State laws

- 30 states + Washington D.C. have state-level provisions on pregnancy accommodations that include private employers
 - **Illinois:** requires employers to make reasonable accommodations for pregnancy, childbirth, or medical or common conditions related to pregnancy, unless the employer demonstrates that the accommodation would impose an undue hardship. [775 Ill. Comp. Stat. § 5/2-102\(J\)\(1\)](#)
 - **South Carolina:** requires employers to provide reasonable accommodations to employees with medical needs arising from pregnancy, childbirth or related medical conditions, unless the employer can demonstrate that the accommodation would impose an undue hardship. [S.C. Code Ann. §§ 1-13- 80\(A\)\(4\)](#)
- Localities like NYC, Philadelphia and Providence, RI too

Questions?