



U.S. Equal Employment Opportunity Commission

Summary of Key Provisions of EEOC's Final Rule to Implement the Pregnant Workers Fairness Act (PWFA)

The U.S. Equal Employment Opportunity Commission issued a final rule to implement the Pregnant Workers Fairness Act (PWFA). The final rule was issued on April 15, 2024, and published in the Federal Register on April 19, 2024. The rule is available at <https://www.federalregister.gov/d/2024-07527> (<https://www.federalregister.gov/d/2024-07527>). The regulation went into effect June 18, 2024. Prior to the issuance of the final rule, the EEOC issued a Notice of Proposed Rulemaking (NPRM), published in the Federal Register on August 11, 2023, and available here <https://www.federalregister.gov/d/2023-17041> (<https://www.federalregister.gov/d/2023-17041>).

This document provides a summary of key portions of the final rule. This document is provided for informational purposes only. It is not a substitute for the full text of the final rule. It does not discuss all of the provisions in the final rule and does not contain details, examples, or explanations that are provided in the final rule. This document indicates the notable differences between the proposed and final rule. In addition to the differences noted in this document, the final rule has numerous minor language changes and several additional examples.

The PWFA requires a covered entity to make reasonable accommodations to a qualified employee's or applicant's known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, absent undue hardship on the operation of the business of the covered entity. The PWFA directs

the Equal Employment Opportunity Commission to promulgate regulations to implement the PWFA. As required by the PWFA, the final rule also provides examples of reasonable accommodations.

1. Who is Covered:

The PWFA covers employers (as well as unions and employment agencies), employees, applicants, and former employees who are currently covered by: (1) Title VII of the Civil Rights Act of 1964 (Title VII); (2) the Congressional Accountability Act of 1995 and 3 U.S.C. § 411(c);^[1] (3) the Government Employee Rights Act of 1991 (GERA); or (4) section 717(a) of Title VII, which covers federal employees. Whoever satisfies the definition of an “employer” or “employee” under any of these laws is an employer or employee for purposes of the PWFA.^[2]

2. Remedies and Enforcement:

a. The procedures for filing a charge or claim under the PWFA, as well as the available remedies, including the ability to obtain damages, are the same as under (1) Title VII; (2) Congressional Accountability Act of 1995 and 3 U.S.C § 411(c); (3) GERA; and (4) section 717 of Title VII, for the employees covered by the respective statutes. Limitations regarding available remedies under these statutes likewise apply under the PWFA. As with the Americans with Disabilities Act, as amended (ADA), damages are limited if the claim involves the provision of a reasonable accommodation, and the employer makes a good faith effort to meet the need for a reasonable accommodation.

b. In the preamble to the final regulation, the Commission also previews enhancements to its administrative charge processing procedures to facilitate the submission of information about potential defenses, including religious defenses. The Commission is revising numerous documents, including its Notice of Charge of Discrimination letter and webpages, to identify how employers can raise defenses, including religious defenses, in response to a charge of discrimination. Additionally, as appropriate, the Commission will resolve charges based on the information submitted in support of the asserted defenses, including religious defenses, in order to minimize the burden on the employer and the charging party.

3. Definitions:

- a. “Known limitation” is defined in the PWFA as a “physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or the employee’s representative has communicated to the covered entity, whether or not such condition meets the definition of disability” under the ADA.
 - i. In the final rule, as in the proposed rule, “known” means “the employee or the employee’s representative has communicated the limitation to the employer.”
 - ii. In the final rule, as in the proposed rule, “limitation” means a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions. The physical or mental condition that is the limitation is:
 - 1. an impediment or problem that may be modest, minor and/or episodic;
 - 2. a need or problem related to maintaining the employee's health or the health of the pregnancy; or
 - 3. seeking health care related to pregnancy, childbirth, or a related medical condition itself.

The physical or mental condition can be a PWFA limitation whether or not it meets the definition of “disability” under the ADA. The physical or mental condition must be a condition of the employee (or applicant) themselves.

- iii. “Pregnancy, childbirth, or related medical conditions” is a phrase used in Title VII (42 U.S.C. 2000e(k)) and in the final rule, as in the proposed rule, it has the same meaning under the PWFA as under Title VII. The final rule clarifies that the pregnancy, childbirth, or related medical conditions refer to the pregnancy, childbirth, or related medical conditions of the specific employee in question. Like the proposed rule, the final rule provides examples of “pregnancy, childbirth, or related medical conditions.”

iv. The physical or mental condition must be “related to, affected by, or arising out of” pregnancy, childbirth, or related medical conditions. The final rule explains that “related to, affected by, or arising out of” is an inclusive term. Under the final rule, pregnancy, childbirth, or related medical conditions do not need to be the sole, the original, or a substantial cause of the physical or mental condition at issue in order for the physical or mental condition to be “related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions.”

b. The PWFA has two definitions of “qualified.”

i. First, the PWFA uses language from the ADA: “an employee or applicant who, with or without reasonable accommodation, can perform the essential functions of the employment position” is qualified.

ii. Second, the PWFA allows an employee or applicant to be qualified even if they cannot perform one or more essential functions of the job if the inability to perform the essential function(s) is “temporary,” the employee could perform the essential function(s) “in the near future,” and the inability to perform the essential function(s) can be reasonably accommodated. The terms “temporary,” “in the near future,” and “can be reasonably accommodated” are not defined in the statute.

1. The final rule, like the proposed rule, defines the term “temporary” as lasting for a limited time, not permanent, and may extend beyond “in the near future.”

2. In the final rule, as in the proposed rule, if the employee is pregnant, it is assumed that the employee could perform the essential function(s) “in the near future” because they could perform the essential functions within generally 40 weeks of the temporary suspension of the essential function. The final rule’s definition in this section does not mean that the essential function(s) of a pregnant employee must always be suspended for 40 weeks, or that if a pregnant employee seeks the temporary suspension of an essential function(s) for 40 weeks it must be automatically granted.

3. In the final rule, unlike in the proposed rule, whether the employee could perform the essential function(s) “in the near future” in situations other than when the employee is pregnant is determined on a case-by-case basis.
 4. The final rule, like the proposed rule, also discusses the meaning of the PWFA’s requirement that the inability to perform the essential function(s) can be reasonably accommodated. For some positions, this may mean that one or more essential functions are temporarily suspended (with or without reassignment to someone else) and the employee continues to perform the remaining functions of the job. For other positions, some of the essential functions may be temporarily suspended (with or without reassignment to someone else) and the employee may be assigned other tasks to replace them. In yet other situations, one or more essential functions may be temporarily suspended (with or without reassignment to someone else) and the employee may perform the functions of a different job to which the employer temporarily transfers or assigns them, or the employee may participate in the employer’s light or modified duty program. Throughout this process, as with other reasonable accommodation requests, an employer may need to consider more than one alternative to identify a reasonable accommodation that does not pose an undue hardship.
- c. “Essential function” is a term from the ADA, and the final rule, like the proposed rule, uses the same definition as in the ADA. In general terms, it means the fundamental duties of the job.
 - d. “Reasonable accommodation” is a term from the ADA, and the PWFA uses a similar definition as in the ADA. Generally, it means a change in the work environment or how things are usually done. The final rule, like the proposed rule, provides specific examples of possible reasonable accommodations under the PWFA, including:
 - i. Frequent breaks;
 - ii. Sitting/Standing;

- iii. Schedule changes, part-time work, and paid and unpaid leave;
 - iv. Telework;
 - v. Parking;
 - vi. Light duty;
 - vii. Making existing facilities accessible or modifying the work environment;
 - viii. Job restructuring;
 - ix. Temporarily suspending one or more essential functions;
 - x. Acquiring or modifying equipment, uniforms, or devices; and
 - xi. Adjusting or modifying examinations or policies.
- e. “Undue hardship” is a term from the ADA, and the PWFA follows the definition in the ADA. Generally, it means significant difficulty or expense for the operation of the employer. The final rule, like the proposed rule, outlines some factors to be considered when determining if undue hardship exists. These are the same factors as under the ADA.
- i. Additionally, to address that under the PWFA an employer may have to accommodate an employee’s temporary inability to perform an essential function(s), the final rule, like the proposed rule, adds additional factors that may be considered when determining if the temporary suspension of an essential function(s) causes an undue hardship. These additional factors include: consideration of the length of time that the employee will be unable to perform the essential function(s); whether there is work for the employee to accomplish; the nature of the essential function, including its frequency; whether the employer has provided other employees in similar positions who are unable to perform the essential function(s) of their positions with temporary suspensions of those functions and other duties; if necessary, whether there are other employees, temporary employees, or third parties who can perform or be temporarily hired to perform the essential function(s) in question; and whether the essential

function(s) can be postponed or remain unperformed for any length of time and, if so, for how long.

ii. The final rule, like the proposed rule, identifies a limited number of simple modifications that will, in virtually all cases, be found to be reasonable accommodations that do not impose an undue hardship when requested by a pregnant employee. These “predictable assessments” in the final rule are the same ones as in the proposed rule: (1) allowing an employee to carry or keep water near and drink, as needed; (2) allowing an employee to take additional restroom breaks, as needed; (3) allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and (4) allowing an employee to take breaks to eat and drink, as needed. As in the proposed rule, the predictable assessments provision in the final rule does not alter the meaning of the terms “reasonable accommodation” or “undue hardship.” The individualized assessment of whether these modifications are reasonable accommodations that would cause undue hardship will, in virtually all cases, result in a determination that the modifications are reasonable accommodations that will not impose an undue hardship under the PWFA when they are requested as workplace accommodations by an employee who is pregnant. Therefore, with respect to these modifications, the individualized assessment should be particularly simple and straightforward.

f. “Interactive process” is a term from the ADA, and the final rule, like the proposed rule, explains that the “interactive process” is a method to help the employer and the employee (or applicant) identify the limitation and the adjustment or change at work needed due to the limitation and potential reasonable accommodations. Generally, it means a discussion or two-way communication between an employer and an employee.

g. Limitations on Supporting Documentation: Under the final rule, as under the proposed rule, an employer is not required to seek supporting documentation from an employee or applicant who requests an accommodation under the PWFA. If an employer decides to seek supporting documentation, it is only permitted to do so under the final

rule if it is reasonable to require documentation under the circumstances for the employer to determine whether the employee (or applicant) has a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions (a limitation) and needs a change or adjustment at work due the limitation. The final rule, like the proposed rule, sets out examples of when it would not be reasonable for the employer to require documentation.

Under the final rule, as with the proposed rule, when requiring documentation is reasonable, the employer is limited to requiring documentation that itself is reasonable. The final rule has modified the definition of “reasonable documentation” so that it now means the minimum documentation that is sufficient to: (1) confirm the physical or mental condition; (2) confirm the physical or mental condition is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions (together with (1) “a limitation”); and (3) describe the change or adjustment at work needed due to the limitation.

The final Interpretive Guidance explains how the provisions of the ADA that require a covered entity to keep medical information confidential apply to employees and information under the PWFA.

4. Requesting an Accommodation:

The final rule, like the proposed rule, explains how an employee may request a reasonable accommodation, which has two parts. The employee must identify the limitation (the physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions) and that the employee needs an adjustment or change at work due to the limitation.

5. Nondiscrimination With Regard To Reasonable Accommodations

- a. The PWFA prohibits an employer from failing to make reasonable accommodation to the known limitations of qualified employees or applicants, absent undue hardship. The final rule, like the proposed rule, sets out additional considerations for covered entities and employees in complying with this provision. Under the final rule, as under the proposed rule:

- i. An unnecessary delay in making a reasonable accommodation may result in a violation of the PWFA. This can be true even if the reasonable accommodation is eventually provided, when the delay was unnecessary.
 - ii. An employee is not required to accept an accommodation. However, if an employee rejects a reasonable accommodation that they need in order to be “qualified” under the PWFA (either because they need it to perform an essential function, to apply for the job, or to obtain a temporary suspension of an essential function), then that employee or applicant will not be considered qualified.
 - iii. An employer cannot justify failing to make a reasonable accommodation or the unnecessary delay in providing a reasonable accommodation based on the employee (or applicant) failing to provide supporting documentation unless: (1) the employer seeks the supporting documentation; (2) seeking supporting documentation is reasonable under the circumstances as set out under the final rule; (3) the supporting documentation is reasonable documentation as defined in the final rule; and (4) the employer provides the employee with sufficient time to obtain and provide the documentation.
 - iv. When choosing among effective accommodations, the employer must choose an accommodation that provides the qualified employee (or applicant) equal employment opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges as are available to the average employee without a known limitation who is similarly situated. The similarly situated average employee without a known limitation may include the employee requesting accommodation at a time prior to communicating the limitation.
- b. The PWFA prohibits an employer from requiring a qualified employee or applicant to accept an accommodation other than one arrived at through the interactive process.
 - c. The PWFA prohibits an employer from denying employment opportunities to a qualified employee or applicant if the denial is based

on the employer's need to make a reasonable accommodation for the known limitation of the employee or applicant.

- d. The PWFA prohibits an employer from requiring a qualified employee with a known limitation to take leave, either paid or unpaid, if another effective reasonable accommodation exists, absent undue hardship.
- e. The PWFA prohibits an employer from taking adverse action in terms, conditions, or privileges of employment against a qualified employee or applicant on account of the employee requesting or using a reasonable accommodation for a known limitation.

6. Prohibition on Retaliation and Coercion:

- a. The PWFA prohibits retaliation against any employee, applicant, or former employee because that person has opposed acts or practices made unlawful by the PWFA or has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the PWFA.
- b. The PWFA prohibits coercion, intimidation, threats, or interference with any individual in the exercise or enjoyment of rights under the PWFA or with any individual aiding or encouraging any other individual in the exercise or enjoyment of rights under the PWFA. The final rule, like the proposed rule, adds "harass" to the list of prohibited activities.
- c. The final rule explains how, depending on the facts, certain actions can violate the prohibitions on retaliation and coercion, such as not providing an interim reasonable accommodation, seeking supporting medical documentation or information when it is not permitted under the PWFA or the final rule, or disclosing confidential medical information.

7. Relationship to Other Laws:

- a. The PWFA does not limit the rights of individuals affected by pregnancy, childbirth, or related medical conditions under any Federal, State, or local law that provides greater or equal protection.
- b. The final rule provides more information about the interactions between the PWFA and Title VII and between the PWFA and the ADA.

c. The PWFA provides a “[r]ule of construction” stating that the law is “subject to the applicability to religious employment” set forth in section 702(a) of the Civil Rights Act of 1964, 42 U.S.C. 2000e-1(a). The relevant portion of section 702(a) provides that “[Title VII] shall not apply . . . to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.” The final rule, like the proposed rule, provides that when this PWFA provision is asserted by a respondent employer, the Commission will consider the application of the provision on a case-by-case basis.

[1] The EEOC does not have enforcement authority for the Congressional Accountability Act (CAA). Thus, the final regulations do not apply to employees or employers covered by this law.

[2] This document uses the term “employer,” but the requirements apply to all covered entities. On February 27, 2024, a federal district court in Texas issued **a permanent injunction** (<https://casetext.com/case/texas-v-garland?q=5:23-CV-034-H&sort=relevance&p=1&type=case>) prohibiting the EEOC from accepting PWFA charges against agencies or divisions of the State of Texas. On June 17, 2024, a federal district court in Louisiana issued **a preliminary injunction** (<https://casetext.com/case/state-v-equal-empt-opportunity-commn>) prohibiting the EEOC from initiating any investigation or issuing notices of right to sue for PWFA charges involving accommodations for abortions “that are not necessary to treat a medical condition related to pregnancy” for employees (a) “whose primary duty station is located in Louisiana or Mississippi;” or (b) who work for the following entities: the State of Louisiana, or any agency thereof; the State of Mississippi, or any agency thereof; the United States Conference of Catholic Bishops; Catholic University of America; the Society of the Roman Catholic Church of the Diocese of Lake Charles; or the Society of the Roman Catholic Church of the Diocese of Lafayette. On September 23, 2024, a federal district court in North Dakota issued a **preliminary injunction** (https://www.eeoc.gov/sites/default/files/2024-10/31%20-%20PI%20Order_508FINAL.pdf) that, in relevant part, prohibits the EEOC from “interpreting or enforcing,” initiating any investigation, or issuing any notice of right to sue for PWFA charges against the Catholic Benefits Association (CBA), the Diocese of Bismarck, CBA members, and those acting in concert with or participating with CBA or a member of CBA, with regard to charges alleging certain

claims related to “abortion or infertility treatments that are contrary to the Catholic faith.”