

## **Congress Passed Two New Laws Protecting Pregnant and Nursing Workers**

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Late last year, Congress signed a bill that contains two new acts that warrant updating your employment policies and practices: the Pregnant Workers Fairness Act (PWFA), which takes effect this summer, and the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP), which has taken effect already). The Acts provide greater protection for pregnant or breastfeeding workers. Here's a quick summary.

### **Pregnant Workers Fairness Act**

Previously, pregnancy alone wasn't considered a disability that obligated employers to grant reasonable accommodations, unless there was a pregnancy-related complication that amounted to a disability. The PWFA expands the ADA by defining "qualified individuals" as those who are temporarily unable to perform an essential function of their job due to pregnancy, childbirth or a related condition and it requires employers to grant reasonable job accommodations to qualified individuals.

The PWFA makes it an unlawful employment practice for an employer with 15 or more employees to do any of the following:

- Fail to make reasonable accommodations for employees related to pregnancy, childbirth or a related medical condition absent an undue hardship.
- Require an employee seeking a pregnancy-related accommodation to accept an accommodation other than one arrived at through the interactive process.
- Deny employment opportunities to pregnant or recently pregnant employees based on the requirement to make reasonable accommodations.
- Require an employee seeking a pregnancy-related accommodation to take leave, paid or unpaid, if the employer can provide an alternative, reasonable accommodation that allows the employee to continue to work.
- Take adverse action against an employee on account of their request for, or use of, a reasonable accommodation.

### **Providing Urgent Maternal Protections for Nursing Mothers**

Since 2010, the FLSA has required employers to provide non-exempt, breastfeeding employees "reasonable break time" to express breast milk after the birth of their children. The PUMP Act expands to all nursing employees (both exempt and non-exempt). It also requires the provision of a private space, other than a bathroom, for breastfeeding employees to pump for up to one year after the birth of their child. Although the PUMP Act does not define "reasonable break time," guidance from the United States Department of Labor (DOL) says employers must provide breaks "as frequently as needed" by the nursing employee and that "the duration of each break will likely vary." Whether an employer must compensate a nursing employee during a reasonable break time depends on whether the employer provides compensated breaks to employees for other purposes and whether the

breastfeeding employee is completely relieved from duty during the break. For example, an employer that does not provide compensated break time to employees for other purposes and completely relieves the breastfeeding employee from duty during the break will not have to pay the breastfeeding employee during the break.

If you would like help updating your policies and practices to comply with these new laws as well as training for your managers, which includes advanced ADA compliance training that incorporates the new law, please contact a member of the [Employment & Labor team](#).



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