

# Understanding and Using the EEOC's New Pregnant Workers Fairness Act (PWFA) Regulations

Center for WorkLife Law and ACLU in partnership with NELA

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## Agenda

- **“Pregnancy, childbirth, and related medical conditions”**
- **Procedures for identifying “reasonable accommodations”**
- **Permissible (& impermissible) requests for documentation**
- **Employer delay & interim accommodations**
- **Temporary suspension of “essential functions”**
- **Q&A**

## “Pregnancy, Childbirth, or Related Medical Conditions”

- 29 C.F.R. 1636.3(b) – Comprehensive list of conditions “related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions”
- Includes conditions before, during, and after pregnancy
- *See also* Interpretive Guidance, Section III ¶¶ 15-22 & nn. 23-27.

## **“Limitation”**

29 C.F.R. § 1636.3(a)(2):

- “[R]elated to, affected by, or arising out of pregnancy, childbirth, or related medical conditions”
- [M]ay be “modest, minor and/or episodic”
- Includes needs related to maintaining health, i.e., preventive
- Includes medical appointments

## Requesting and Identifying Reasonable Accommodations

29 C.F.R. § 1636.3(a)(1): “Known” limitation means employee has communicated the limitation to employer

- Supervisor
- Manager
- Someone with supervisory authority or who regularly directs work
- HR personnel
- “Another appropriate official”
- Steps in employer’s accommodation policy

## Interactive Process

29 C.F.R. § 1636.3(k):

- Informal
- Intended to identify limitation + change that is needed
- Potential reasonable accommodations
- “No rigid steps that must be followed.”
- Entire process may occur in the course of one conversation
  - *See* Interpretive Guidance, Section III ¶ 107

## Identifying Reasonable Accommodations

29 C.F.R. § 1636.3(h)-(i):

- Alleviating pain or risk to health
- Time off
- Sparring from penalty (e.g., attendance policies)
- Sitting/standing
- Telework
- Parking
- Modifying uniforms/PPE
- Time/space to pump
- Temporary suspension of essential function

N.B. “Predictable assessments,” 29 C.F.R. § 1636.3(j)(4)(i)-(iv)

## Requests for Documentation

29 C.F.R. § 1636.3(I):

- An employer is **not required** to request documentation
- An employer is **permitted** to request supporting documentation, but “**only when it is reasonable under the circumstances**”
- **May may only request “reasonable documentation”**
  - No particular form required
  - Definitely not same form as used for ADA or FMLA



## Requests for Documentation (cont'd)

- “Unreasonable” documentation can support liability (failure to accommodate, retaliation, coercion)
  - Liability for failure to accommodate can arise from:
    - Denying accommodation due to insufficient documentation
    - Unnecessary delay caused by unreasonable documentation
    - Failure to provide interim accommodation while documentation gathered/evaluated
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## Temporary Suspension of Essential Function

An employee may be “qualified” even if temporarily unable to perform the essential functions of the job if:

- Any inability to perform the essential function is **temporary**;
- The essential function could be performed “**in the near future**”; and
- The inability to perform the essential function can be **reasonably accommodated**.

## Temporary Suspension of Essential Function (cont'd)

“In the near future” = case by case determination

- If pregnant, presumed able to perform within 40 weeks = near future
- If not pregnant = no specific length, case by case

Interpretive Guidance, Section III ¶ 43: Each request for accommodation necessitates distinct inquiry

## **PWFA and Other Statutes**

- Americans with Disabilities Act (ADA)
- Title VII/Pregnancy Discrimination Act (PDA)
- Family and Medical Leave Act (FMLA)
- Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act
- Occupational Safety and Health (OSH) Act
- State and local statutes

**29 C.F.R. 1636.7; Interpretive Guidance Section VI ¶¶ 1-22**

# Q&A

# Contact Us



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