

Employers May Have to Provide Reasonable Accommodations to Pregnant Workers

President Biden recently signed the Pregnant Workers Fairness Act (PWFA) and the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act) into law. The PWFA, which goes into effect on June 27, 2023, applies to employers with 15 or more employees and imposes obligations on employers with respect to pregnant employees and applicants. The PUMP Act, which went into effect December 29, 2022, amends the Fair Labor Standards Act (FLSA) with respect to break time for nursing mothers and applies to employers with 50 or more employees.

The PWFA

Previously, the Pregnancy Disability Act (PDA) protected workers from discrimination on the basis of pregnancy and related conditions. It did not, however, expressly require employers to provide accommodations to pregnant workers. But, in 2015, the U.S. Supreme Court held in *Young v. United Parcel Service, Inc.*, that pregnant workers were entitled to accommodations under the PDA, but only if the employer provided comparable accommodations to similarly situated workers. The decision resulted in uncertainty and inconsistency among the courts regarding which employees were proper comparators such that pregnant workers would be entitled to accommodations.

The PWFA was enacted, in part, to address this confusion and provide clarity as to employers' obligations to pregnant workers.

The PWFA's Requirements

Although the PDA only prohibited employers from discriminating against workers on the basis of pregnancy, the PWFA now expressly requires employers to also provide reasonable accommodations to pregnant workers *regardless* of whether accommodations are provided to similarly situated employees.

The PWFA applies many of the protections under the Americans with Disabilities Act (ADA) to pregnant workers on a temporary basis. The PWFA also adopts the same definition of "reasonable accommodation" as the ADA.

Some of the PWFA's key elements include:

POSTED:

Jan 18, 2023

RELATED PRACTICES:

[Labor and Employment](#)

<https://www.reinhartlaw.com/practices/labor-and-employment>

[Health Care](#)

<https://www.reinhartlaw.com/practices/health-care>

[Corporate Law](#)

<https://www.reinhartlaw.com/practices/corporate-law>

RELATED PEOPLE:

[Robert S. Driscoll](#)

<https://www.reinhartlaw.com/people/robert-driscoll>

[Katie D. Triska](#)

<https://www.reinhartlaw.com/people/katie-triska>

- Employers must grant reasonable accommodations to qualified employees for “known limitations” related to pregnancy, childbirth or related medical conditions. “Known limitation” is defined as a physical or mental condition relating to or arising from pregnancy, childbirth or related medical conditions that has been communicated to the employer, *regardless* of whether the condition is a “disability”;
- Employers may not require a qualified employee affected by pregnancy, childbirth or a related medical condition to accept an accommodation she did not agree to through the interactive process;
- Employers are prohibited from denying employment opportunities to qualified employees if such denial is based on the need for the employer to provide a reasonable accommodation for limitations related to pregnancy, childbirth or related medical conditions;
- Employers are prohibited from requiring a pregnant employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided; and
- Employers are prohibited from taking adverse action in the terms, conditions or privileges of employment against a qualified employee on account of the employee requesting or using a reasonable accommodation.

PWFA Remedies and Enforcement

The U.S. Equal Employment Opportunity Commission is charged with enforcing the PWFA and will provide additional guidance concerning reasonable accommodations for pregnant workers within two years. Employers that violate the PWFA may be subject to backpay, costs and fees (including attorneys’ fees), and compensatory and punitive damages.

The PUMP Act

Previously, the FLSA obligated employers with 50 or more employees to provide reasonable break time to *non-exempt* employees to express their breast milk and provide them with a private place shielded from view and intrusion that is not a bathroom. Those obligations continue.

Under the PUMP Act, however, employers are now obligated to provide these same breaks to all employees—including *exempt* employees.



Although employers are generally not obligated to pay non-exempt workers for this break time, they should if employees perform work during this break or are using an otherwise paid break. Employers should pay exempt employees their full weekly salary regardless of whether they take break time to express breast milk.

What the PWFA and PUMP Act Mean for Employers

Employers should be aware that they may be obligated to provide a reasonable accommodation to an employee or applicant experiencing a pregnancy-related condition. Employers should ensure their managers and human resource employees are trained to spot such a request and engage in the interactive process if necessary. Managers and human resource employees should also be trained on their obligations to provide employees with reasonable breaks to express breast milk.

Employers should also be aware that neither the PWFA nor the PUMP Act preempts state or local law. Therefore, employers in areas with more favorable laws will still need to comply with those requirements.

Please contact [Robert S. Driscoll](#), [Katie D. Triska](#) or your Reinhart attorney if you have questions about the Pregnant Workers Fairness Act, the PUMP Act or your obligations to provide reasonable accommodations or break time.

These materials provide general information which does not constitute legal or tax advice and should not be relied upon as such. Particular facts or future developments in the law may affect the topic(s) addressed within these materials. Always consult with a lawyer about your particular circumstances before acting on any information presented in these materials because it may not be applicable to you or your situation. Providing these materials to you does not create an attorney/client relationship. You should not provide confidential information to us until Reinhart agrees to represent you.