

Comparison of Americans with Disabilities Act and Pregnant Workers Fairness Act Requirements

The Pregnant Workers Fairness Act (PWFA) is a federal law that went into effect on June 27, 2023, and requires employers to provide reasonable accommodations for the known limitations of employees and applicants related to **pregnancy, childbirth** and **related medical conditions**. The Americans with Disabilities Act (ADA) is a federal law that was signed into law on July 26, 1990, and requires employers to provide reasonable accommodations for the known limitations of employees and applicants related to **disabilities**. In drafting the final rules implementing the PWFA, the Equal Employment Opportunity Commission (EEOC) borrowed language and concepts from the ADA. However, despite their many similarities, the two laws have a number of distinctions.

Among the key differences between the two laws are the following:

- Which individuals are protected under the law;
- Known limitations that qualify for a reasonable accommodation;
- The required severity of such conditions;
- Whether employees must be able to perform the essential functions of the job to qualify for an accommodation;
- Whether employers may require employees to take leave as a reasonable accommodation;
- Whether certain accommodations must generally be provided automatically and without an interactive process;
- When and to what extent employers may request medical documentation; and
- Whether employers can require employees to undergo a medical examination.

Because of these key differences, employers who apply the ADA requirements to PWFA reasonable accommodation requests may run afoul of the law. Therefore, employers should carefully review their obligations under each of these laws to prevent potential employee claims of discrimination for failure to accommodate a covered condition. This Compliance Overview provides a high-level summary of the key provisions of the ADA and PWFA and how the two laws differ.

ADA AND PWFA BACKGROUND

In general, both the ADA and the PWFA require employers to reasonably accommodate certain known limitations related to disability and pregnancy, childbirth or related medical conditions, respectively. While these laws impose similar obligations on employers, they differ in a number of significant ways, and the PWFA generally imposes greater requirements on employers than the ADA does. To avoid potentially costly and time-consuming legal challenges, it is crucial for employers to understand their obligations under both laws.

The following tables provide a high-level overview of the key provisions of each ADA and the PWFA reasonable accommodation requirements and highlight the significant similarities and differences in the laws. Employers may note that the ADA contains other provisions, including provisions that prohibit discrimination on the basis of an individual's disability. While the PWFA does not contain such provisions, individuals are protected from discrimination on the basis of their pregnancy, childbirth or related medical condition under Title VII of the Civil Rights Act. These tables only address the reasonable accommodation requirements under each law.

SIMILARITIES BETWEEN THE ADA AND PWFA

In many ways, the PWFA mirrors the reasonable accommodation requirements under the ADA. The key similarities are highlighted in the chart below.

COVERED EMPLOYERS	The ADA and PWFA apply to all employers with **15 or more employees** for 20 or more calendar workweeks (which do not need to be consecutive) in either the current or preceding calendar year.
REASONABLE ACCOMMODATION	The ADA and PWFA require employers to provide qualified individuals with a reasonable accommodation for their covered condition unless doing so would impose an undue hardship on the employer. Under both laws, "**reasonable accommodations**" generally include: • Modifications or adjustments to a job application process that enable a qualified applicant with a known limitation to be considered for a position; • Modifications or adjustments to a work environment or to the manner or circumstances under which a position is done to allow a person with a known limitation to perform the essential functions of the job; and • Modifications or adjustments to the way things usually are done to enable an employee with a known limitation to enjoy equal benefits and privileges of employment.
UNDUE HARDSHIP	Under the ADA and PWFA, employers must perform an individualized assessment of current circumstances that show an accommodation would cause an undue hardship. Each law uses a substantially similar definition of "undue hardship." Specifically, undue hardship means that an accommodation would be unduly costly, extensive, substantial or disruptive, or would fundamentally alter the nature or operation of the business. Among the factors to be considered in determining whether an **undue hardship** exists are: • The nature and cost of the accommodation needed; • The overall financial resources of the facility; • The number of employees at the facility; • The effect on expenses and resources of the facility; • The overall financial resources, size, number of employees, and, if applicable, the type and location of the employer's overall facilities; • The type of operation of the employer; and • The accommodation's impact on the operation of the facility.
INTERACTIVE PROCESS	The ADA and PWFA both require employers to engage in the "interactive process" after receiving a request for an accommodation based on an individual's disability or pregnancy, childbirth or related medical condition. In each case, the interactive process should begin as soon as possible and does not have to follow any particular format. Instead, it should be a dialogue between the employer and the individual requesting an accommodation. The discussion may cover the nature of the underlying condition, how the condition prompts a need for an accommodation and whether any alternative accommodations may be effective in meeting the individual's needs. However, under both the ADA and PWFA, the interactive process may not always be necessary where the appropriate accommodation is obvious. In addition, as discussed further below, **certain accommodations must generally be provided automatically under the PWFA without requiring any interactive process.**
ESSENTIAL FUNCTIONS OF THE JOB	Although the ADA and PWFA differ as to whether a qualified individual must be able to perform the essential functions of the job, with or without accommodation, both laws generally apply the same definition of the term. "**Essential functions**" are the fundamental job duties of the employment position the individual holds or desires. A job function may be considered essential for various reasons, including: • The reason the position exists is to perform that function; • There are a limited number of employees available to perform that function; or • The function is highly specialized, so the employee in the position is hired for a particular expertise or ability.
PROHIBITED RETALIATION	The ADA and the PWFA prohibit employers from punishing or retaliating against an individual for: • Requesting or using a reasonable accommodation under the ADA or PWFA; • Reporting or opposing unlawful discrimination under the ADA or PWFA; or • Participating in an ADA or PWFA proceeding (such as an investigation).

ENFORCEMENT	The ADA's reasonable accommodation requirements and the PWFA are enforced by the EEOC.

DIFFERENCES BETWEEN THE PWFA AND THE ADA

Despite the many similarities between the PWFA and the ADA, the laws differ in a number of respects. In most cases, the PWFA imposes greater requirements on employers. Therefore, employers must be careful not to automatically apply the same procedures to accommodate an individual's pregnancy, childbirth or related medical condition that are used when accommodating an individual's disability under the ADA. Failure to comply with the PWFA's stricter obligations could open the employer up to employee claims and costly litigation. The chart below highlights some of the key differences between the reasonable accommodation requirements under the ADA and the PWFA.

	ADA	PWFA
QUALIFIED INDIVIDUAL	Qualified individuals include employees and applicants who: • Meet legitimate skill, experience, education or other requirements of an employment position that they seek; and • **Are able to perform the essential functions of the job**, with or without reasonable accommodation.	Qualified individuals include employees and applicants who: • Are able to perform the essential functions of the job, with or without reasonable accommodation; or • **Cannot perform an essential function of the job**, but such inability is temporary, the essential function could be performed in the "near future" and such inability to perform an essential function can be reasonably accommodated. Under the PWFA, "**temporary**" means lasting for a limited time, not permanent, and may not extend beyond the near future. In the case of pregnancy, "near future" generally means 40 weeks from the start of the suspension of an essential job function but is not defined for childbirth or related medical conditions.
KNOWN LIMITATIONS COVERED UNDER THE LAW	The ADA requires employers to reasonably accommodate a qualified individual's known limitation related to disability, which includes any of the following: •Having a physical or mental impairment that substantially limits one or more major life activities of an individual; •Having a record of such impairment; or •Being regarded as having such an impairment.	The PWFA requires employers to reasonably accommodate an individual's known limitation (i.e., physical or mental condition) related to, affected by or arising out of: • **Pregnancy** (including uncomplicated pregnancies); • **Childbirth** (including vaginal deliveries or cesarian sections); and • **Related medical conditions** (including but not limited to miscarriage, postpartum depression, edema, placenta previa and lactation). "Related medical conditions" also include not only new physical and mental conditions originating in pregnancy but also preexisting conditions exacerbated by pregnancy or childbirth (e.g., diabetes or high blood pressure).
REQUIRED SEVERITY OF THE LIMITATION	Under the ADA, to qualify for an accommodation, an individual's impairment must **substantially limit** one or more major life activities (e.g., caring for oneself, performing manual tasks, seeing, hearing, eating). The impairment may be episodic or in remission but must reach the required level of severity when active.	Under the PWFA, the limitation need not rise to any level of severity to qualify for an accommodation (e.g., pregnancy in and of itself is a known limitation) and may be **modest, minor and/or episodic**. Unlike the ADA, the individual's known limitation **does not need to meet the definition of a disability** under the ADA in order to be covered.
REQUIRING LEAVE AS AN ACCOMMODATION	Leave (either paid or unpaid) is a form of reasonable accommodation under the ADA, and the law generally does not restrict an employer's ability to grant leave as a reasonable accommodation.	While leave can be a reasonable accommodation under the PWFA, an employer **cannot require that an employee take leave** if another reasonable accommodation would enable the employee to continue working.

	ADA	PWFA
PREDICTABLE ASSESSMENTS (ACCOMMODATIONS THAT MUST BE PROVIDED)	The ADA does not require employers to provide any particular accommodation without engaging in the interactive process or assessing whether the accommodation would provide an undue hardship.	The following accommodations (also known as "predictable assessments") are generally assumed to be reasonable and not impose an undue hardship and **should be provided in virtually all cases and with limited or no interactive process**: • 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.
REQUESTING MEDICAL DOCUMENTATION	An employer may ask an employee for reasonable documentation about an individual's disability only if it is reasonable to do so under the circumstances to determine whether the employee has a covered condition and needs an adjustment at work due to such condition. Under the ADA, it is not reasonable to request medical documentation when: • The disability and the accommodation need are obvious; and • The employer has sufficient information to substantiate that the individual has a limitation and needs an adjustment at work. All documentation received must be kept **confidential**.	An employer may ask an employee for reasonable documentation about an individual's known limitation only if it is reasonable to do so under the circumstances to determine whether the employee has a covered condition and needs an adjustment at work due to such condition. Under the PWFA, it is not reasonable to request medical documentation when: • Both the limitation and the accommodation need are obvious; • The employer has sufficient information to substantiate that the individual has a limitation and needs an adjustment at work; • A pregnant employee seeks a "predictable assessment" that generally must be provided automatically; • The limitation for which an accommodation is needed involves lactation; or • The requested accommodation is available to employees in that situation normally pursuant to an employer's policies or practices without submitting supporting documentation. All documentation received must be kept **confidential**.
MEDICAL EXAMINATIONS	In some instances, an employer may require that an employee seeking an accommodation be examined by a health care provider selected by the employer (e.g., the employer has explained what type of documentation is needed, and the employee fails to provide it or provides insufficient documentation).	Employers **may not** require that an employee seeking an accommodation be examined by a health care provider selected by the employer.

EMPLOYER TAKEAWAYS

Although the ADA and the PWFA have many similarities, they have significant differences. While both laws require employers to reasonably accommodate covered conditions, the PWFA generally extends broader protections to employees and applicants. Therefore, employers may not simply treat a request to reasonably accommodate pregnancy, childbirth or a related medical condition in the same manner they would treat a request to accommodate a disability—doing so may result in noncompliance with the PWFA. Failure to comply with the PWFA may result in substantial penalties, including injunctive relief (e.g., reinstatement), back pay, compensatory damages, punitive damages, front pay, and attorney fees and costs. To prevent noncompliance, employers should familiarize themselves with their obligations under each law and ensure that their policies and procedures reflect these distinct requirements. Employers may also wish to train supervisors and HR personnel on their legal obligations, such as handling and responding to accommodation requests under the respective laws.

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