

The Final Rule for the Pregnant Worker's Fairness Act (PWFA) was published on April 15, 2024.

*Pregnant Workers Fairness Act (PWFA): The Pregnant Workers Fairness Act is a 2023 law that requires covered employers to provide "reasonable accommodations" to a worker's "known limitations" related to pregnancy. Before passage of the PWFA, a pregnant employee was not necessarily entitled to a reasonable accommodation (RA), unless the pregnancy caused additional medical issues, such as gestational diabetes. However, the PWFA has expanded the protection of pregnant employees such that an employer may now be required to grant an RA to a pregnant employee based on the pregnancy alone even if the employee has no other pregnancy-related illness or disability.*

*To be qualified under the PWFA:*

*An employee or applicant who can perform the "essential functions" of the job with or without an RA is qualified. "Essential functions" are the fundamental duties of the job. This is the same definition as qualified under the Americans with Disabilities Act (ADA).*

*However, under the PWFA, an employee can be considered "qualified" even if their pregnancy prevents them from performing the essential functions of their job as long as:*

- The inability to perform the essential functions of the job is "temporary;"*
- The employee could perform the essential functions "in the near future;" and*
- The inability to perform the essential functions can be reasonably accommodated.*

*This means that an employee who is temporarily unable to perform one or more essential functions of their job, and who therefore needs light duty or a change in their work assignments, may be able to get such a change as an RA.*

*The term "reasonable accommodation" is any modification to the work environment or policy and has much the same meaning as it does under the ADA. In virtually all cases, the following modifications will be found to be RAs that do not pose an undue hardship: (1) allowing an employee to carry or keep water near and drink, as needed; (2) allowing an employee to take*

*additional breaks, as needed, to eat and drink or use the restroom; and (3) allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed.*

*Other examples of RAs may include but are not limited to:*

- *Telework.*
- *Changing a uniform or dress code or providing safety equipment that fits.*
- *Changing a schedule, such as shorter work hours, part-time work, or a later start time.*
- *Temporary reassignment.*
- *Temporary suspension of one or more essential job functions.*
- *Leave for medical appointments and/or to recover from childbirth or other medical conditions related to pregnancy or childbirth.*
- *Light duty or help with lifting.*

*Also, a worker may need different accommodations at different times during the pregnancy or after childbirth.*

*The term "known limitation" is defined as a "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 covered entity, whether or not such condition meets the definition of disability" under the ADA.*

*The physical or mental condition that is the limitation is:*

- 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.*

*The physical or mental condition must be a condition of the employee (or applicant) themselves.*

### ***Processing PWFA Requests:***

*It is important to understand that the amount of medical documentation required to request an accommodation under the PWFA is not as extensive as requesting an RA under the ADA. Additionally, the PWFA does not require*

that documentation regarding the need for accommodation come from an Obstetrician/Gynecologist but can be from other sources.

- a. The employee will request an RA in writing or orally to the Reasonable Accommodation Coordinator (RAC) or to their supervisor.
- b. The RAC will begin the interactive process by determining the limitation relating to the request.
- c. The RAC will provide the Designated Management Official (DMO) information on the limitation.
- d. The DMO will have an interactive meeting with the employee to determine the essential functions and the accommodation.
- e. The DMO and the RAC must ensure that limitations caused by pregnancy or childbirth are clearly addressed by the RA.
- f. The DMO will complete the Accommodation Request Determination form (VA 0857f) and get it signed by the employee.
- g. The National Reasonable Accommodation Consultants (NRAC) must educate and inform all DMOs and RACs to recognize and appropriately respond to RA requests related to pregnancy or childbirth.
  - (1) The organization may not require pregnant employees to take leave (paid or unpaid) if another RA can be provided that would allow the employee to work (such as a stool to sit on).
  - (2) The organization cannot deny employment opportunities or take adverse actions against a pregnant employee because the employee was granted or requested an RA.
  - (3) In accordance with EEOC guidance to "focus on employee's qualification for the job, do not ask questions about pregnancy status, children, plans to start a family, other related issues."

For further guidance, please refer to [What You Should Know About the Pregnant Workers Fairness Act | U.S. Equal Employment Opportunity Commission \(eoc.gov\)](#).