

# TOP 5 PREGNANCY ACCOMMODATION PITFALLS RETAILERS NEED TO AVOID IN 2026

Insights  
Apr 29, 2026

## Top 5 Pregnancy Accommodation Pitfalls Retailers Need to Avoid in 2026

Retail employers face a unique set of challenges when it comes to complying with the Pregnant Workers Fairness Act, and the EEOC has taken notice. Since the law took effect in June 2023, the agency has been steadily ramping up enforcement and targeting employers that rigidly apply attendance policies, demand unnecessary documentation, or deny accommodations that the law's own regulations explicitly call reasonable. For retailers, the decentralized nature of store operations and heavy reliance on frontline managers creates real exposure when those managers aren't equipped to recognize and triage PWFA requests. Here are five pitfalls retailers need to avoid heading into the second half of 2026.

### Overview of the Pregnant Workers Fairness Act

The PWFA implemented a new requirement for covered employers to provide reasonable accommodations for a qualified employee's known limitations due to pregnancy, childbirth, or related medical conditions, unless such accommodations would cause the employer undue hardship. The EEOC released a final rule in 2024 to define the parameters of the PWFA and govern the application of the PWFA.

Unlike the ADA, the PWFA imposes an affirmative obligation on employers to accommodate qualified employees, even

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when such accommodations may require the temporary suspension of an essential job function. You can read our detailed FAQs about the PWFA [here](#) and our in-depth discussion of the final rule [here](#).

[Based on our assessment of PWFA and the EEOC's enforcement efforts to date](#), we have prepared a list of five PWFA pitfalls that retail companies should avoid now as we make our way into the second quarter of 2026.

## 1. Ditch the Strict Work Rules

The decentralized nature of retail operations means that employers often rely on standardization when it comes to work rules, such as disallowing food or drink at workstations, requiring employees to stand while working, strictly applying uniform and attendance policies, or offering break times at only specific intervals. Each of those examples present seemingly equal treatment, but if strictly adhered to, could present risk for PWFA exposure for retail employers.

Attendance policies have received recent attention from the EEOC. Time off for attending medical appointments related to pregnancy, childbirth, or related medical conditions may be a required accommodation under the PWFA, even if the frequency of the time off violates a workplace policy. Retailers that enforce strict attendance policies against employees who put their employers on notice of their need to take time off for such medical appointments, or on the advice of their doctors to treat related symptoms, may face exposure under the PWFA.

- For example, just last month, [the EEOC sued a Florida employer](#) that enforced strict policy requiring employees to resign after taking two weeks off if they did not qualify for FMLA.
- Last year, [the EEOC settled a case against an Alabama employer](#) for \$55,000 after the agency alleged it enforced attendance points against an employee who needed time off for pregnancy-related medical appointments and conditions.

## 2. The PWFA's Explicitly Identified Accommodations are Almost Always Reasonable



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Much of the litigation surrounding the PWFA involves whether the accommodations requested were reasonable or not. Despite the PWFA's final rule explicitly listing potential reasonable accommodations, many employers are still falling short and deeming such requests unreasonable in *their* workforce.

To avoid this fate, make sure your workforce is aware that, despite its longstanding work rules, the following accommodations are likely to be considered reasonable under the PWFA for individuals who are pregnant, who have given birth, or who have pregnancy-related medical conditions:

- schedule changes, part-time work, and paid and unpaid leave;
- frequent breaks;
- acquiring or modifying equipment, uniforms, or devices;
- making existing facilities accessible or modifying the work environment;
- allowing sitting or standing (and providing means to do so);
- light duty;
- telework or remote work;
- providing a reserved parking space;
- job restructuring;
- temporarily suspending one or more essential function; and
- adjusting or modifying workplace policies.

Additionally, the final rule provides four accommodations that will be found to (nearly) never impose undue hardship on an employer:

- carrying or keeping water near and drinking, as needed;
- allowing additional restroom breaks, as needed;
- allowing sitting for those whose work requires standing and standing for those whose work requires sitting, as

needed; and

- allowing breaks to eat and drink, as needed.

Although many of these accommodations seem straightforward, frontline managers are typically told to stick to a script and to apply work rules consistently. You will need to bring them into conversations about the flexibility anticipated when someone requests a PWFA accommodation so that they can start envisioning the possibility that there may be situations where an “exception to the rule” is appropriate.

### **3. Relax the Documentation Requirements for PWFA requests**

Gone are the days when retailers can require every employee that requests an accommodation to fill out a specific form. Unlike the medical accommodation process under the ADA, the PWFA has made clear that employers *may not* require that documentation be submitted on a specific form. The PWFA permits only “the minimum that is sufficient” to confirm the condition, make sure it’s related to pregnancy, childbirth, or related medical conditions the law covers and describe the workplace adjustment needed.

Employers cannot require documentation when the employee is clearly pregnant or has a related condition and the solution is clear, when the employer already has enough information to determine if the employee needs an accommodation, and/or when the accommodation is available to employees without known limitations without documentation.

Further, the PWFA explicitly states that employers cannot require documentation from employees looking for a place to pump or nurse at work.

### **4. Train Frontline Managers to Specifically Recognize Pregnancy-Related Accommodation Requests**

Though corporate processes and procedures may exist at the highest levels, in the retail setting, some portion of the accommodation process is frequently handled by an on-site manager and in real time in light of the fast-paced nature of the business. To make things more complicated, managers often change throughout the week, and turnover rates are

high, making consistency in communication with the retail workforce complicated and difficult to achieve.

The definition of “pregnancy and childbirth” is broad, and includes but is not limited to current pregnancy, past pregnancy, potential or intended pregnancy (which can include infertility, fertility treatment, and the use of contraception), labor, and childbirth. The final rule gives a non-exhaustive list of examples or conditions that are, or may be, “related medical conditions” including termination of pregnancy, including via miscarriage, stillbirth, or abortion; ectopic pregnancy; preterm labor; pelvic prolapse; nerve injuries; cesarean or perineal wound infection; gestational diabetes; lactation and conditions related to lactation, such as low milk supply, engorgement, plugged ducts, mastitis, or fungal infections; and many, many, more.

This broad definition is currently being closely scrutinized by EEOC Chair Andrea Lucas and being further interpreted by the courts. However, it remains in effect as of the date of this article. It is important for HR and frontline retail managers to understand the broad scope of this definition so that they can identify when an accommodation request by an employee may fall under this definition.

If you train frontline managers on this definition and the uniqueness of pregnancy related accommodations requests *as distinct from other ADA accommodation requests*, they will know to triage to the appropriate Human Resources representative. It is when frontline managers are unaware of broad scope of the PWFA’s accommodation requirements that retailers find themselves handling these issues on their own, resulting in inconsistent results or lack of appreciation for the employer’s responsibilities under the PWFA.

## **5. Consider Light Duty as a Reasonable Accommodation**

In the retail world, many employees engage in physical activities including prolonged standing, walking, lifting, and stocking. These physical activities may be considered essential functions of the job. Under the ADA, workplace accommodations were not reasonable if they prevented employee from performing the essential functions of their job. Under the PWFA, however, essential job duties can be temporarily suspended.

As a result, retailers should not be so quick to deny an employee’s request for light duty work. Indeed, the EEOC

[has been taking action against employers](#) that have forced leaves of absence on employees who could have otherwise been provided another reasonable accommodation or light duty which would have allowed the employee to continue to work.

## **Conclusion**

Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information on PWFA compliance. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our [Retail Industry Team](#).