



## NATIONAL WOMEN'S LAW CENTER

Justice for Her. Justice for All.

MARCH 2023 | FACT SHEET

### KNOW YOUR RIGHTS

# Pregnant Workers Fairness Act

In December 2022, President Biden signed the Pregnant Workers Fairness Act into law. This new federal law provides pregnant workers with the right to reasonable workplace accommodations to help them do their jobs while protecting their health and the health of their pregnancies. This document explains the new rights for pregnant workers under this law. The law will go into effect on June 27, 2023.<sup>1</sup>

## What is the Pregnant Workers Fairness Act?

The Pregnant Workers Fairness Act (PWFA) is a new federal law that requires employers to make reasonable accommodations for employees who have a known limitation due to pregnancy, childbirth, or related medical conditions, unless the accommodation poses an undue hardship to the employer.

## Am I covered by this law?

The PWFA covers all employees who work for an employer with more than 15 employees, including both public and private employers. It covers people who need accommodations because they are pregnant or have just given birth, or who need accommodations because of medical conditions related to pregnancy.

## What is a medical condition related to pregnancy or childbirth?

The PWFA requires employers to accommodate employees who have limitations related to “pregnancy, childbirth, or related medical conditions.” The law itself does not define “related medical conditions,” but it is the same language used in the Pregnancy Discrimination Act, which the Equal Employment Opportunity Commission and the courts have been interpreting for over 40 years. “Related medical conditions” includes illnesses, complications, and symptoms that an employee is experiencing as a result of pregnancy or childbirth. Some examples of “related medical conditions” include:

- Morning sickness
- Gestational diabetes
- Pregnancy-induced hypertension
- Pregnancy-related carpal tunnel syndrome
- Miscarriage
- Sciatica
- Lactation or the need to express breast milk
- Recovery from abortion
- Physical injuries from childbirth
- Postpartum depression

<sup>1</sup> The Equal Employment Opportunity Commission is required to issue rules implementing the law and providing examples of reasonable accommodations by the end of 2023.

## How do I ask for a workplace accommodation?

[Accommodating pregnant workers is good for business!](#)

But telling your employer you are pregnant or need an accommodation may be stressful. The law does not require that you say any “magic words” or have a doctor’s note stating that you need an accommodation, but it can be helpful to have a plan for what you will say and how you will say it. Your employer might have guidance on the process for seeking accommodations in its employee handbook or antidiscrimination policy. You can also ask a supervisor or someone in Human Resources (if your employer has an HR department) if there are relevant policies or procedures.

When you make your request, you should state clearly that you need an accommodation, and tell your employer you are willing to work with them to figure out an accommodation that works for you and the business. You can ask for the specific accommodation you need—like not lifting more than 25 pounds or telecommuting for a few weeks because your doctor has told you to stay on bedrest—or you can offer several options for what might work for you. Your employer might suggest other ways to accommodate your needs. This conversation is sometimes called an “interactive process.” If you are temporarily unable to perform one of the essential functions of your job, a temporary accommodation may still be reasonable even if it does not enable you to perform that essential function, if you will be able to again perform the essential function in the near future. Your employer cannot discriminate or retaliate against you because you asked for an accommodation, even if in the end your employer determines that the accommodation you asked for is not reasonable.

## Do I need to prove I have a disability to be eligible for an accommodation?

No, you do not need to have a disability in order to be eligible for an accommodation under the PWFA. The PWFA guarantees workers experiencing pregnancy, childbirth, or related medical conditions the right to reasonable workplace accommodations for “known limitations.” A “known limitation” is a physical or mental condition that is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions. The law specifically states that a “known limitation” does not have

to meet the definition of disability under the Americans with Disabilities Act. Workers with normal, uncomplicated pregnancies, for example, may experience pregnancy-related limitations that are covered under the PWFA.

## What kinds of accommodations can I ask for?

Accommodations are personalized changes to your job to help you stay safe and on the job. [The Job Accommodation Network](#) can help you brainstorm what kinds of accommodations you might ask for. Some examples of accommodations:

- An employer might be required to modify a no-food-or-drink policy for a pregnant employee who experiences painful or potentially dangerous uterine contractions when she does not regularly drink water.
- An employer might be required to provide a stool to a pregnant cashier who was experiencing leg pain and swelling from standing for long periods of time.
- An employer might be required to reassign heavy lifting duties to other employees for some portion of an employee’s pregnancy.
- An employer might be required to provide an available light duty position to a pregnant police officer who was temporarily unable to go on patrol because no bulletproof vest would fit her.
- An employer might be required to allow an employee to use an empty office as a lactation room.
- An employer might be required to modify an employee’s schedule to allow time to attend a doctor’s appointment related to pregnancy or childbirth—for example, to address post-partum depression or to have an abortion.
- An employer might be required to allow an employee to take time off to physically recover from childbirth, even if she was not eligible for leave under the Family and Medical Leave Act because she had only recently started working for the employer.

## Does my employer need to give me an accommodation?

The Pregnant Workers Fairness Act requires your employer to provide you with a reasonable accommodation unless the accommodation would cause the business an “undue hardship.” Generally, undue hardship means that providing the accommodation would be a significant expense or difficulty for your employer.

Although your employer is required to provide an accommodation if it does not pose an “undue hardship,” your employer is not required to give you the exact accommodation you asked for, so long as the accommodation provided effectively addresses your limitation. Your employer should discuss your needs with you and can suggest alternative accommodations in what’s called an “interactive process” where you work together to find the best outcome. Your employer cannot force you to accept an accommodation that wasn’t arrived at through the interactive process.

If your employer is a religious institution, it may be able to deny you an accommodation—but only in limited circumstances. Religious institutions can prefer someone of the same religion in making accommodations. For example, if a church was choosing between making a job answering questions from prospective congregants available to a pregnant worker as a light duty assignment, or hiring someone who is a member of the church’s denomination to fill that role, it could choose to hire someone new rather than provide the accommodation, without violating the PWFA. Your employer, however, should continue to work with you through the interactive process to try to find another reasonable accommodation.

## Can my employer force me to take leave because I need a pregnancy accommodation?

No. Your employer cannot require you to take leave if there is another reasonable accommodation the employer can provide that would let you keep working.

## My employer is refusing to give me an accommodation. What should I do?

If your employer refuses to give you an accommodation, be sure to document what happened. It is a good idea to keep notes, any email correspondence, and a timeline

about your request for an accommodation and your employer’s response. Check to see if your employer has an accommodations or anti-discrimination policy. This may be on the employer’s website or in an employee handbook.

You can also ask a supervisor or someone in Human Resources (if your employer has an HR department) whether there are relevant policies if you do not already have them. Ask for a copy.

Because the PWFA is new, your employer might not be aware of their obligations under this law. If your employer hasn’t heard of the PWFA, you can share guidance about the law from the Equal Employment Opportunity Commission (EEOC): “[What You Should Know About the Pregnant Workers Fairness Act.](#)”

If you believe your employer is violating the PWFA, you can go to the EEOC, which is the federal agency in charge of enforcing the PWFA. If you want to talk to a lawyer about your rights and options under the PWFA, you can contact the Legal Network for Gender Equity, administered by the National Women’s Law Center Fund, by filling out an intake form online (see the section below on “How can I find a lawyer?” for links and more information).

## Can my employer punish me for asking for a reasonable accommodation, or for bringing a complaint under the PWFA?

No—this is retaliation. Retaliation is illegal. You may have been retaliated against if after letting your employer know you need an accommodation or seeking to enforce your rights under the PWFA you have experienced termination; demotion; discipline or threats; reduced hours and thus reduced pay; increased scrutiny or lower performance evaluations; transfer to a less desirable position; verbal or physical abuse; being reported or threatened with being reported to immigration authorities; or less desirable work assignments.

If you are worried that your employer is retaliating or discriminating against you because you asked for an accommodation or tried to enforce your rights, it is a good idea to write down dates, times, and descriptions of anything that could be retaliation and keep any relevant emails, letters, disciplinary documents, or other written records.



If you are experiencing retaliation or other behavior that may constitute pregnancy discrimination and your employer has a workplace nondiscrimination policy, follow the steps in the policy to report the retaliation and discrimination. If there is no policy, talk with a supervisor, a human resources representative, or someone else in a position of power at the organization who you trust who may be able to help. Explain what is happening and ask for that person's help in getting the behavior to stop.

You can consider bringing a coworker or union representative with you to speak with a supervisor or HR. It can help to have someone you trust with you when going into a meeting.

If your employer has no policy and there is no one at your organization who you can talk with without being retaliated against (for instance, you work at a company with 15 employees and the person harassing you is the CEO), you can reach out to a lawyer by contacting the Legal Network for Gender Equity.

## If my employer has violated my rights under the Pregnant Workers Fairness Act, what can I do?

If you want to bring a legal claim against your employer, you must file a charge of discrimination with the EEOC. Normally (unless you work for the federal government, in which case special requirements, described below, apply), you must file a charge of discrimination within 180 days of the unlawful act. The 180-day filing deadline may be extended to 300 days if the claim also is covered by a state or local anti-discrimination law, but it is best not to wait to file a charge. While an attorney can be helpful in this process, you do not need an attorney to file a charge of discrimination with the EEOC.

To file a claim with the EEOC, you can submit a complaint using their online portal—[publicportal.eeoc.gov](https://publicportal.eeoc.gov)—or by going to an EEOC office in person. To find your nearest EEOC office location, visit [www.eeoc.gov/field-office](https://www.eeoc.gov/field-office). When you file a charge, you will be asked some questions about yourself, your work and your job history, and about the discrimination that took place. The EEOC may also reach out to your employer to get more information about what happened. After you file a charge, the EEOC may investigate what happened. They will send a copy of the charge to your

employer and they may also reach out to them as part of the investigation. The EEOC will then make a decision about whether or not discrimination likely took place. If the EEOC cannot determine that discrimination took place, it will end its investigation and provide you a “right to sue” letter. If it determines that discrimination likely took place, it will work with you and your employment to try to get your employer to settle your claim. You may also choose to participate in a mediation. If your employer agrees to mediation, this process may take place before or during the investigation. If a settlement is not reached, either the EEOC will bring a lawsuit against your employer or it will issue you a “right to sue” letter. If you do not wish to continue with the EEOC's investigation process and prefer to bring a lawsuit, at any time after 180 days have passed since you filed your charge you can ask for and obtain a “right to sue” letter from the EEOC. The “right to sue” letter allows you to file a lawsuit in court. Once you receive the “right to sue” letter, you only have 90 days to start a lawsuit in court.

To contact the nearest EEOC office in your area by phone, call 1-866-408-8075. The system will automatically recognize your area code and connect you to the office that corresponds with the area code associated with your phone number. You can ask your local EEOC office how to contact any state or local agencies in your area. Many states and localities have Fair Employment Practices Agencies where you can instead file a charge that will automatically be “dual filed” with the EEOC.

**IF YOU ARE AN EMPLOYEE OF A FEDERAL GOVERNMENT AGENCY**, you must first contact the agency's Equal Employment Opportunity (EEO) counselor within 45 days of the date the discrimination occurred. The EEO counselor will try to resolve the issue and if it fails to do so will give you notice about how to file a formal complaint. If you decide to file a formal complaint, you must do so with the agency's EEO office within 15 days from the day you receive notice. When the agency completes its investigation, it will issue a notice allowing you to either request a hearing before an EEOC Administrative Judge, or to request that the agency decide about whether discrimination occurred. If the agency finds no discrimination occurred, or if you disagree with the decision, you can appeal the decision to the EEOC or file a lawsuit in federal court.



## Do I have any other rights to accommodation under state or federal law?

Maybe. To learn more about the different protections for pregnant workers under the Pregnancy Discrimination Act, the Americans with Disabilities Act, and the Family and Medical Leave Act, please refer to NWLC's fact sheet: [Pregnant At Work? Know Your Rights](#). In addition, many states have their own pregnancy accommodation laws that may cover more employees or provide more protections than the federal law. You can refer to NWLC's fact sheet on [Pregnancy Accommodations in the States](#) to find out more about whether your state has such a law.

To learn more, visit our website at [www.nwlc.org](http://www.nwlc.org).

## HOW CAN I FIND A LAWYER?

One option for finding a lawyer is to contact the Legal Network for Gender Equity, administered by the National Women's Law Center Fund. The Legal Network is made up of attorneys who litigate sex discrimination matters, including pregnancy discrimination matters. If you contact the Network, you will be connected to three lawyers in the Legal Network for Gender Equity who practice in your area. Lawyers in the Legal Network agree to do a free initial meeting with people coming to them through the Legal Network. Some of these lawyers also offer lower rates or free assistance, and some work on contingency, meaning they will only get paid if you win your case, but others require payment after the first meeting.

To contact the Legal Network for Gender Equity, fill out an online intake form here: <https://nwlc.org/legal-assistance> or call us at: 202-319-3053.

You can also check the National Employment Lawyers Association attorney database here: <http://exchange.nela.org/memberdirectory/findalawyer>.

You may also find legal help through the American Bar Association Directory: [https://www.americanbar.org/groups/legal\\_services/flh-home/flh-bar-directories-and-lawyer-finders](https://www.americanbar.org/groups/legal_services/flh-home/flh-bar-directories-and-lawyer-finders).

## DISCLAIMER

This factsheet does not constitute legal advice; individuals and organizations considering legal action should consult with their own legal counsel before deciding on a course of action.

