

Pregnant Workers Fairness Act: Understanding Employer Obligations

Frequently Asked Questions: Medical Certifications

What is the Pregnant Workers Fairness Act?

PWFA is a new federal law that requires employers to reasonably accommodate employees who need changes at work because of pregnancy, childbirth, and related medical conditions. To learn more about PWFA, see guidance from the [Equal Employment Opportunity Commission](#).

This briefing is intended to assist employers in understanding their rights and obligations under the new law with regard to requesting medical documentation of pregnancy-related health needs.

What does PWFA say about requesting medical certification?

The Pregnant Workers Fairness Act does not explicitly authorize employers to request medical certification, unlike similar laws requiring work modifications such as the Americans with Disabilities Act (ADA) and Family and Medical Leave Act (FMLA). However, the Equal Employment Opportunity Commission (EEOC) - the federal enforcement agency tasked with interpreting PWFA - issued proposed regulations¹ that would allow employers to request reasonable medical documentation in certain circumstances. The EEOC's guidance could change when it issues its final regulation, but this document recommends best practices based on what we know at this time from the proposed rule.

When are employers permitted to seek medical documentation?

The EEOC's proposed rule states that employers are "limited to requiring documentation that is reasonable under the circumstances for the covered entity to determine whether to grant the accommodation."² The proposed rule first provides a non-exhaustive list of four situations when it is *not* reasonable to request documentation. Under the proposed rule, **employers are prohibited from seeking documentation when:**

- The need for accommodation is obvious (e.g., an employee needs a larger uniform to accommodate their growing abdomen due to pregnancy).
- When the employee or applicant has already provided sufficient information to substantiate that they have a limitation and need an accommodation (e.g., an employee who normally works 9-hour shifts has provided a note from a nurse-midwife stating that they are unable to work shifts of longer than 5 hours in duration due to pregnancy).
- When the pregnant employee is requesting any of the following accommodations: permission to carry a water bottle, to sit, to stand, or to take additional breaks for going to the bathroom, eating, or drinking. When these specific pregnancy accommodations are at issue, employers should not seek medical documentation.
- When the employee is seeking an accommodation for lactation/breastfeeding needs.

¹ 88 Fed. Reg. 54714, Notice of Proposed Rulemaking, RIN 3046-AB30, Regulations to Implement the Pregnant Workers Fairness Act, August 11, 2023.

² 88 Fed. Reg. 54769.

In any of these four situations,³ requesting documentation (or further documentation) puts an employer at legal risk.⁴

What type of medical documentation are employers permitted to request?

In its proposed regulations, the EEOC states that employers can request only reasonable documentation, which means “documentation that is sufficient to describe or confirm the physical or mental condition; that the condition is related to, affected by, or arising out of pregnancy, childbirth, or a related medical condition; and that a change or adjustment at work is needed.”⁵

Note that under PWFA, employers must accommodate physical or mental conditions that “the employee or the employee’s representative has communicated to the employer whether or not such condition meets the definition of disability specified in [the ADA].”⁶ Because employees are not required to establish that they have a disability to be entitled to PWFA accommodation, ***the use of ADA paperwork designed to assess whether the employee’s health condition rises to the level of disability is inappropriate.***

How to Ensure Compliance in Documenting PWFA Requests

The EEOC has stated that making unreasonable requests for medical documentation, and delaying or denying requests because an employee has not responded to an unreasonable documentation request, may constitute unlawful coercion, retaliation, and/or failure to accommodate.⁷ The safest practice for avoiding legal liability is to not request medical documentation, particularly when the employee has communicated a limitation that is typically associated with pregnancy or has already turned in a letter from a healthcare provider stating that they need an accommodation due to pregnancy. In such cases, the best practice is to provide, without delay, an accommodation that does not impose an undue hardship to business operations.

Be aware that the laws of some states and local jurisdictions also require employers to provide certain pregnancy accommodations upon request, without medical certification.

How to Request Medical Documentation

When it is reasonable to seek documentation, employers may ask an employee seeking a PWFA accommodation to turn in paperwork that asks their healthcare provider⁸ to:

1. Describe or confirm the employee’s physical or mental condition;
2. Indicate whether the condition is related to, affected by, or arising out of pregnancy, childbirth, or a related medical condition; and

³ 88 Fed. Reg. 54769

⁴ 88 Fed. Reg. 54771 (“requiring supporting documentation when it is not reasonable under the circumstances for the [employer] to determine whether to provide the accommodation is a violation”).

⁵ 88 Fed. Reg. 54769.

⁶ 88 Fed. Reg. 54766.

⁷ 88 Fed. Reg. 54771.

⁸ In its proposed regulations, the EEOC has proposed defining “healthcare provider” to include doctors, doulas, midwives, psychologists, nurses, physical therapists, licensed mental health providers, or similar healthcare providers. 88 Fed. Reg. 54769.

3. State that a change or adjustment at work is needed. Healthcare providers are not required to identify a particular accommodation, although they may do so.

Medical certification forms that have been designed for requests under the ADA and/or FMLA would typically run afoul of the EEOC's guidelines, as those forms normally seek detailed information about the employee's health history and prognosis, consent to contact the medical care provider, and/or an evaluation of whether the employee can perform their various job functions. Such information and consent is not reasonable under the PWFA and should not be sought.

Keep in mind that pregnancy accommodations may be needed on an urgent basis to avoid health complications. Most pregnant people do not have immediate access to a medical care provider for completing paperwork. Thus, the best practice for employers waiting to receive medical documentation is to **provide a temporary interim accommodation**. In its proposed regulations, the EEOC states that an unnecessary delay in providing accommodation may result in a PWFA violation, but that delay is more likely to be excused when an interim accommodation is provided.⁹

As with ADA and FMLA paperwork, any medical information the employer receives **must be treated confidentially** and kept separate from the employee's personnel file. Private medical information can be shared with a supervisor only to the extent that disclosure is necessary to provide the accommodation, but the supervisor must also treat the information as confidential.

Questions?

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⁹ 88 Fed. Reg. 54770.