

Pregnancy Accommodation Model Policy *Explanation and Implementation Tips*

EMPLOYERS SHOULD SEEK THE ADVICE OF THEIR EMPLOYMENT LAWYER before adopting this policy. This policy is not legal advice and may not be construed as legal advice. It may not adequately or accurately reflect the laws that govern a particular employer’s legal obligations to accommodate pregnant employees.

More information about pregnancy accommodation laws is available at www.pregnantatwork.org/accommodating-pregnant-employees and www.workfamilyinsight.com/pregnancy-and-lactation-accommodation.

If you have questions or comments about this model policy, please contact us at info@worklifelaw.org or info@workfamilyinsight.com.

Explanation of Policy Provisions

Policy Provision	Explanation
[Employer] is committed to supporting you if you need accommodations (temporary changes to how, when, or where you work) due to pregnancy, childbirth, or related medical conditions. [Employer] will provide you with an accommodation so long as it will not create an undue hardship for the company.	An introductory section should set a positive tone and affirm that the employer supports its employees.
Applicability This policy applies to all employees and job applicants of [Employer].	The federal Pregnant Workers Fairness Act (PWFA), 42 U.S.C. § 2000gg <i>et seq.</i> , which is the primary source of employers’ legal obligations to accommodate pregnant employees, applies to employees and applicants.
Covered Conditions [Employer] provides reasonable accommodations for limitations that arise from pregnancy, childbirth and related medical conditions or are made worse by pregnancy, childbirth, and related medical conditions. Examples of related medical conditions include	The regulations that implement the PWFA, 29 C.F.R. § 1636.3(b), give examples of limitations that are pregnancy-related medical conditions, some of which are repeated here. The Pregnancy Discrimination Act, 42 U.S.C. § 2000e(k),

<p>infertility and fertility treatment, use of contraception, miscarriage, stillbirth, abortion, and lactation.</p>	<p>also applies to pregnancy-related medical conditions.</p>
<p>Limitations can be physical or mental conditions, and do not have to be severe or disabling. Examples of limitations include common pregnancy symptoms (such as fatigue and nausea), pregnancy conditions (such as high-risk pregnancy or gestational diabetes), and postpartum conditions (such as depression and back pain). Limitations also include the need to maintain a healthy pregnancy (such as obtaining healthcare or taking water breaks), the need for safety (such as avoiding chemical exposure), and the need to alleviate pain (such as switching between sitting and standing to ease pain).</p>	<p>This section defines “limitations.” The most important points are that they can be physical or mental, and they do not have to be severe. The definition is taken from the PWFA regulations, 29 C.F.R. § 1636.3(a)(2).</p>
<p>Accommodation</p> <p>An accommodation is a change in how, when, or where you work. Your supervisor or the Human Resources department (HR) will work with you to determine the appropriate accommodation for your limitation and set up necessary changes. Examples include:</p> <ul style="list-style-type: none"> • Additional breaks as needed to rest, use the restroom, drink, or eat • Periodic sitting or standing, as needed • Part-time or modified work schedules • Time off for prenatal appointments • Changes to job duties • Assistance with lifting • Reassignment to an open position • Work location closer to home or medical facilities • Excusal from travel • Remote work, including working from home • Continuous or intermittent leave • Lactation breaks and an appropriate space for pumping <p>Accommodations are to be individually tailored to meet your specific needs. More than one accommodation may be necessary.</p>	<p>The examples in this provision are derived from the PWFA regulations, 29 C.F.R. § 1636.3(i). The list is not exhaustive, as each employee’s needs will be unique. Note that it will often be necessary to combine two or more accommodations. For example, if an employee needs to work from home but has some duties that cannot be done remotely, the employee’s job duties will be changed (or the employee reassigned temporarily) and the employee will be allowed to work remotely.</p>

<p>How to Request an Accommodation</p> <p>If you need a change at work due to pregnancy, childbirth, or a related medical condition, you (or someone acting on your behalf) should tell your supervisor, anyone who regularly directs your work, HR, or anyone in management. Job applicants should tell their point of contact in the hiring department, HR, or anyone in management. You may tell the person orally or in writing.</p>	<p>This provision instructs employees about how to make their limitations known to the employer. As stated in the PWFA regulations, 29 C.F.R. § 1636.3(a), a representative of the employee can notify the employer on the employee’s behalf. The content of the notice – simply that the employee has a limitation related to pregnancy, childbirth or a related medical condition and needs a change at work – is set out in 29 C.F.R. § 1636.3(h)(2). The regulations also state to whom the notice may be given, including the people noted here. 29 C.F.R. § 1636.3(d).</p>
<p>You may be asked to complete a request form or the person you tell will do it for you. This is not required but helps [Employer] to understand your needs and what accommodation(s) would be appropriate. You will be asked to identify your limitation, confirm that it is related to pregnancy, childbirth, or a related medical condition, identify or describe the change that you need, and state how long you expect to need the accommodation or change. You do not need to describe your symptoms or provide a particular diagnosis beyond explaining that it is pregnancy-related. All information that you provide will be handled under [Employer]’s confidentiality policy for medical information.</p>	<p>The PWFA regulations state that employers cannot require the use of a specific form to request a reasonable accommodation. 29 C.F.R. § 1636.3(d)(2). This provision refers to a voluntary use of a form, but if the employee does not fill out a form, we suggest that HR or the employee’s supervisor fill out a form documenting the request. WorkLife Law and Work+Family Insight have created an accommodation request form that complies with the PWFA. It can be found on each organization’s website.</p> <p>Note that all medical information received in connection with a PWFA accommodation request, including the employee’s pregnancy, must be treated confidentially in accordance with the Americans with Disabilities Act (ADA).</p>
<p>Note that you are not required to disclose your pregnancy if you do not want to. If you do not want to disclose, instead of requesting a pregnancy accommodation, you may request a reasonable accommodation under [Employer]’s disability policy. Please note that not all pregnancy-related symptoms will qualify as disabilities. For more information,</p>	<p>Employees who do not wish to disclose their pregnancy may be entitled to reasonable accommodations under laws other than the PWFA, such as the ADA or state law.</p>

<p>please refer to [Employer’s] policy about Disability Accommodation.</p>	
<p>Approval Process</p> <p><i>Minor accommodations</i></p> <p>If the accommodation you request is minor, you and your supervisor can agree to implement the accommodation without seeking assistance from HR.</p> <p>Minor accommodations include:</p> <ul style="list-style-type: none"> • having water or snacks at your workstation • taking additional breaks to rest, use the restroom, or eat • sitting or standing as needed • taking lactation breaks as needed • uniform changes or temporary alterations to uniform standards • simple equipment changes (e.g. a new chair) 	<p>The accommodations discussed in this provision are common sense accommodations that should take little effort to implement – and therefore should be granted on the spot. The PWFA regulations provide that the first four in this list are “predictable assessments” that will rarely cause undue hardship and thus should be granted automatically and without any medical documentation. 29 C.F.R. § 1636.3(j)(4).</p>
<p><i>Other accommodations</i></p> <p>For accommodation requests that are not minor, your supervisor will seek assistance from HR.</p> <p>Once you have told your supervisor, HR, or management that you need an accommodation or requested a specific accommodation, you and your supervisor will discuss your particular needs and the ways in which your needs can be met reasonably and effectively. This discussion is intended to be an open exchange of ideas. An HR professional may participate in the discussion as well. Please keep in mind that although you may be entitled to an accommodation, you may not be entitled to a particular accommodation or even your preferred accommodation. If the accommodation you request is not reasonable or could not be provided without significant difficulty or expense, your supervisor will inform HR and work with them to identify and suggest</p>	<p>This provision describes the interactive process that is contemplated by the PWFA and modeled on the interactive process used to determine appropriate accommodations under the ADA. The process is supposed to be quick and informal. Delays in providing accommodations violate the PWFA. We suggest that employers aim to provide reasonable accommodations within two to three business days of becoming aware of the employee’s need for accommodation.</p> <p>We suggest that HR participate in the interactive process, if possible. Often HR has a broader sense of possible or available accommodations if the employee’s requested accommodation cannot be provided.</p>

<p>other accommodations or will ask you to suggest other accommodations.</p>	
<p>HR may request that you provide some limited information from your healthcare provider to assist in the identification of appropriate accommodations. The information that can be requested may include 1) your limitation; 2) a confirmation that it is related to pregnancy, childbirth, or a related medical condition; 3) the change or accommodation that you need at work; and 4) an estimate of how long you will need the change or accommodation. Your healthcare provider can write a note with this information or, if you prefer, HR will give you a form to take to your healthcare provider. While you obtain the necessary information, your supervisor will provide you with a temporary accommodation if it is possible to do so.</p>	<p>Employers are not required to ask for medical certification. Sometimes it is prohibited, such as when the accommodation needed is obvious, the employer already has enough information, the accommodation requested in minor (predictable assessments), the accommodation sought relates to breaks or space for pumping, or other employees are able to use the accommodation without documentation. 29 C.F.R. § 1636.3(l)(1). When medical documentation is permitted, the medical information that employers can request is limited to the four categories stated in the provision. 29 C.F.R. § 1636.3(l)(2). ADA paperwork and medical certification forms are not appropriate for PWFA accommodation requests. They typically require a significant amount of irrelevant information and their use can be considered harassment, retaliation, and interference with statutory rights.</p> <p>More information about medical certification is available at https://pregnantatwork.org/wp-content/uploads/PWFA-Medical-Certification-Guidelines-for-Employers.pdf (model medical certification form attached) and https://workfamilyinsight.com/medical-documentation-and-the-pregnant-workers-fairness-act/.</p> <p>A model Medical Certification Form is available at https://workfamilyinsight.com/wp-content/uploads/2024/04/Sample-Medical-Certification-Form.pdf.</p>

<p>[Employer] will do our best to provide you with a reasonable accommodation promptly. You will not be required to take leave if you do not want to unless there is no other accommodation that will allow you to work safely and comfortably. If you are not satisfied with your supervisor’s response to your request or the accommodation(s) offered by your supervisor, please contact HR or use [Employer]’s alternative dispute resolution process.</p>	<p>Unnecessary delay violates the PWFA, even if an accommodation is ultimately provided. 29 C.F.R. § 1636.4. As stated above, we suggest that employers aim to resolve accommodation requests within two to three business days. If it will take longer, we strongly recommend following the suggestion of the EEOC to provide an interim accommodation. 29 C.F.R. § 1636.4(a)(1)(vii) and appendix, 1636.4(a)(1) note 6.</p> <p>The PWFA prohibits employers from requiring pregnant employees to take leave if they do not want to and another accommodation is available that would allow them to continue to work. 42 U.S.C. § 2000gg-1(4).</p>
<p>Modification of Accommodation</p> <p>If your needs change, or if your accommodation is not meeting your needs, please notify your supervisor. Your supervisor will discuss a potential change to your current accommodation or will begin the process of finding a new accommodation.</p>	<p>It is reasonable to expect a pregnant employee’s needs to change over time. This provision encourages open communication between employees and their supervisors to ensure that needed accommodations are provided.</p>
<p>How to End an Accommodation</p> <p>Once you no longer need an accommodation, notify your supervisor that the accommodation is no longer necessary. You will be returned to the same position, employment terms and conditions, and duties that you had before your accommodation began. If it would cause undue hardship to [Employer] to return you to your same position, HR will give you notice of the hardship before your accommodation begins or as soon as the hardship becomes known and will work with you to find a comparable position once you no longer need the accommodation.</p>	<p>The PWFA makes it an unlawful employment practice to take an adverse action in terms, conditions, or privileges of employment against an employee because they requested or used reasonable accommodations related to pregnancy, childbirth, or related medical conditions. 42 U.S.C. § 2000gg-1(5). It is also illegal to retaliate or interfere with statutory rights. 42 U.S.C. § 2000gg-2(f). Failure to return an employee to their original position after they no longer need an accommodation would violate these provisions.</p> <p>The EEOC has noted that employees returning from leave under the PWFA, like the ADA, should be returned to their original positions, if they can still perform them, unless to do so would create an undue hardship. Appendix to regulations,</p>

	notes to 1636.3(h), note 62. We suggest providing advance notice of undue hardship because failing to raise the issue until the employee is ready to return to their original position could be deemed interference with their statutory rights or retaliation.
<p>No Discrimination</p> <p>As set forth in [Employer]’s equal employment opportunity policy, employees and applicants will not be discriminated against or harassed because of pregnancy, childbirth, or related medical conditions. In addition, employees and applicants will not be penalized or discriminated against for requesting or using reasonable accommodations related to pregnancy, childbirth, or related medical conditions.</p>	The PWFA and the PDA prohibit discrimination and harassment based on pregnancy, childbirth, and related medical conditions.
<p>Questions or Concerns</p> <p>If you have any questions or concerns about your pregnancy accommodation, or if you believe you have been penalized or discriminated against, report the matter immediately to HR. You may also file a complaint with [Employer]’s Alternative Dispute Resolution office.</p>	As with harassment policies, we suggest providing employees with several avenues to report discrimination.
<p>Related Policies</p> <p>[Employer] also provides accommodation for adoption, legal guardianship, and foster care. Please see the Adoption policy for additional information.</p> <p>For lactation accommodations, please see the Lactation Accommodation Policy. For accommodations not related to pregnancy, or for which pregnancy is not disclosed, please see the Disability Accommodation Policy.</p>	We suggest referencing other policies that are relevant, such as parental leave for childbirth, flexible work, and Family and Medical Leave.

Implementation Tips

Employers should edit the model policy to reflect their existing policies and practices, and the laws of the cities and state(s) where they operate.

Employers may want to provide supervisors with a written explanation of how to use the model policy, perhaps in a supervisors’ handbook, that includes:

- the company’s policy or philosophy regarding the granting of requests for accommodation,
- information about how to recognize a request,
- a more detailed description of the interactive process,
- creative ideas for accommodations,
- instructions to make a prompt decision regarding a request and to provide interim accommodations where necessary,
- directions to notify HR of any requests made for minor accommodations and their implementation, and
- directions to include HR in any requests made for non-minor accommodations, such as in the interactive process, requests for medical information, and determination of appropriate accommodation.

Suggestions for accommodations can be obtained from the Job Accommodation Network, <https://askjan.org/disabilities/Pregnancy.cfm> and WLL’s Pregnant at Work, <https://www.pregnantatwork.org/wp-content/uploads/Workable-Accommodation-Ideas.pdf>.

Training for supervisors about pregnancy accommodation is strongly recommended. We recommend that the training include bias based on pregnancy, motherhood, and flexible work as well as the legal requirements of the PWFA and PDA. More information about bias is available at <https://workfamilyinsight.com/> and <https://worklifelaw.org/projects/family-caregiver-discrimination/>.

Having current job descriptions for all employees is a recommended practice that will make it easier to respond to accommodation requests.

HR departments may find it beneficial to set up a system for responding to accommodation requests and memorializing decisions. We suggest including accommodations that are not related to pregnancy as well as those that are because, per the Supreme Court’s *Young v. UPS* decision, the Pregnancy Discrimination Act requires employers to accommodate pregnant employees if they accommodate other employees (unless they have a strong legitimate reason for not doing so).

A model Pregnancy Accommodation Request form can be found here: <https://workfamilyinsight.com/wp-content/uploads/2024/04/WorkFamily-Insight-Reasonable-Accommodation-Form.pdf>.

A model PWFA Medical Certification form can be found here: at <https://pregnantatwork.org/wp-content/uploads/PWFA-Medical-Certification-Guidelines-for-Employers.pdf> (model medical certification form at end) and <https://workfamilyinsight.com/wp-content/uploads/2024/04/Sample-Medical-Certification-Form.pdf>.