Pregnant Workers Fairness Act Regulations Issued April 15, 2024
Effective June 18, 2024
Summary of Key Provisions

The Pregnant Workers Fairness Act (PWFA), 42 U.S.C. §§ 2000gg to 2000gg-6, requires most employers with 15 or more employees to provide "reasonable accommodations," or changes at work, for a qualified employee or applicant's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship. Congress directed the Equal Employment Opportunity Commission (EEOC) to issue regulations that "provide examples of reasonable accommodations." 42 U.S.C. § 2000gg-3(a). On April 15, 2024, the EEOC released the final regulations.

As explained by the EEOC, the PWFA prohibits employers from: (1) failing to make a reasonable accommodation for the known limitations of a qualified employee or applicant related to pregnancy, childbirth, or related medical conditions, unless the accommodation would cause an undue hardship; (2) requiring an employee to accept an accommodation other than a reasonable accommodation arrived at through the interactive process; (3) denying a job or other employment opportunities to a qualified employee or applicant based on the person's need for a reasonable accommodation; (4) requiring an employee to take paid or unpaid leave if another reasonable accommodation can be provided that would let the employee keep working; (5) punishing or retaliating against an employee or applicant for requesting or using a reasonable accommodation under the PWFA, reporting or opposing unlawful discrimination under the PWFA, or participating in a PWFA proceeding (such as an investigation); or (6) interfering with or coercing individuals who are exercising their rights or helping others exercise their rights under the PWFA. *See* 29 CFR §1636.1, §1636.4.

The PWFA and its regulations overlap with requirements in other laws that may provide greater or different protections for workers. Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e – 2000e17 and the Americans with Disabilities Act, 42 U.S.C. §12101 *et seq*., for example, prohibit discrimination based on sex and disability, respectively. These laws cover a wide range of employment decisions including termination, while the PWFA applies only to accommodations. State and local laws may provide additional protections for workers. The regulations make clear that the PWFA does not limit those protections.

In its 2024 final regulations, the EEOC provides detailed definitions of terms, explanations of how and when employers must accommodate qualified employees, and numerous scenario examples, as summarized below.

Reasonable accommodations

Although the PWFA defines "reasonable accommodation" to have the same meaning of that term in the ADA, the PWFA regulations describe more specifically how an employer may be expected to modify or adjust a job application process, work environment, or manner or circumstances under which the position held or desired is customarily performed, to enable a qualified employee or applicant with a known pregnancy-related limitation to perform the essential functions of that position or to enjoy equal benefits and privileges of employment. 29 CFR §1636.3(h)(1) – (4). "To determine the appropriate reasonable accommodation, it may be necessary for the covered entity to initiate an informal, interactive process," the regulations explain. 29 CFR §1636.3(h)(5).

Reasonable accommodations may include:

- Frequent breaks;
- Breaks and space for lactation;
- Sitting/standing;
- Schedule changes, part-time work, and paid and unpaid leave;
- Telework;
- Parking;
- Light duty;
- Making existing facilities accessible or modifying the work environment;
- Job restructuring;
- Temporarily suspending one or more essential functions;
- Acquiring or modifying equipment, uniforms, or devices; and
- Adjusting or modifying examinations or policies.

29 CFR §1636.3(h).

An unnecessary delay in making a reasonable accommodation could constitute a violation of the PWFA. 29 CFR §1636.4(1). An employer must choose an accommodation that provides the qualified employee (or applicant) equal employment opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges as are available to the average employee without a known limitation who is similarly situated. 29 CFR §1636.4(4).

Known limitations

A wide spectrum of conditions will be considered "limitations" under the PWFA regulations. To be a "known" limitation, it must be an employee's own physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or the employee's representative has communicated to the employer, whether or not such condition meets the definition of disability under the ADA. 29 CFR §1636.3(a). "Limitation" means (1) an impediment or problem that may be modest, minor and/or episodic; (2) a need or problem related to maintaining the employee's health or the health of the pregnancy; or (3) seeking health care related to pregnancy, childbirth, or a related medical condition itself. 29 CFR §1636.3(a). The regulations include examples of conditions that are or may be "related medical conditions" and note that an employee would not have to specify a condition on this list or use medical terms to describe a condition to be eligible for reasonable accommodation. 29 CFR §1636.3(b). Importantly, the regulations clarify that "related to, affected by, or arising out of" is an inclusive term.

Qualified employee/applicant

Like the ADA, the PWFA protects "qualified" employees and applicants – those who, with or without reasonable accommodation, can perform the essential functions of the employment position. 29 CFR §1636.3(f). An employee or applicant can be "qualified" even if they cannot perform one or more essential functions of the job if that inability is temporary, the employee could perform that function in the near future, and the inability may be reasonably accommodated. 29 CFR §1636.3(f). The EEOC explains that employers are expected to assume that a pregnant employee could perform the essential function(s) "in the near future" because they could perform the essential functions within generally 40 weeks of the temporary suspension of the essential function. Whether a non-pregnant employee could perform the essential function in the near future is to be determined on a case-by-case basis.

Although an employee need not accept an accommodation, if the employee rejects a reasonable accommodation that would make that person "qualified" under the PWFA (because it would allow them to

perform an essential function, apply for the job, or obtain a temporary suspension of an essential function), then the employee or applicant will not be considered "qualified." 29 CFR §1636.4(2).

Undue hardship

Like the ADA, PWFA requires an employer to accommodate a covered employee unless to do so would be an "undue hardship." The PWFA regulations list factors to be considered in determining whether an accommodation would be an undue hardship on an employer, such as the nature and cost of the accommodation, the overall financial resources of the facility or facilities involved, the overall financial resources of the covered entity, the type of operation or operations of the covered entity, and the impact of the accommodation upon the operation of the facility. 29 CFR §1636.3(j)(2).

The regulations list additional factors that may be considered when determining if the temporary suspension of an essential function causes an undue hardship, such as the length of time that the employee will be unable to perform the essential function(s); whether there is work for the employee to do, whether other employees are able to cover the tasks, whether other employees have been similarly accommodated, and whether the essential functions may be postponed. 29 CFR §1636.3(j)(3).

Predictable assessments

A limited number of specific, simple modifications will, in virtually all cases, be found to be reasonable accommodations that do not impose an undue hardship when requested by a pregnant employee. According to the regulations, for these modifications, "the necessary individualized assessment should be particularly simple and straightforward."

- Carrying/keeping water near and drinking it as needed;
- Additional restroom breaks, as needed;
- Sitting/standing as needed;
- Breaks to eat and drink, as needed.

29 CFR §1636.3(j)(4).

Interactive process and documentation

Like under the ADA, employers must go through an interactive process with an employee or applicant to identify the known limitation and the adjustment at work that is needed, if that is not clear from the request, and potential reasonable accommodations. 29 CFR §1636.3(k). The regulations do not require an employer to seek supporting documentation from an employee or applicant who requests an accommodation under the PWFA. Employers only may do so if it is reasonable to require documentation under the circumstances for the employer to determine whether the employee or applicant has a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions (a limitation) and needs a change or adjustment at work due to the limitation. Even then, an employer only may require "reasonable documentation," the minimum documentation that is sufficient to: (1) confirm the condition; (2) confirm that the condition is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, and (3) describe the change or adjustment at work needed due to the limitation. 29 CFR §1636.3(k)(2) and (3).

An employer cannot justify failing to make a reasonable accommodation based on the employee's failure to provide supporting documentation unless: (1) the employer asks for the documents; (2) it is reasonable for

the employer to seek that documentation; (3) the documentation is "reasonable documentation;" and (4) the employer provides the employee with sufficient time to provide it. 29 CFR §1636.4(3).

Confidentiality

The Interpretive Guidance released as Appendix A to the PWFA regulations, explains how the provisions of the ADA that require a covered entity to keep medical information confidential apply to employees and information under the PWFA. The Guidance explains that the "ADA rules on keeping medical information confidential apply to all medical information, including medical information voluntarily provided as part of the reasonable accommodation process, and, therefore, include medical information obtained under the PWFA." 29 CFR Pt. 1636, App. A.

Employee must identify the limitation

To request a reasonable accommodation under the PWFA, the employee or applicant, or a representative of that person, must identify the limitation and that the employee needs an adjustment or change at work due to the limitation. 29 CFR §1636.3(d)(3). The request must be communicated to a supervisor, or human resources personnel, or by following the employer's procedures specified by policy. 29 CFR §1636.3(d).

Retaliation and coercion

The PWFA prohibits coercion, intimidation, threats, or interference with any person in the exercise of PWFA rights or with anyone aiding that. The regulations add "harass" to the list of prohibited actions. 29 CFR § 1636.4(f). Scenarios including not providing an interim reasonable accommodation, seeking supporting medical documentation or information when it is not permitted under the PWFA or the regulations, or disclosing confidential medical information could violate the prohibition on retaliation and coercion. 29 CFR § 1636.5(f).

Equal Employment Opportunity Commission : Implementation of the Pregnant Workers Fairness Act

29 CFR Part 1636, 89 FR 29096 (released April 15, 2024, effective June 18, 2024)

Authority: 42 U.S.C. 2000gg to 2000gg-6.

Final Rule

Summary of Final Rule

EEOC Q&A on Pregnant Workers Fairness Act