



New Rights for Pregnant Workers, New Requirements for Employers: The Pregnant Workers Fairness Act of 2023

Pregnant workers in Maryland have long had a right to reasonable accommodations for disabilities related to pregnancy, both under the Americans with Disabilities Act ([ADA](#)) and the Reasonable Accommodations for Pregnant Workers Act ([RAPWA](#)), a 2013 Maryland state law.

Now, under the [Pregnant Workers Fairness Act](#) of 2023 (PWFA), employers are also required to provide “reasonable accommodations” for any employee’s “known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions.” But there is one major caveat: an employer does not need to provide accommodations that would cause them “undue hardship.”

Although the PWFA went into effect in 2023, the EEOC’s regulations carrying out the law only recently went into effect on June 18, 2024. The regulations provide more clarity as to how the law will be implemented nationwide.

Which employers and employees are covered by PWFA?

- The PWFA applies to all employers, public or private, with more than 15 employees
- The term “Employees” includes current employees and, when applicable, job applicants and former employees

What is a “known limitation”?

- A known limitation under the PWFA means “a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions” that the employee has communicated to the employer

§ “Related medical conditions” include medical conditions related to the following: “current pregnancy; past pregnancy; potential or intended pregnancy (which can include infertility, fertility treatment, and the use of contraception); labor; and childbirth.”

§ The rule provides a [non-exhaustive list of conditions](#) that are (or may be) related to pregnancy and childbirth, including termination of pregnancy, depression, and conditions related to lactation

What is a “reasonable accommodation”?

- [Examples of reasonable accommodations](#) include providing longer and more frequent breaks, changing work hours, or permitting temporary reassignment, telework, or light duty

What is meant by “undue hardship” to employers?

- The PWFA adopts the existing ADA definition for “undue hardship”: “an action requiring significant difficulty or expense.”
- However, the new rule identifies “predictable assessments” that are, in virtually all circumstances, reasonable accommodations that do not present an undue hardship to employers:
 - carrying water;
 - additional bathroom breaks;
 - permission to sit or stand as needed;
 - additional breaks to eat or drink.

Can employers request supporting documentation from pregnant employees requesting accommodations?

- Yes, but there are limitations to what employers can request. For example, employers cannot seek documentation for the accommodations identified above as “predictable assessments”

**This client alert is for informational purposes and is not legal advice. View [previous issues](#) of Monday Minute.*

What's Next?

Employers should act quickly to ensure that their handbooks and policies are compliant with the PWFA. If you would like to discuss how the new PWFA regulations will impact your organization, please reach out to our employment attorneys.

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