

CHECKLIST | COMPLYING WITH THE PREGNANT WORKERS FAIRNESS ACT

Presented by Sullivan Benefits

The Pregnant Workers Fairness Act (PWFA) is a federal law that requires covered employers to provide reasonable accommodations to an employee or applicant's known limitations related to pregnancy, childbirth or related medical conditions unless it would cause undue hardship on the operation of the employer's business.

A reasonable accommodation is a modification or adjustment to a job, the work environment or the operations of the hiring process. These modifications enable an individual with known limitations related to pregnancy, childbirth or related medical conditions to have an equal opportunity not only to get a job but also to successfully perform their job responsibilities and tasks to the same extent as others.

This checklist outlines key steps to help employers comply with the PWFA's prohibitions and requirements. Other federal laws may also apply and overlap with some of these requirements, including Title VII of the Civil Rights Act, the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), and the Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act .

In addition to the PWFA, many states have their own laws that provide additional employment protections to employees and applicants with known limitations related to pregnancy, childbirth and related medical conditions. Accordingly, employers are encouraged to seek legal counsel to address specific issues and concerns.

Covered Employers

Is Your Company Subject to the PWFA?	Yes	No
<p>Is your organization subject to the PWFA?</p> <p>Select "Yes" if your organization is any of the following:</p> <ul style="list-style-type: none">• A private sector employer with 15 or more employees for at least 20 weeks in the current or preceding calendar year;• A state or local government agency with 15 or more employees for at least 20 weeks in the current or preceding calendar year;• An employment agency (such as a temporary staffing agency or recruitment company) of any size; or• A labor organization that operates a hiring hall or has at least 15 members. <p><i>If you answer "no," you can stop here. However, be sure to check any state employment laws that may apply to your organization.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>

Poster Requirement

Display Updated Notices	Completed
<p>Display the “Know Your Rights” posters (English version and Spanish version), which were updated in 2023 to include information about the PWFA, in conspicuous locations in the workplace where employees and applicants can readily see them.</p> <p>Employers are also encouraged to display the notices on their websites and may use the following for this purpose: PDF English version, Optimized for Screen Readers, HTML English version and HTML Spanish version.</p>	<input type="checkbox"/>

Administering PWFA Accommodation Requests

A request for reasonable accommodation starts an informal, interactive process between an employee (or applicant) and your organization. This process often begins by examining whether the requesting individual is “qualified” for reasonable accommodations under the PWFA.

Qualified Individual	Yes	No
<p>Is the individual able to perform the essential functions of their job with or without reasonable accommodation?</p> <p>If the individual is not able to perform one or more essential functions with or without accommodation, or if you have questions about whether this is the case, select “no” and proceed to the next question.</p> <p><i>If you answer “Yes,” go to “Interactive Accommodation Process.”</i></p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Will the individual be able to perform the essential function(s), with or without reasonable accommodation, with the benefit of a period of intermittent leave, after a period of part-time work, or at the end of a period of leave or time off?</p> <p>Select “No” and proceed to the next question if:</p> <ul style="list-style-type: none"> The individual is not requesting leave as a reasonable accommodation; or The individual is not expected to be able to perform the essential functions with the benefit of a period of intermittent leave, after a period of part-time work, or at the end of a period of leave or time off. <p><i>If you answer “Yes,” go to “Interactive Accommodation Process.”</i></p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Is the individual’s inability to perform the essential function(s) expected to last only for a temporary period that will end in the near future?</p> <p>Select “Yes” if the individual’s inability to perform the essential function(s) is not permanent and the individual is expected to be able to perform the essential functions within the next 40 weeks. For example, an individual who is three months pregnant will meet the definition because the pregnancy will be over in less than 40 weeks. The determination of “in the near future” must be made when the employee asks for each accommodation that requires the suspension of one or more essential functions.</p>	<input type="checkbox"/>	<input type="checkbox"/>

If you answer “No,” you can stop here. However, be sure to document the individual’s request and your finding that the individual is not qualified under the PWFA. Also, determine whether the individual qualifies for accommodations under the ADA or leave under the FMLA, and check any state employment laws that may apply to your organization.

Can the temporary inability to perform the essential function(s) be reasonably accommodated?

Depending on the situation, this may mean one or more essential functions are temporarily suspended, with or without reassignment to someone else, and the individual either:

- Continues to perform the remaining functions of the job;
- Performs other assigned tasks to replace the suspended functions;
- Performs another job to which you assign or transfer them; or
- Participates in your organization’s light or modified duty program (this must be considered even if an existing policy limits these programs to those with work-related injuries or otherwise).

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Select “Yes” if a temporary suspension of one or more essential functions can be reasonably accomplished without causing undue hardship.

Throughout this process, as with other reasonable accommodation requests, an employer may need to consider more than one alternative to identify a reasonable accommodation that does not pose an undue hardship. Depending on how the temporary suspension is accomplished, the employer may also need to prorate certain production standards.

If you answer “No,” you can stop here. However, be sure to document the individual’s request and your finding that the individual is not qualified under the PWFA. Also, determine whether the individual qualifies for accommodations under the ADA or leave under the FMLA, and check any state employment laws that may apply to your organization.

Interactive Accommodation Process	Yes	No
<p>Has a qualified individual communicated the need for an accommodation?</p> <p>A covered entity’s responsibility to engage in an interactive process with an employee or applicant is triggered if the individual (or a representative of the individual, such as a family member) communicates that the individual:</p> <ul style="list-style-type: none"> • Has a limitation related to pregnancy, childbirth or a related medical condition; and • Needs an adjustment or change at work. <p>Requests can be informal and do not need to be in writing or include any specific phrases or terms to start the interactive process under the PWFA.</p> <p><i>If you answer “No,” you can stop here.</i></p>	<input type="checkbox"/>	<input type="checkbox"/>

Interactive Accommodation Process	Yes	No
<p>Provide any interim reasonable accommodations that meet the individual's needs while the interactive process is conducted.</p> <p>An individual may have an urgent need for a reasonable accommodation due to the nature or sudden onset of a known limitation under the PWFA. For example, a pregnant employee may ask for immediate leave to see a health care provider upon experiencing a symptom that may indicate more serious problems. As a best practice, a covered entity should consider providing an interim reasonable accommodation that meets the individual's needs while the interactive process is conducted.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Create and maintain separate confidential records of the individual's request and the entire accommodation process.</p> <p>Start recordkeeping as soon as you receive an accommodation request. Keep documenting as long as the employee remains at your organization and for at least one year after the record is made or the personnel action is taken.</p> <p>You should document every step of the process, including how you:</p> <ul style="list-style-type: none"> Analyzed the particular job involved and determined its purpose and essential functions; Consulted with the employee with a known limitation to ascertain what kind of accommodation is necessary given the known limitation; Identified potential accommodations and assessed the effectiveness of each; and Considered the preference of the employee to be accommodated; and Selected and implemented the accommodation that is most appropriate for both the employee and covered entity. <p>To comply with the PWFA, these records must be kept confidential and stored separately from the employee's personnel file.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Gather information about the individual's condition and limitations.</p> <p>When the individual's limitations are not obvious or already known, an employer may ask the individual for more information and, in some cases, supporting documentation.</p> <p>Organizations may require medical documentation for a PWFA accommodation request only if it is reasonable to do so under the circumstances to determine whether to grant an accommodation. In addition, employers may only require the documentation to confirm or describe:</p> <ul style="list-style-type: none"> The physical or mental condition; The fact that the condition is related to, affected by or arises from pregnancy, childbirth or related medical conditions; and The fact that a change or adjustment at work is needed for that reason. 	<input type="checkbox"/>	<input type="checkbox"/>

Interactive Accommodation Process	Yes	No
<p>In general, employers should allow an individual affected by pregnancy, childbirth or a related medical condition to do the following without requiring the individual to submit medical documentation:</p> <ul style="list-style-type: none"> • Carry and drink water; • Sit or stand ; • Take extra bathroom breaks; and • Take extra breaks to eat or drink. <p>These requested modifications will virtually always be found to be reasonable accommodations that do not impose an undue hardship.</p>		
<p>Engage with the individual to identify options for an effective and reasonable accommodation.</p> <p>When an employee or applicant requests an accommodation, the appropriate accommodation may be obvious, or the individual may suggest a reasonable accommodation based upon their life or work experience. However, when the appropriate accommodation is not readily apparent, employers must make a reasonable effort to identify one. The best way to do this is to consult with the individual about potential accommodations that would enable them to participate in the application process or perform the essential functions of the job.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Evaluate whether the requested accommodation would create an undue hardship for your organization.</p> <p>An employer does not have to provide an accommodation that would cause an “undue hardship” to its organization. Undue hardship means that the accommodation would be significantly difficult or expensive when considered in light of several factors.</p> <p>In determining whether an accommodation would impose an undue hardship on a covered entity, some factors, with no one factor to be dispositive, include:</p> <ul style="list-style-type: none"> • Nature and net cost of the accommodation; • Overall financial resources of the facility or facilities involved in providing the reasonable accommodation, including the number of persons employed at such facility and the effect on expenses and resources; • The overall financial resource and size of the covered entity with respect to the number of its employees and the number, type and location of its facilities; • The type of operation or operations of the covered entity, including the composition, structure and functions of its workforce, the geographic separateness, and the administrative and fiscal relationship of the facility or facilities in question to the covered entity; and • The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility’s ability to conduct business. 	<input type="checkbox"/>	<input type="checkbox"/>

Interactive Accommodation Process	Yes	No
<p>If a particular accommodation would create an undue hardship, a covered entity must try to identify another accommodation that will not pose such an undue hardship.</p> <p>Note that certain modifications will virtually always be considered reasonable and not undue hardship under the PWFA. These include allowing a qualified individual to:</p> <ul style="list-style-type: none"> • Carry and drink water as needed; • Sit or stand; • Have extra bathroom breaks; or • Have extra breaks to eat and drink as needed. 		
<p>Select an effective and reasonable accommodation for the individual.</p> <p>Employers may choose among reasonable accommodations as long as the chosen accommodation is effective, meaning it would remove a workplace barrier that is impeding the individual. If there are two possible reasonable accommodations, and one costs more or is more burdensome than the other, a covered entity may choose the less expensive or burdensome accommodation as long as it is effective. However, an employer's ultimate discretion to choose an accommodation may also be limited by other factors.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Implement the selected accommodation and monitor its effectiveness.</p> <p>A covered entity's duty to provide reasonable accommodation is ongoing. Some individuals require only one reasonable accommodation, while others may need more than one. Others may need one reasonable accommodation for a time and then, at a later date, require another type of reasonable accommodation. If a reasonable accommodation turns out to be ineffective and the employee with known limitations related to pregnancy, childbirth or related medical conditions remains unable to perform an essential function, employers must consider whether there would be an alternative reasonable accommodation that would not pose an undue hardship.</p>	<input type="checkbox"/>	<input type="checkbox"/>

Use this checklist as a guide when reviewing your company's compliance with the PWFA. For assistance, contact Sullivan Benefits.