

# What the Protecting Pregnant Workers Fairness Act requires of Employers

- OHR Enforcement Guidance 17-02 -



**Date:** September 18, 2017

## **Subject**

---

The Protecting Pregnant Workers Fairness Act of 2014 (PPWFA)

## **Purpose**

---

This enforcement guidance provides an update on the enforcement agency, what the law requires, examples of violations and non-violations, and best practices in complying with the law.

### **A. What does the law require generally?**

---

Generally, PPWFA requires employers to provide a reasonable accommodation to employees whose ability to perform job duties is limited because of pregnancy, childbirth, breastfeeding, or a related medical condition.

### **B. Which agency is enforcing the law?**

---

Starting October 1, 2017, the Office of Human Rights will have full jurisdiction over the Protecting Pregnant Workers Fairness Act and ALL complaints alleging a violation of this law MUST be filed at OHR.<sup>1</sup>

### **C. Who does the law apply to?**

---

All employers in the District of Columbia, regardless of size, are obligated to comply with the Protecting Pregnant Workers Fairness Act (PPWFA).<sup>2</sup>

### **D. Are there posting or notification requirements?**

---

Yes. Employers MUST:

- Post and maintain in a conspicuous place a notice of PPWFA rights in both English and Spanish
- Provide written notice of PPWFA rights to new employees
- Provide written notice of PPWFA rights to existing employees within 120 days after March 3, 2015
- Provide notice of PPWFA rights to an employee who notifies the employee of the pregnancy within 10 days of the notification

---

<sup>1</sup> See Fiscal Year 2018 Budget Support Act of 2017 (B22-0244). The Act was originally enforced by the Department of Employment Services, but OHR investigated claims via an MOU with DOES in FY16 and FY17.

<sup>2</sup> The relevant provisions discussed can be found at D.C. Code §§ 32-1231.01-.15.

## E. What are the specific reasonable accommodation requirements of the law?

---

Under the PPWFA, employers **MUST**:

- 1. Engage in the Interactive Process:** If an employee requests a pregnancy related accommodation, the employer **MUST** engage, in good faith, in a timely and interactive process to determine if a reasonable accommodation can be made for the employee.
- 2. Make Reasonable Accommodations:** If a job performance limitation is related to the employee's pregnancy, childbirth, related medical conditions, or breastfeeding needs, the employer **MUST** make reasonable accommodations for the known limitations of the worker.

Under the PPWFA, employers **MAY NOT**:

- 1. Refuse to Make Reasonable Accommodations:** Unless the employer can demonstrate that the requested accommodation would impose an undue hardship to the employer, the employer may **NOT** refuse to make reasonable accommodations for the known limitations related to pregnancy, childbirth, related medical conditions, or breastfeeding for any employee.
- 2. Require an Employee to Take Leave:** If a reasonable accommodation can be provided, the employer may **NOT** require a pregnant, breastfeeding, or employee suffering from pregnancy related medical conditions to take leave.
- 3. Require Certain Accommodation:** The employer may **NOT** require an employee who is pregnant or breastfeeding, or an employee with related medical conditions, to take an accommodation that is not necessary or requested.
- 4. Retaliate:**
  - a. The employer may **NOT** retaliate or take an adverse action against an employee for requesting pregnancy related accommodations under this Act.
  - b. The employer may **NOT** retaliate or take an adverse action against an employee because they are absent from work due to a pregnancy related condition or pre-birth complication.
  - c. Adverse actions can include:
    - Change or denial of the privileges and conditions of employment due to the reasonable accommodation
    - Denial of employment opportunities to an employee or job applicant if the denial is based on the need of the employer to make reasonable accommodations to the known limitations related to pregnancy, childbirth, related medical conditions or breastfeeding
    - Termination

Under the PPWFA, employers **MAY**:

- 1. Require Medical Certification:** Employers may require an employee to provide a certification from the employee's health care provider concerning the medical advisability of a reasonable accommodation to the same extent a certification is required for other temporary disabilities

The certificate shall include:

- The date the reasonable accommodation became or will become medically advisable

- An explanatory statement as to the medical condition and the advisability of providing the reasonable accommodation
- The probable duration that the reasonable accommodation will need to be provided

## **F. What are examples of reasonable accommodations?**

---

### **Reasonable Accommodations can include:<sup>3</sup>**

- (A) More frequent or longer breaks
- (B) Time off to recover from childbirth
- (C) The acquisition or modification of equipment or seating
- (D) The temporary transfer to a less strenuous or hazardous position or other job restructuring such as providing light duty or a modified work schedule
- (E) Having the employee refrain from heavy lifting
- (F) Relocating the employee's work area
- (G) Providing private non-bathroom space for expressing breast milk
- (H) Time off due to pre-birth complications

## **G. Are there exceptions in the law?**

---

Yes.

- 1. Undue Hardship Exception:<sup>4</sup>** An employer is not obligated to reasonably accommodate a pregnant employee, if the accommodation would impose an undue hardship on the employer.

An undue hardship “means any action that requires significant difficulty in the operation of the employer’s business or significant expense on the behalf of the employer when considered in relation to factors such as the size of the business, its financial resources, and the nature and structure of its operation.”

## **H. Are there examples of accommodations and accommodation requests?**

---

### **EXAMPLES**

**Ex. 1:** Portia is a pregnant employee who is seen writhing in pain at her desk. She informs her supervisor that she is experiencing sciatica in her back due to the weight of her twins. Portia finishes her work for the day despite the pain. The following day, the supervisor observes Portia getting up every few minutes to relieve the pressure on her back. The supervisor tells Portia that she needs to take a leave of absence and to come back after the baby is born. Portia informs her supervisor that she is fine as long as she can stand up every once in a while to relieve the pressure on her back. The supervisor, believing that Portia would be better off “resting,” insists that Portia take a leave of absence.

Here the supervisor has likely violated the PPWFA, because she required Portia to take leave, even though she was able to perform her duties without taking leave, and did not want to take the leave.

**Ex. 2:** Safeco the employer asks Mary, the pregnant employee, to carry heavy boxes filled

<sup>3</sup> D.C. Code §§ 32-1231.01 (2)(A)-(H).

<sup>4</sup> D.C. Code § 32-1231.01 (3).

with printer paper down the office, despite Mary notifying and requesting that this particular task be temporarily reassigned to another employee due to her pregnancy concerns with heavy lifting. Safeco refuses and continues to demand that Mary performs the job.

Here, Safeco has likely violated the PPWFA because Mary requested that this task be temporarily assigned to another employee, and the reasonable accommodation would not impose an undue burden on the business.

**Ex. 3:** Norma is a night shift security guard at Top Security. She is having pregnancy complications and often falls asleep during the shift. She requests that her schedule be changed so that she can work during the day instead. Top Security denies Norma's request because it does not need any security guards on duty during the day.

Here the employer may not have violated the PPWFA because the request to modify the employee's schedule into a day time security guard imposed an undue burden on the business. The burden is on the employer to show that the accommodation would impose an undue burden.

**Ex. 4:** Janice requests time off to recover from childbirth. The Employer asks Janice to provide a document from her doctor stating (1) the date the accommodation became or will become medically advisable, (2) an explanatory statement as to the medical condition and the advisability of providing the reasonable accommodation in light of the condition, and (3) the probable duration that the accommodation will need to be provided. Janice failed to provide the document.

Here the employer may not have violated the PPWFA because an employer may require an employee to provide a certification from the employee's health provider concerning the medical advisability of a reasonable accommodation.

## I. What are the best practices in complying with the PPWFA?

---

### Best Practices

- Create a process for employees who want to request pregnancy related complications, and designate a contact person for these requests.
- Once the employer has knowledge of an employee's pregnancy, the employer should inform the employee of their rights under the PPWFA, and how the employee can request an accommodation if an accommodation becomes necessary.
- Work with the employee, in good faith, to provide the accommodation if it is reasonable and not an undue burden.