

Delivering A Preview of the Pregnant Workers Fairness Act



YOUR WORKPLACE IS OUR WORK.®

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Pregnant Workers Fairness Act

Current Employment Law Protections for Pregnant Women and New Mothers

- Pregnancy Discrimination Act (PDA)
 - Prohibits discrimination based on pregnancy, childbirth, or related medical conditions;
 - Protected women to be treated the same as “other persons ... similar in their ability or inability to work.”
 - 2015’s *Young v. UPS* (U.S. Sup. Ct.) “clarified” this by holding that a “plaintiff may reach a jury on this issue by providing sufficient evidence that the employer's policies impose a significant burden on pregnant workers...” To do so, a plaintiff may provide “evidence that the employer accommodates a large percentage of nonpregnant workers while failing to accommodate a large percentage of pregnant workers.”



Pregnant Workers Fairness Act

Current Employment Law Protections for Pregnant Women and New Mothers

- Americans with Disabilities Act (ADA)
 - 2008 ADA Amendments Act broadened definition of disability.
 - Subsequent regulations included pregnancy-related impairments as disabilities.
- Family Medical Leave Act (FMLA)
- Fair Labor Standards Act (as amended by PUMP Act)



Pregnant Workers Fairness Act

PWFA: Quick Facts

- Effective June 27, 2023.
- Covers employers with 15 or more employees.
- EEOC regulations to follow by 12/29/2024; informal guidance and infographics (not required postings) available now.
- PWFA claims must be exhausted through administrative charge filing process.



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PWFA Key Provisions

- Employer must reasonably accommodate the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee except where it would impose undue hardship;
- Employer must engage in interactive process to arrive at reasonable accommodation;
- Employer must not require leave—*paid* or not—if another reasonable accommodation can be provided;
- Employer must not deny opportunities because of anticipated need to make reasonable accommodations;



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PWFA Key Provisions

- Employer must not retaliate for requesting or using accommodation.
- Employer must not retaliate for opposing violations of this law or participating in an investigation, Charge, or suit under PWFA.
- Employer may access good faith defense against damages if it can demonstrate good faith efforts (including consultation with employee) to identify a reasonable accommodation that provides “an equally effective opportunity” but does not cause undue hardship.



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PWFA Reasonable Accommodation

- Employers must make reasonable accommodation (using ADA framework) as long as it does not impose undue hardship.
 - *Young v. UPS* established workers receiving ADA accommodations could be potential comparators for women with PDA claims; but this enshrines the right to the ADA process without needing an actual, similarly-limited comparator.
 - No minimum employment requirement; definition of employee includes applicants (consistent with other employment law).



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Accommodation Examples

- The ability to sit while working;
- A parking space closer to the workplace;
- Flexible hours;
- Receive appropriately sized uniforms and safety apparel;
- Receive **additional break time** to use the restroom, eat and rest;
- Be excused from either strenuous activities or activities that involve exposure to substances that are not safe during pregnancy;
 - *Note:* employers still may not initiate removing an employee from such activities.



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Accommodation Examples

- **Leave:**
 - Emergency leave (see *Walgreens PDA* case below);
 - Leave for appointments;
 - Leave to recover from childbirth (particularly if the employee is not eligible for FMLA);
 - Leave for a temporary defined period if employee unable to perform essential functions;
- **Task Reassignment**
 - Including limited duration task assignment of essential functions if not an undue hardship in the short term.



EEOC Activity on Pregnancy Claims

EEOC Charge Filing History

	2015	2016	2017	2018	2019	2020	2021	2022
Total Charges	89,385	91,503	84,254	76,418	72,675	67,448	61,331	73,485
Pregnancy Charges	3,543	3,486	3,174	2,790	2,753	2,698	2,261	2,273
% Pregnancy	4.0%	3.8%	3.8%	3.7%	3.8%	4.0%	3.7%	3.1%



EEOC Activity on Pregnancy Claims

EEOC Conciliation History

	2015	2016	2017	2018	2019	2020	2021	2022
Total Merit Resolutions	16,761	15,832	14,642	13,777	12,611	12,336	11,922	12,115
Pregnancy Resolutions	859	832	815	772	745	717	652	555
% Pregnancy	5.1%	5.2%	5.5%	5.6%	5.9%	5.8%	5.5%	4.6%
Total \$\$ (M)	\$356.6	\$348.0	\$355.6	\$353.9	\$346.6	\$333.2	\$350.7	\$342.1
Pregnancy \$\$ (M)	\$14.8	\$15.5	\$15.0	\$16.6	\$22.4	\$15.3	\$14.0	\$12.0
% Pregnancy \$	4.2%	4.4%	4.2%	4.7%	6.5%	4.5%	4.0%	3.5%



EEOC Activity on Pregnancy Claims

EEOC Litigation History

- No composite data specific to pregnancy, however, in a 2014 press release, the Commission touted it had brought 14 pregnancy-related suits, accounting for 18.4% of all Title VII suits (sex, race, color, national origin, religion) and 10.5% of all merits suits (Title VII + ADA, ADEA, GINA, EPA) it filed that year.
- Since then, the press releases tell the tale:
 - 5/15/2023: [EEOC Sues Corner Bar for Pregnancy Discrimination](#)
 - 4/28/2023: [EEOC Sues Dillard's for Retaliation](#)
 - 4/14/2023: [A.V.I. Sea Bar & Chophouse Restaurant to Pay \\$55,000 in EEOC Pregnancy Discrimination Lawsuit](#)
 - 4/13/2023: [Heartfelt Home Healthcare Services Settles Pregnancy Discrimination Lawsuit with EEOC](#) [\$20,000]



EEOC Activity on Pregnancy Claims

EEOC Litigation History

- The press releases tell the tale:
 - 4/12/2023: [Nursing Facility Symphony of Joliet to Pay \\$400,000 to Settle EEOC Pregnancy Discrimination Suit](#)
 - “In its lawsuit, the EEOC charged that Symphony, a skilled nursing and rehabilitation facility, implemented a policy **requiring employees to inform the company of any pregnancy and to obtain a note from their doctor releasing them to work without restrictions.**” [emphasis added]
 - 2/28/2023: [Aruba Airlines to Pay \\$75,000 to Settle EEOC Pregnancy Discrimination Lawsuit](#)
 - 1/19/2023: [Burger King Franchise to Pay \\$60,000 to Settle EEOC Sexual Harassment and Retaliation Suit](#)
 - 11/9/2022: [Circle K to Pay \\$8 Million to Resolve EEOC Disability, Pregnancy, and Retaliation Charges](#)





EEOC Activity on Pregnancy Claims

EEOC Litigation History

- The press releases tell the tale:
 - 11/16/2022: [Keystone Foods LLC to Pay \\$60,000 to Settle EEOC Pregnancy Discrimination Lawsuit](#)
 - 11/4/2022: [Ford Motor Company to Pay \\$115,000 to Settle EEOC Pregnancy Discrimination Case](#)
 - 9/28/2022: [Walgreens Sued by EEOC for Pregnancy and Disability Discrimination](#)
 - “No one should have to choose between losing a pregnancy and losing a job,” said Andrew Kingsley, a senior trial attorney in the EEOC’s New Orleans Field Office.
 - 9/27/2022: [EEOC Sues Dollar General for Pregnancy Discrimination](#)
 - 5/26/2022: [Restaurant Admits to Pregnancy Discrimination and Pays \\$30,000 to Resolve EEOC Lawsuit](#)
 - 5/16/2022: [Presidente Supermarket to Pay \\$75,000 to Settle EEOC Pregnancy Discrimination Lawsuit](#)



EEOC Litigation History

- The press releases tell the tale:
 - 4/26/2022: [DLS Engineering Associates to Pay \\$70,000 to Settle EEOC Pregnancy Discrimination Lawsuit](#)
 - “According to the EEOC’s suit, DLS offered a woman a position as an engineering logistics analyst in Jacksonville, Florida. After she told the company’s vice president that she was five months pregnant, he rescinded her offer, explaining the company could not hire someone who was pregnant.”



Pregnant Workers Fairness Act

Key Takeaways

- Covered employees need not prove ADA disability or comparator (*a la* PDA).
- “What can I do to help?”
 - “Congratulations! Please let us know how we can support you.”
 - “I see you’re having trouble with _____. What can I do to help?”
- Now is the time to get reasonable accommodation policies, practices, and training perfect.
 - For pregnancy (or disability), employee limitations, job duties, and business needs may evolve over time.



QUESTIONS & ANSWERS





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