
The Pregnant Workers Fairness Act and the PUMP Act

Illinois Human Rights Commission
October 26, 2023

About A Better Balance

A BETTER BALANCE National legal advocacy organization with offices in New York City, Nashville, Denver, New Orleans, and Washington D.C.

MISSION Use the power of the law to advance justice for workers, so they can care for themselves and their loved ones without jeopardizing their economic security.

Introductions



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The Problem

The New York Times

Opinion

OP-ED CONTRIBUTOR

January 2012:

Pregnant, and Pushed Out of a Job

By Dina Bakst

Jan. 30, 2012



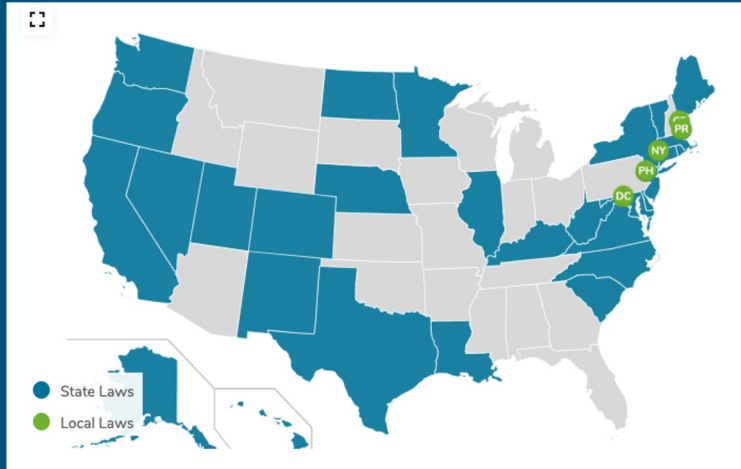
Sol Cotti

Image by Sol Cotti, New York Times

The Decade-Long Fight



State PWFAs



Alaska
California
Colorado
Connecticut
Delaware
Hawaii
Illinois
Kentucky

Louisiana
Maine
Maryland
Massachusetts
Minnesota
Nebraska
New Jersey
New Mexico

New York
North Carolina
North Dakota
Oregon
Rhode Island
South Carolina
Tennessee
Texas

Utah
Vermont
Virginia
Washington
Washington, D.C.
West Virginia

The Pregnant Workers Fairness Act & PUMP Act Are Now Law!

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Senate passed PWFA & PUMP as amendments to the FY 2023 omnibus spending bill in overwhelmingly bipartisan votes.

The Pregnant Workers Fairness Act went into effect.



President Biden signed the omnibus into law. The PUMP Act's expanded access provisions went into effect immediately. Expanded remedies went into effect on April 28, 2023.

EEOC issued proposed regulations on the Pregnant Workers Fairness Act.

Significance of Passage

PREGNANT WORKERS FAIRNESS ACT

- Reasonable accommodations for limitations related to pregnancy, childbirth, and related medical conditions, absent undue hardship, for **3+ million pregnant people** and millions of postpartum workers each year.

PUMP FOR NURSING MOTHERS ACT

- Nearly **9 million more workers** have access to reasonable break time and space to pump at work.
- New enforcement provisions for violations of the law.

PWFA: Basics

- **Went into effect on June 27, 2023.**
- **Covers public employers, and private employers with 15+ employees.**
- **Remedies and EEOC filing prerequisites identical to Title VII.**

PWFA: Five New Rights

1. Employers must provide reasonable accommodations for employees' known limitations related to pregnancy, childbirth, or related medical conditions, unless doing so would impose an undue hardship.
2. Employers cannot require employees to accept any accommodation that was not arrived at through the interactive process.
3. Employers cannot deny a job or promotion because the employee would need a reasonable accommodation to do it.
4. Employers cannot require an employee to take leave (whether paid or unpaid) if another reasonable accommodation exists.
5. Employers cannot retaliate against workers for requesting or using a reasonable accommodation.

PWFA: Essential Functions

The PWFA uses the ADA's definitions of "undue hardship" and "reasonable accommodation."

Under the PWFA, however, an employee is still considered "qualified" for their position, and thus entitled to accommodation, even if they are unable to complete all of the essential functions of their position, so long as:

1. Their inability to perform the essential function is temporary;
2. They can perform the essential function in "the near future"; and
3. Their inability to perform the essential function can be reasonably accommodated.

PWFA: Examples



- More frequent or longer **breaks**, including bathroom or rest breaks
- Modifying a **food or drink policy** to allow access to water or snacks
- Temporary **inside duty**, for example, to avoid heat or wildfire smoke

PWFA: Examples



- Allowing employees to work while **sitting**
- Assisting with **heavy lifting**
- **Temporarily transferring** an employee to a less strenuous or hazardous position
- Modifying a **work schedule**
- Time off for **prenatal appointments**
- Remote work or **telework**
- Changing a **uniform or dress code**

PWFA: Lactation Accommodations

DID
YOU
KNOW

The **Pregnant
Workers Fairness
Act** can help with...

**Breaks and a
private space
for breast milk
pumping**



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Also includes other **lactation-related accommodations**, such as modifying uniforms and equipment, or providing a temporary transfer.

PWFA: Childbirth Accommodations

- The PWFA provides **time off to recover from childbirth**, even for those who otherwise would not qualify for Family Medical Leave Act.
- Can also include other **postpartum reasonable accommodations**, such as working from home to recover from postpartum mental health conditions.

PWFA: Related Medical Conditions

- Unlike the Americans with Disabilities Act, pregnant workers **no longer have to have a disability** for legal protection.
- PWFA covers **medical conditions related to pregnancy**, this can include pregnancy loss, mastitis, and mental health conditions.
- PWFA likely also applies to those who are **trying to become pregnant**.

PWFA: EEOC Rulemaking

On August 11, 2023, the EEOC issued proposed regulations to implement the PWFA.

The comment period closed on October 10, 2023. The EEOC received over 97,000 comments!

The EEOC will review the comments and issue final regulations, which may then be subject to legal challenge.



Federal PWFA Interaction w/ State Laws

- 30 states, D.C., and 4 localities have PWFA laws on the books
- These state/local laws are NOT preempted
- Illinois PWFA was passed in 2014, became effective 1/1/15
- Covers employers of all sizes
- Requires employers to provide reasonable accommodations absent undue hardship
- Statute lists possible accommodations, including breaks, seating, private space to express milk or breastfeed
- Posting requirements

The PUMP Act

- Expands lactation rights under the FLSA to nearly 9 million more workers, including teachers, registered nurses, farmworkers, and many others.
- Applies to employers of ALL sizes. Employers with fewer than 50 employees can claim an undue hardship exemption.
- For certain employees of rail carriers and motorcoaches, the law will go into effect on December 29, 2025.
- The law does not apply to flight attendants and pilots.

The PUMP Act

- Provides covered workers with the right to reasonable break time (“each time [the] employee has need”) and a clean, private space to express milk.
- Protections for up to one year following birth.
- The law does not mandate that break time be paid. However, if an employee is performing any work while pumping, that time counts as “hours worked” and must be both paid and counted towards overtime.
- Workers cannot be required to work additional time to “make up” for time spent pumping.
- Retaliation is prohibited.

The PUMP Act

- Workers can file complaints with the U.S. Department of Labor or directly in federal court.
- Remedies now include (re)instatement, promotion, lost wages, liquidated damages, emotional distress, attorneys' fees, and punitive damages.
- Before filing a lawsuit for inadequate lactation space, workers must notify the employer and give them 10 days to correct.
 - Notice requirement does not apply if the employee was discharged in retaliation for their request or if the employer has stated their intention to never provide the space.
 - Notice requirement does not apply to claims filed at the DOL.

Federal PUMP Interaction w/ State Laws

- Many states have laws providing protections for lactating workers expressing milk in the workplace.
- The PUMP Act does not preempt these state/local laws.
- Illinois Nursing Mothers in the Workplace Act covers employers with 5+ employees.
- Requires reasonable, paid break time absent undue hardship.
- Requires private location, other than a toilet stall, to pump.
- Illinois law also protects the right to breastfeed in any public or private location.

How We Can Help

CALL our free and confidential legal helpline:

1-833-NEED-ABB (1-833-633-3222)

- Free
- Confidential
- Informal
- Information to help pregnant people, new parents, and other caregivers understand their rights at work and at school
- English and Spanish (other languages may be accessible via translation services)

Note: What we share today is for informational use only. It is not legal advice.

What We Can Help With

INFORMATION about:

- Pregnancy accommodations & pumping at work
- Pregnancy and caregiver discrimination at work
- Paid sick time
- Paid family leave / temporary disability insurance
- Pregnancy discrimination and accommodations at school

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Resources for Workers

Find more information
about your workplace
rights at

[www.abetterbalance.org/
know-your-rights/](http://www.abetterbalance.org/know-your-rights/)

Workplace Rights Hub

A state by state legal guide to asserting your rights for workers caring for yourself and your loved ones.



Knowledge is power! You shouldn't have to choose between caring for your health and your family, or your paycheck. There are laws that can help. **ABB's Workplace Rights Hub** is your guide to the workplace laws that can help ensure you are free from discrimination and give you the time and support

Find Your State

Choose a state ↓

Go »

Reach Out to Us

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Questions?