

HR Insights

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New Federal Laws Provide Protection for Pregnant and Nursing Mothers

President Biden signed the Pregnant Workers Fairness Act (PWFA) and the Providing Urgent Maternal Protections for Nursing Mothers (PUMP Act) into law in December 2022. The new laws require employers to make reasonable accommodations for pregnancy and childbirth related conditions, including providing break time for nursing mothers.

This issue of *HR Insights* summarizes the requirements of the new laws and provides a side-by-side comparison of them to the MA Pregnant Workers Fairness Act (MA PWFA), which is very similar to the new federal laws.

Provisions	New Federal Laws		
	MA PWFA	PWFA	PUMP Act
Effective date	April 1, 2018	June 27, 2023	In general, December 29, 2022. Changes to remedies are effective April 28, 2023.
Covered employers	MA private employers with 6 or more employees, state and local governments, employment agencies, and labor organizations.	Private and public sector employers with at least 15 employees, and Congress, Federal agencies, employment agencies, and labor organizations.	The PUMP Act break rules fall under FLSA and thus apply to most employers subject to FLSA. However, employers with fewer than 50 employees are exempt from the FLSA break time requirements if the employer can demonstrate that compliance would impose an undue hardship. To determine if the exemption applies, all employees, regardless of work site, must be counted. In addition, a narrow exemption may apply to certain transportation employees.
Requirements	Prohibits employment discrimination based on pregnancy and pregnancy-related conditions, such as lactation or the need to express breast milk for a nursing child. Employers must provide a reasonable accommodation for pregnancy and related conditions, unless doing so would impose an undue hardship on the employer	Employers must provide reasonable accommodations to a worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless doing so would cause the employer an undue hardship	Employers must provide a reasonable amount of break time and space for expressing breast milk as frequently as needed by a nursing mother for up to one year following the birth of their child. The space cannot be a bathroom and it must be shielded from view and free from intrusion by coworkers and the public.
Undue hardship	An undue hardship is an accommodation that would cause significant difficulty or expense to the employer.	An undue hardship is an accommodation that would cause significant difficulty or expense to the employer.	An undue hardship is based on the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, and structure of the employer's

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			business. The undue hardship exemption applies only to employers with fewer than 50 employees. It is not available to employers with 50 or more employees.
Examples	<p>Reasonable accommodations examples:</p> <ul style="list-style-type: none"> • More frequent or longer paid or unpaid breaks • Time off to deal with a pregnancy complication or to recover from childbirth with or without pay • Acquisition or modification of equipment or seating • Temporary transfer to a less strenuous or hazardous job • Job restructuring • Light duty • Private non-bathroom space for expressing breast milk • Assistance with manual labor • Modified work schedule 	<p>Reasonable accommodations examples:</p> <ul style="list-style-type: none"> • Ability to sit or drink water • Receive closer parking • Flexible hours • Appropriately sized uniforms and safety apparel • Additional break time to use the bathroom, eat, and rest • Take leave or time off to recover from childbirth • Excused from strenuous activities or activities that involve exposure to compounds not safe for pregnancy 	<p>Reasonable break examples:</p> <ul style="list-style-type: none"> • Employee A, a manager at a fast food restaurant, takes four 25-minute pump breaks per day • Employee B, a department store delivery driver with 9-month-old baby takes two 30-minute pump breaks a day <p>Space examples:</p> <ul style="list-style-type: none"> • Employee C, a logging company employee, pumps in a break room at the company's office, which is shielded from view and employee can lock the door during pump breaks
Requests for accommodations	<p>When a request for an accommodation is made, the employer must engage in a timely, good faith, and interactive process to determine an effective, reasonable accommodation that enables the employee or prospective employee to perform the essential functions of the job.</p> <p>An employer may require documentation about the need for reasonable accommodation come from an appropriate health care or rehabilitation professional. However, an employer cannot require documentation for any of the following accommodations:</p> <ul style="list-style-type: none"> • More frequent restroom, food, or water breaks 	<p>When a request for an accommodation is made, the employer must engage in a discussion with the employee about the accommodation.</p>	<p>When a request for space to pump breast milk, the space must be provided unless an exemption applies.</p>

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	<ul style="list-style-type: none"> • Seating • Limits on lifting more than 20 pounds • Private non-bathroom space for expressing breast milk 		
Other provisions	<p>Employer cannot:</p> <ul style="list-style-type: none"> • Deny an employment opportunity based on the need to reasonably accommodate the employee • Require an employee to accept an accommodation the employee chooses not to accept when the accommodation is unnecessary for performing the essential functions of the job • Require an employee to take leave when another reasonable accommodation can be made • Refuse to hire an applicant because of a pregnancy or related condition if the applicant can perform the essential job functions with reasonable accommodation 	<p>Employer cannot:</p> <ul style="list-style-type: none"> • Deny a job or other employment opportunities to a qualified employee or applicant based on the person's need for a reasonable accommodation • Require an employee to accept an accommodation without discussion about it • Require an employee to take leave if another reasonable accommodation can be made that would let the employee keep working • Retaliate against an individual for reporting or opposing unlawful discrimination under the PWFA or participating in a PWFA proceeding (such as an investigation) • Interfere with any individual's rights under the PWFA 	<ul style="list-style-type: none"> • A break time for expressing breast milk does not have to be a paid break time. However, if paid, the nursing mother must be compensated in the same way other employees are compensated for break time. • An employer can create or convert a temporary space for expressing milk or make a space available when needed as long as the space is not a bathroom and is shielded from view, and free from any intrusion from co-workers and the public. The space must also be functional for expressing breast milk and available when needed.
Interaction with other laws	<ul style="list-style-type: none"> • Other laws that may apply include Title VII, ADA, FMLA, MA PFML, PWFA, and PUMP Act 	<ul style="list-style-type: none"> • PWFA does not replace federal, state, or local laws that are more protective than the federal law • Other laws that may apply include Title VII, ADA, FMLA, MA PFML, and the PUMP Act 	<ul style="list-style-type: none"> • The PUMP Act does not preempt State or local laws that provide greater protections to employees • Other laws that apply include PWFA and MA PWFA

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