

PREGNANT AND NURSING WORKERS

THE PREGNANT WORKERS FAIRNESS ACT (PWFA)

The *Pregnant Workers Fairness Act* (PWFA) requires covered employers to provide reasonable accommodations to qualified employees' or applicants' known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions unless an undue hardship can be established.

An employer claiming an undue hardship should contact their labor counsel to review the situation's specifics and get an opinion on possible legal liability.

Who Is Covered Under the Act?

- A *covered employer* is any private or public employer with fifteen or more employees.
- A *qualified individual* is an employee or applicant who can complete the essential functions of the job with or without reasonable accommodations OR an employee or applicant who cannot perform the essential functions of the job due to a temporary inability that will be alleviated in the near future, and the inability to perform the essential functions of the job can be reasonably accommodated.
 - The employee or the employee's representative must communicate any such limitations to the employer.
 - An employee who is temporarily unable to perform one or more of the essential job functions may be able to receive such reasonable accommodations as light duty or a change in work assignments, among other accommodations.

What Must the Employer Provide?

If an employee or applicant notifies the employer of a limitation related to, affected by, or arising out of pregnancy, childbirth, or a related medical condition, the employer and employee must begin an interactive process to determine an appropriate accommodation. It is important that the employer not adopt a 'take-it-or-leave-it' stance during this process. This needs to be a dialogue between both parties to develop an accommodation that is suitable for everyone.

A qualified individual of a covered employer must be provided with reasonable accommodations such as, but not limited to, the following examples:

- additional, longer, or more flexible breaks to drink water, eat, rest, or use the restroom;
- changing food or drink policies to allow for a water bottle or food;
- changing equipment, devices, or workstations to provide for a stool to sit;

- changing a uniform or dress code or providing properly fitted safety equipment;
- changing work schedules, including shorter hours, part-time work, or later start times;
- telework;
- temporary reassignment;
- temporary suspension of one or more essential job functions;
- time off for health care appointments;
- light duty or help with lifting or other manual labor;
- leave to recover from childbirth or other medical conditions related to pregnancy or childbirth.

Can the Employer Require Information From a Health Care Provider?

- In limited cases, an employer may ask for documentation related to the accommodations being sought from the employee's healthcare provider. This request for documentation must be reasonable under the circumstances. It would not be reasonable if:
 - the limitation and need for accommodations are obvious (need for a larger uniform given the employee's pregnancy);
 - the employee has already provided documentation to the employer relating to the accommodation (the employer may not require documentation every time the employee seeks to use the accommodation);
 - the employee needs breaks for water, to use the restroom, or eat;
 - the employee is lactating and needs an accommodation for this; or if
 - the employer would not normally ask for documentation under current workplace policies.
- The documentation sought by the employer is limited to:
 - a simple statement confirming the physical or mental condition for which the accommodation is sought;
 - confirmation that the physical or mental condition is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions; and
 - a description of the adjustment or change at work that is needed because of the physical or mental condition.
- Employers must keep any medical information gathered during this process confidential.
- Employers may not require an employee to be examined by an outside medical care provider selected by the employer.

Additional information for employers and employees may be found online at
<https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act>

PROVIDING URGENT MATERNAL PROTECTIONS FOR NURSING MOTHERS ACT (PUMP ACT)

The *Providing Urgent Maternal Protections for Nursing Mothers Act* (PUMP Act) was enacted in 2022 and amended the *Break Time for Nursing Act* of 2010 (BTNA). The PUMP Act expanded the BTNA's coverage to several employment categories not previously covered and created additional financial penalties for employers found to be in violation of the act.

The BTNA requires employers to provide reasonable break time and a clean, private, non-bathroom space for lactating employees to express breast milk during the workday for up to one year following the birth of their child. The PUMP Act expanded this protection to include certain employment categories such as teachers, registered nurses, farmworkers, etc.

The BTNA and PUMP Act apply to employers of all sizes. Employers with under fifty employees may be exempt from these requirements if an undue hardship can be proven. However, this is rarely granted

An employer claiming an undue hardship should contact their labor counsel to review the situation's specifics and get an opinion on possible legal liability.

Additionally, employees may now seek monetary damages against an employer that does not provide adequate time and facilities as required by these acts.

Employees in employment categories not covered under the PUMP Act and BTNA may have certain rights under other state or federal acts, such as the Pregnant Workers Fairness Act (see above) or the Americans with Disabilities Act (ADA).

What the Employer Must Provide

- A reasonable amount of break time to express breast milk each time the employee needs it.
- A clean, private, non-bathroom space to express breast milk that is free from intrusion from coworkers and the public and available each time the employee needs the space.
- Accommodation for up to one year following the birth of the employee's child.

Additional information for employers and employees can be found online at

<https://www.dol.gov/agencies/whd/pump-at-work> or <https://www.usbreastfeeding.org/>

***Contact MML Risk Management Services Staff
or your Loss Control Consultant for more information.***



Important Phone Numbers

MML Risk Management Services	800-653-2483
Loss Control Services	800-482-0626
Michigan Department of Labor	517-373-1820
Michigan Dept. of Civil Rights	313-456-3700
Equal Employment Opportunity Commission	800-669-4000

Note:

This document is not intended to be legal advice.

It only identifies some of the issues surrounding this topic.

***Public agencies are encouraged to review their procedures with an expert
or a competent attorney who is knowledgeable about the subject.***