



# Pregnant Worker Protections: A Developing Landscape

PWFA, PUMP Act, and State Laws



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## Before the PWFA - *Young v. UPS*

- SCOTUS case decided in 2015
- Young worked for UPS as a driver and became pregnant. Her doctor restricted her from lifting certain amounts of weight.
- UPS informed Young that she could not work because the company required drivers to be able to lift parcels weighing up to 70 pounds - Young was placed on leave without pay.
- UPS at the time accommodated: (1) drivers injured on the job, (2) drivers who lost DOT certifications, and (3) drivers suffering from disabilities under the ADA.
- Young sued UPS claiming gender & disability discrimination under the ADA and Pregnancy Discrimination Act.
- SCOTUS held that courts must evaluate the extent to which an employer's policy treats pregnant workers less favorably than non-pregnant workers with similar inabilities to work.

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## The Pregnant Workers Fairness Act (PWFA)

- Effective June 27, 2023
- **Covered employers** must grant reasonable accommodations to **qualified applications and employees with known limitations** related to:
  - Pregnancy
  - Childbirth
  - Related medical conditions

## What does that mean?

- **Covered Employer:** private & public employers that have 15 or more employees
- **Qualified Employee or Applicant:** can perform the **essential functions** of the job with or without a reasonable accommodation, **OR** if they cannot perform the essential functions of the job with or without a reasonable accommodation, they can still be qualified as long as:
  - The inability is **temporary**
  - They could perform the functions **in the near future**, and
  - The inability to perform the essential functions can be reasonably accommodated

## What does that mean?

- **Known Limitation:** the employee has communicated the physical or mental limitation related to pregnancy, childbirth, or related medical condition to the employer. The limitation does not have to be major or ongoing - some examples include:
  - pelvic pain,
  - fatigue,
  - occasional morning sickness,
  - need to attend appointments,
  - miscarriages,
  - postpartum depression,
  - lactation

## Reasonable Accommodations

- Reasonable accommodations are changes in the work environment
- Examples:
  - Flexible breaks
  - Changing food or drink policies
  - Providing a stool to sit on
  - Changing the dress code
  - Telework
  - Leave for medical appointments
  - Assistance with manual labor
  - Temporary reassignment

## Requesting a Reasonable Accommodation

- Employees do not need to use specific words to make the request
- The following would be sufficient:
  - “I’m having trouble getting to work on time because of morning sickness”
  - “I’m worried about hurting myself or the baby if I lift these boxes”
  - “I need time off to attend a medical appointment for my pregnancy”
- Employers should train supervisors how to respond to such requests and engage in the **interactive process**

## Medical Documentation

- Employers may request medical documentation if **reasonable**. It is not reasonable if:
  - The limitation is obvious (ex: pregnant employee seeks a larger sized uniform)
  - Employer is already aware of the limitation
  - Worker is pregnant and needs breaks for the bathroom or to eat/drink, or needs to carry water around with them, or needs to be able to sit or stand
  - Employee is lactating and needs modifications to pump at work
  - Employer would not ask a worker for documentation in that situation normally (ex: company policy to only require a doctor’s note for absences if worker is missing 3 or more days in a row)
- Employers may not require the worker seeking an accommodation be examined by a health care provider selected by the employer

## To comply with the PWFA, do not do the following:

- Fail to reasonably accommodate a known limitation (unless it would cause an undue hardship)
  - Undue Hardship: significant difficulty or expense to the employer
- Require the employee to accept an accommodation that was not arrived at through the interactive process
- Deny employment opportunities based on the need for reasonable accommodation
- Require the employee take leave if another option is available
- Retaliate against the employee for engaging in activity protected under the PWFA

## EEOC Charges

- Accepting charges alleging violation of the PWFA since the effective date - June 27, 2023
- The EEOC recently filed lawsuits against 2 companies to enforce the PWFA:
  - **EEOC v. Polaris Industries, Inc.** - the company refused to excuse an employee's absences related to her pregnancy & required her to work overtime even when her doctor restricted her from working over 40 hours a week while pregnant
  - **EEOC v. Urologic Specialists of Oklahoma, Inc.** - the company did not allow the employee to sit, take breaks, or work part-time as her doctor said was needed to protect her health during her final trimester of her high-risk pregnancy (company forced her to take unpaid leave)
- EEOC General Counsel, Karla Gilbride stated:
  - "When employers apply inflexible policies that drive pregnant workers out of the workplace rather than engaging in this interactive process, the EEOC will step in to defend workers' rights under this new law."

## Other federal laws providing protections for pregnant workers

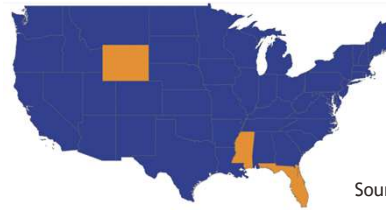
- **Title VII** - Protects workers from discrimination based on pregnancy, childbirth, or related medical conditions
- **ADA** - Protects workers from discrimination based on disability and requires reasonable accommodations (where some pregnancy-related conditions qualify as a disability)
- **FMLA** - Provides workers with unpaid, job-protected leave for certain family and medical reasons
- **PUMP Act** - Broadens workplace protections for employees to express breast milk at work

## Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act)

- Effective April 28, 2023
- Employers shall provide:
  - Reasonable **break time** for an employee to express breast milk for 1 year after the child's birth, each time the employee has a need to express milk
    - The break time provided is considered hours worked if the employee is not completely relieved from duty
  - A **place**, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public

## State laws requiring accommodations for pregnant workers

- PWFA does not replace state or local laws that are more protective of workers
- Most states have laws that require employers to provide accommodations for pregnant workers (all of the blue states below have some sort of state-level protection related to pregnancy accommodations):



Source: U.S. DOL

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## California

- **Reasonable Accommodation:** Employers with 5 or more employees must provide employees with reasonable accommodations for conditions related to pregnancy, childbirth, or related medical conditions at their request, if these requests are reasonable and based on their health-care provider's advice that reasonable accommodations are medically advisable.
- **Pregnancy Disability Leave:** Provides up to 4 months of unpaid, job-protected leave to employees with a pregnancy-related disability
- **CFRA:** Requires covered employers to provide eligible employees with unpaid, job-protected leave of up to 12 work weeks in any 12-month period

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## Illinois

- **Reasonable Accommodation:** Employers with 1 or more employee, must provide reasonable accommodations for employees' and applicants' medical or common conditions related to pregnancy or childbirth, upon their request, unless employers can show that these accommodations would impose undue hardship.
  - Failing to provide timely responses to reasonable accommodation requests can be considered a failure to provide reasonable accommodations.

## Hypothetical #1

- Emma is a customer service representative at a busy call center. She is in her second trimester of pregnancy and has begun experiencing fatigue and nausea, which makes it challenging for her to meet the demands of her role, particularly with the long hours of sitting and the need for frequent bathroom breaks. During a routine check-in with her supervisor, Emma mentions her pregnancy and expresses difficulty managing her workload due to her symptoms.
- **What must the supervisor do?**



## Answer #1

- The Supervisor should start the interactive process with Emma:
  - Acknowledge her request and assure her that the company is committed to supporting employees during pregnancy
  - Gather more information from her related to her specific needs
    - Gathering medical documentation only if necessary
  - Explore reasonable accommodation options with her: flexible break schedule, modified workstation, remote work
  - Implement the accommodation decided on
  - Follow up with her and make adjustments if necessary

## Hypothetical #2

- Sophia is a graphic designer who recently applied for a position at a marketing firm. She is in her first trimester of pregnancy and is experiencing significant morning sickness. During her second interview, Sophia mentions to the hiring manager that she is having morning sickness and may need accommodations going forward in the interview process, and potential work-from-home days, especially during her first trimester, if she were to get the job.
- What must the company do?

## Answer #2

- The hiring manager should start the interactive process with Sophia:
  - Acknowledge her request and assure her that the company is committed to supporting applicants during pregnancy
  - Gather more information from her related to her specific needs
    - Gathering medical documentation only if necessary
  - Explore reasonable accommodation options with her: flexible interview schedule, an adjustable start date, remote work
  - Implement the accommodation decided on
  - Follow up with her and make adjustments if necessary





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