



Labor and Employment Law Seminar

**2026
LAS VEGAS**

HR AND LITIGATION RISK: PREGNANCY ACCOMMODATION AND THE PWFA: WHAT EMPLOYERS STILL GET WRONG



Presented by

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**HR AND LITIGATION RISK:
PREGNANCY
ACCOMMODATION AND
THE PWFA: WHAT
EMPLOYERS STILL
GET WRONG**

Pregnancy Accommodation and the PWFA – What Employers Still Get Wrong

- PWFA PROTECTS

Qualified employees or applicants with known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions.



Pregnancy Accommodation and the PWFA – What Employers Still Get Wrong

KNOWN LIMITATION

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 employer.

Pregnancy Accommodation and the PWFA – What Employers Still Get Wrong

QUALIFIED

An employee or applicant who:

- (1) can perform the “essential functions” of the job with or without a reasonable accommodation
- (2) currently cannot perform one or more essential functions if:
 - the inability is temporary, i.e., not permanent and may not extend beyond “in the near future”; and
 - the worker could perform the essential function(s) in the near future, and
- the inability to perform the essential function(s) can be reasonably accommodated. This could include but is not limited to:
 - temporary suspension of the essential function(s) and the employee performs the remaining functions of their position;
 - performing the remaining functions of their position and other assigned functions;
 - the employee performing the functions of a different job to which temporarily transfers or assigns the employee; or the employee being assigned to light duty or modified duty or participating in the covered entity’s light or modified duty program.

Pregnancy Accommodation and the PWFA

REASONABLE ACCOMMODATION

Employers must reasonably accommodate to

- Give qualified applicants an equal opportunity to be considered for jobs
- Enable employee/applicant to perform essential functions with or without accommodation, or to enable employee to continue working by suspending performance of essential function[s] when suspension is temporary and can be reasonably accommodated.
- Enable the employee to attain the same level of performance.
- Opportunity to enjoy same or equivalent benefits
- A reasonable accommodation can be denied if it causes an undue hardship.

Pregnancy Accommodation and the PWFA – What Employers Still Get Wrong

REASONABLE ACCOMMODATION

Accommodations that are reasonable and will not impose an undue hardship:

- Allowing an employee to carry or keep water near and drink, as needed;
- Allowing an employee to take additional restroom breaks, as needed;
- Allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
- Allowing an employee to take breaks to eat and drink, as needed.

Pregnancy Accommodation and the PWFA – What Employers Still Get Wrong

MISTAKE NO. 1 - DELAYING OBVIOUS REASONABLE ACCOMMODATIONS

- PWFA regulations make unnecessary delay a distinct compliance failure.
- This happens when employers require more documentation to support accommodation, insist on unnecessary paperwork, move requests through too many internal layers, or fail to permit front line supervisors or HR to quickly grant simple requests, e.g., more bathroom breaks, water bottle at work station. Employers aren't saying no here; they are simply taking a long time to say yes.

Pregnancy Accommodations and the PWFA – What Employers Still Get Wrong

LACTATION ACCOMMODATIONS

- Breaks, a space for lactation, and other related modifications as required under the PUMP Act
- Accommodations related to pumping, such as, among other things, ensuring the area for lactation (not a bathroom) is shielded from view and free from intrusion and is reasonably close to the employee's work area; that it has electricity, appropriate seating, and a surface sufficient to place a breast pump; and that it is in reasonable proximity to a sink, running water, and a refrigerator for storing milk;
- Accommodations related to nursing during work hours (where the employee's workplace is close to the child's location).

Pregnancy Accommodation and the PWFA – What Employers Still Get Wrong

MISTAKE NO. 2 – FAILING TO ENGAGE IN A REAL INTERACTIVE PROCESS

- Employer treats the process as if its one sided.
- The employer waits for the employee to solve the problem rather than engaging with the employee to reach a solution.
- Employer rejects proposed accommodations without discussion.
- Employer offers take it or leave it accommodation.

Interactive Process – What Documentation Can Employers Request?

MISTAKE NO. 3 – OVERDEMANDING MEDICAL DOCUMENTATION

- Documentation requests are **unreasonable** if:
 - The limitation and need for an adjustment or change at work due to the limitation is obvious and employee self-confirms.
 - The employer already has sufficient information about the limitation and the adjustment or change needed due to the limitation.
 - The employee is currently pregnant and needs breaks for the bathroom or to eat or drink, needs to carry water with them to drink, or needs to stand if their job requires sitting or to sit if their job requires standing.
 - The employee is lactating and needs modifications to pump at work or nurse during work hours.
 - The accommodation requested is one provided to other employees.

Pregnancy Accommodation and the PWFA – What Employers Still Get Wrong

MISTAKE NO. 3- OVERDEMANDING MEDICAL DOCUMENTATION

An employer may request reasonable documentation that:

- Confirms the limitation
- Confirms that the limitation is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions; and
- Confirms and describes the adjustment or change at work that is needed because of the limitation.
- Must provide sufficient time for employee to obtain documentation.

Pregnancy Accommodation and the PWFA – What Employers Still Get Wrong

MISTAKE NO. 3 - OVERDEMANDING MEDICAL DOCUMENTATION

- Employer may require the worker to provide reasonable documentation from a health care provider, such as doctors, midwives, nurses, nurse practitioners, physical therapists, lactation consultants, doulas, occupational therapists, vocational rehabilitation specialists, therapists, industrial hygienists, licensed mental health professionals, psychologists, or psychiatrists. The health care provider may be a telehealth provider.
- An employer may not require that the health care provider submitting documentation be the provider treating the condition at issue.
- The covered entity may not require that the employee seeking the accommodation be examined by a health care provider selected by the covered entity.

Pregnancy Accommodation and PWFA – What Employers Still Get Wrong

MISTAKE NO. 4 - REFUSING TO TEMPORARILY SUSPEND ESSENTIAL JOB FUNCTIONS

Remember – a protected employee is qualified even if the employee cannot perform an essential job function if the inability to perform it is temporary and the employee will be able to perform it in the near future.

Pregnancy Accommodation and the PWFA – What Employers Still Get Wrong

ADDITIONAL FACTORS IN DETERMINING WHETHER ELIMINATING ESSENTIAL FUNCTIONS IS AN UNDUE HARSHIP

- 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(s), including how frequently it is performed;
- Whether the covered entity has provided other employees in similar positions who are unable to perform the essential function(s) of their position with temporary suspensions of the essential function(s);
- If necessary, whether there are other employees, temporary employees, or third parties who can perform or be hired to perform the essential function(s); and
- Whether the essential function(s) can be postponed or remain unperformed for any length of time and, if so, for how long.

Pregnancy Accommodation and the PWFA – What Employers Still Get Wrong

MISTAKE NO. 5 – FORCING AN EMPLOYEE ON A LEAVE RATHER THAN KEEPING THEM WORKING

Leave is a disfavored accommodation under the PWFA when the employee has not explicitly requested it.

Pregnancy Accommodation and the PWFA – What Employers Still Get Wrong

MISTAKE NO. 6 – DENYING OPPORTUNITIES BECAUSE ACCOMMODATION MAY BE NEEDED

PWFA explicitly prohibits denying opportunities based on the anticipated need for accommodation.

Nevada Pregnant Workers Fairness Act (NPWFA)

NRS613.4353 – NRS 613.4383 *continued...*

- Prohibits discrimination against pregnant employees
- One key difference is that the NPWFA prohibits employers from requiring applicants or employees to accept accommodations they haven't requested or chosen.
 - For example:
 - Under Nevada law, an employer cannot force an employee to accept a specific accommodation they haven't requested, such as a modified work schedule.
 - In contrast, the PWFA says an employer cannot require an employee to accept an accommodation without first discussing it with the employee, but it doesn't explicitly prohibit requiring acceptance of unrequested accommodations.

Nevada Pregnant Workers Fairness Act (NPWFA)

NRS613.4353 – NRS 613.4383 *continued...*

- NPWFA requires employers to notify new employees at the start of their employment (e.g., as part of their new hire packets); and to any current employees within 10 days after that employee gives notification of their pregnancy.
 - The notice must also include a statement that:
 - The employee has the right to be free from discriminatory or unlawful employment practices pursuant to **NRS 613.335** and **Sections 2-8** of the act, and
 - has the right to reasonable accommodations for pregnancy-related conditions.

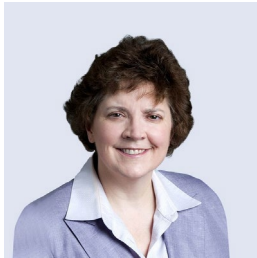
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THE POTENTIAL CONSEQUENCES OF GETTING IT WRONG

- The Ohio Case
- Employee initially denied remote work for employee's high-risk pregnancy..
- Remote work eventually granted.
- Days later employee goes into premature labor.
- Baby died.
- Employee sued employer for wrongful death.
- \$22 million dollar verdict.



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Questions?



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Thank you.