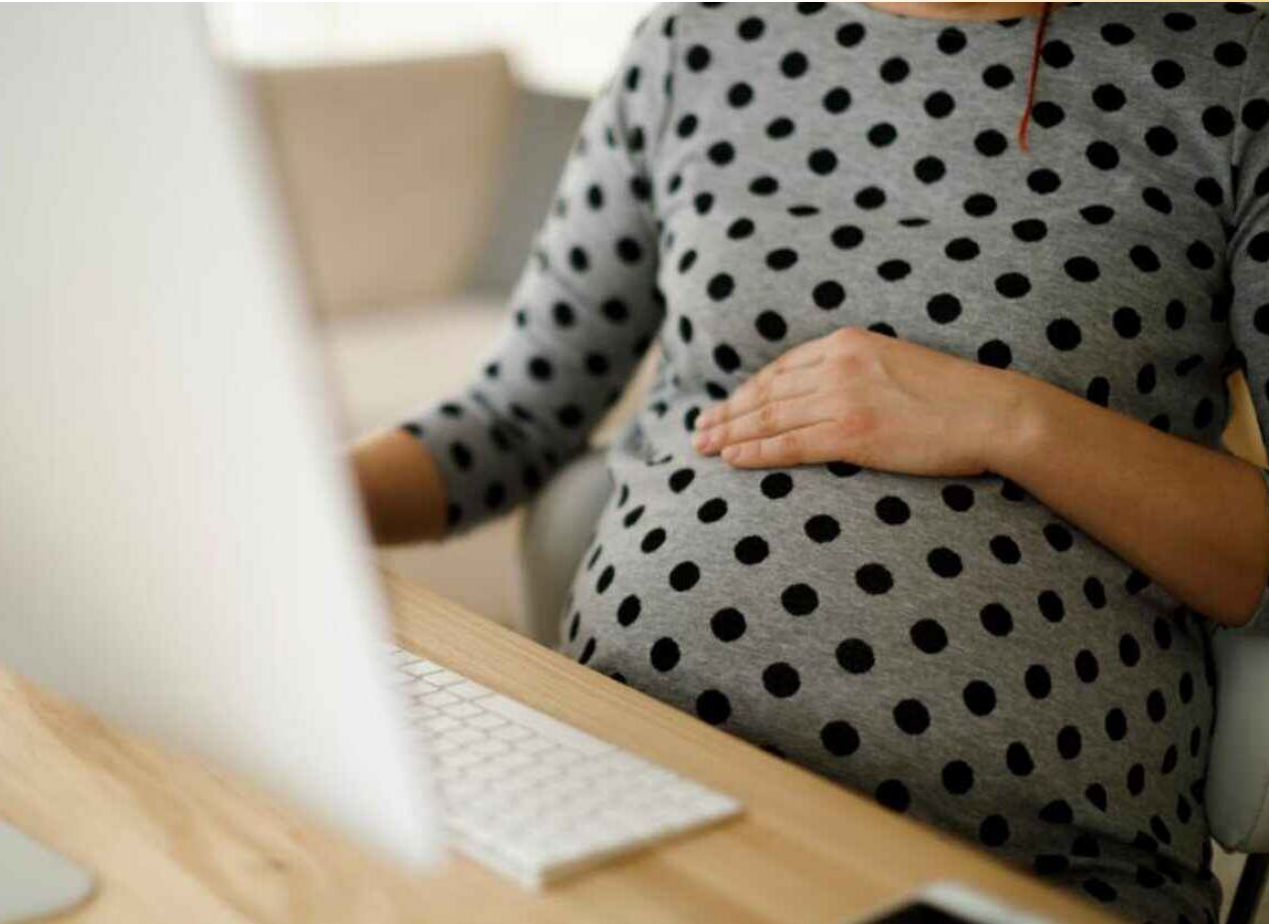




AMERICAN COUNCIL OF ENGINEERING COMPANIES



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Pregnancy & Maternity Regulations & Accommodations

Disclosure of Pregnancy

- Employees are under **no legal obligation to disclose** their pregnancy to an employer or prospective employer
- Federal law **prohibits employers from asking** if a person is or intends to become pregnant
- Per the HIPAA Privacy Rule, pregnancy is considered protected health information and **cannot be disclosed without the person's authorization**, except for health care treatment, payment or operations



Legal Protection for Pregnant Workers: Title VII

1. **Title VII** of the Civil Rights Act of 1964 and its amendment under the Pregnancy Discrimination Act (PDA) of 1978

- Prohibits sex discrimination, including pregnancy discrimination. Discrimination can be based on:
- Current pregnancy
 - Past pregnancy
 - Potential pregnancy
 - Medical condition related to pregnancy or childbirth including breastfeeding/lactation
 - Having, or choosing not to have, an abortion
 - and Birth control (Contraception)

Legal Protection for Pregnant Workers

PFWA

2. The Pregnant Workers Fairness Act (PWFA)

- Employers with 6 or more employees
- Employers provide Reasonable Accommodation (RA) to a worker's known limitation related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship
 - RA must be provided for other workers with similar ability or inability to perform job duties, otherwise it is considered discriminatory
- Prohibits an employer from *forcing* a worker to take an accommodation and prohibits an employer from requiring a worker to take leave if there is another accommodation that does not cause an undue hardship that will allow the worker to stay on the job



Legal Protection for Pregnant Workers

ADA

3. The Americans with Disabilities Act (ADA)

- Prohibits discrimination against an applicant or employee based on a disability, including a disability related to a pregnancy such as diabetes that develops during pregnancy
- Pregnancy itself is not a disability under the ADA, but medical conditions or impairments related to pregnancy qualify as disability under the ADA
- An employer may have to provide that worker with a reasonable accommodation for the pregnancy-related disability
- The ADA also requires that employers keep all medical records and information, including those that are pregnancy-related, confidential and in separate medical files

Legal Protection for Pregnant Workers

Employment Discrimination

- Title VII and the ADA cover **EMPLOYMENT DISCRIMINATION** in all aspects of employment, including:
 - Hiring or the job application and selection process;
 - Pay, job assignments, or promotions;
 - Training, employee benefits, or any other term or condition of employment; and
 - Firing from a job, reduction of hours, layoff, or termination of employment.



Legal Protection for Pregnant Workers

Retaliation and Interference

- Title VII, the PWFA, and the ADA protect workers against **RETALIATION** and **INTERFERENCE**:



- It's illegal for an employer to retaliate against workers for participating in the EEO process or opposing any practice made unlawful under anti-discrimination laws
- The PWFA and the ADA also makes it illegal to interfere with rights under the PWFA and the ADA

Legal Protection for Pregnant Workers

Interference

- Examples of **interference**:

- coercing an individual to relinquish or forgo an accommodation to which they are entitled
- issuing a policy or requirement that purports to limit an employee's rights to invoke ADA protections (for example: a fixed leave policy that states "no exceptions will be made for any reason")
- threatening an employee with loss of employment or other adverse treatment if they do not "voluntarily" submit to a medical examination or inquiry
- subjecting an employee to unwarranted discipline, demotion, or other adverse treatment because he assisted a coworker in requesting reasonable accommodation
- interfering with a former employee's right to file an ADA lawsuit against the former employer by stating that a negative job reference will be given to prospective employers if the suit is filed
- intimidating an applicant from requesting accommodation for the application process by indicating that such a request will result in the applicant not being hired

Legal Protection for Pregnant Workers

Reasonable Accommodations

- Reasonable Accommodations (RA) for pregnant workers include:
 - Ability to sit or drink water
 - Additional break time to use the bathroom, eat, and rest
 - Being excused from strenuous activities and/or activities involving exposure to unsafe compounds
 - Limiting heavy lifting
 - Temporarily reassigning them to light duty or other tasks
 - Flexible hours and allowing them to telecommute
 - Closer parking
 - Appropriately sized uniforms and safety apparel
- However, the EEOC and ADA place **limitations on** the kinds of **disability-related questions** an employer can ask an employee (regardless of whether the disability is pregnancy-related)
- **Employers should never suggest accommodations;** RA should be requested by the employee

The Leaves Applicable to Pregnancy and Maternity

- Multiple types of leave are available and **run concurrently**:
 - FMLA (Federal)
 - MA PFML and other State-mandated paid medical and/or family leaves
 - MA Parental Leave Act (MPLA)
 - Company-paid maternity leave
 - STD benefits
- It is recommended to include this information in your employee handbooks
- Under the FMLA, PFML, and MPLA laws, employees' **health insurance must be maintained** at the same level as if they had not been on leave
- Employee contributions for the maintained health insurance continue during the leave

Applicable Leaves Eligibility

MA Only	Federal	MA Only
PFML	FMLA	MPLA
Have earned at least \$5,700 in the previous 12 months	Have worked for the same employer for at least 12 months And have worked at least 1,250 hours for that employer And be employed at a location with at least 50 other employees within 75 miles	Being employed full time and having completed the initial probation period And giving the employer at least 2-weeks notice before departure (unless unable to for reasons beyond their control)

- Eligibility and applicability rules differ between MA PFML and FMLA, such as the definition of a family member
 - e.g., siblings, grandparents, domestic partners, and in-laws are covered under PFML and **not FMLA**

Applicable Leaves

Benefits

	MA Only	Federal	MA Only
	PFML	FMLA	MPLA
Birth, adoption, or foster care of a child	12 weeks/yr	12 weeks/yr	8 weeks
Caring for family member with medical condition	12 weeks/yr	12 weeks/yr	n/a
Employee's own serious medical condition	20 weeks/yr	12 weeks/yr	n/a
Maximum leave family + medical combined	26 weeks/yr	n/a	n/a
Caring for military service member with serious medical condition	26 weeks/yr	26 weeks/yr	n/a
Maximum benefit amount	\$1,129.82/week	0	0
Unpaid period prior to start of benefits	7 days	n/a	n/a

Applicable Leaves

MA PFML

Under MA PFML:

- An employee can claim concurrent benefits within a benefit year for:
 - 20 weeks of medical leave for health conditions including maternity and childbirth
 - And 12 weeks of family leave to bond with a child
 - But the **maximum benefit** is **26 weeks** of paid leave
- Family leave to bond with a child must be taken within 12 months from the date of birth or adoption
- A benefit year is a period of 52 weeks starting the Sunday before the first day of the first leave
- The lack of 30-day notice does not impede PFML's approval of a leave

Applicable Leaves

New PFML Top Off Rule

Effective for leaves filed on or after November 1, 2023:

- Employees will be allowed to supplement their PFML benefit with accrued vacation pay, sick pay, or other paid leave provided under an employer policy (PTO) while on PFML
- The combined weekly sum of PFML benefits and employer provided paid leave benefits cannot exceed Individual Average Weekly Wage (IAWW)
- Employers are responsible for ensuring that the combined weekly sum of employer-provided paid leave benefits and PFML benefits does not exceed the IAWW
- The Top Off rule also applies to private plans for family leave and/or medical leave

Return to Work



- Under the FMLA, PFML, and MPLA laws, employees are entitled to return to the **same or equivalent position** at the conclusion of the leave, (i.e. status, pay, benefits, length-of-service and seniority)
- It is recommended to have a well-written policy regarding leaves of absence and require employees to provide **updates on their return-to-work status**
- Employers can require workers to provide certification from their health care provider stating that they are **able to resume work**, and to provide a job description to ensure employees are able to perform the job's duties

Return to Work (Cont.)

- The same EEOC accommodation rules apply as for pregnancy
- Even if motivated out of concern, it is discriminatory to treat workers differently (offering remote work, modifying schedules, etc.) on the basis of nursing or assumed childcare responsibilities
- Accommodation requests must come from the employee
- Accommodations cannot be suggested by the Employer; it is recommended to maintain communication with employees during their leave

The PUMP (Providing Urgent Maternal Protections) Act

- The PUMP Act for Nursing Mothers was signed into law by President Biden as part of the 2023 Consolidated Appropriations Act and is effective since December 2022
- The law extends to nursing employees (except certain workers in the transportation industry) the right to receive break time and private space to pump breast milk during the workday for up to one year after their child's birth.



The PUMP Act (Cont.)

- Employers must provide nursing mothers with a private space that is:
 - Functional for pumping milk
 - Shielded from view
 - Free from intrusion
 - Available as needed
 - **NOT a bathroom**



The PUMP Act Break Rules

- **No maximum** number of breaks per day
- Employers **cannot require nursing workers to make up the time** they spent on pump breaks because adding work time to their normal schedule could be considered an adverse action made in retaliation for exercising their lactation rights
- **Time spent pumping milk is considered hours worked** → non-exempt employees must be paid for the entire break and exempt employees receive their full salary regardless of breaks



The PUMP Act Space Rules

- May designate a vacant office or storage room **with a door that closes and covered windows**
- May use partitions or privacy screens as long as the **person using the space is shielded from view and free from intrusion** from co-workers and the public
- Ensure privacy with a door lock or signage that indicates when the space is in use
- Employees **must be able to safely store milk while at work**, such as in an insulated food container, personal cooler or refrigerator
- To determine whether more than one lactation space is needed, employers should take into consideration the number of nursing employees and their work schedules

The PUMP Act

Remote Workers Rules

- Employees working remotely are entitled to take lactation breaks on the same basis as if they were working onsite
- Privacy: they have a right to be shielded from view during a pump break, free from observation by any employer-provided or required video system, including a computer camera, security camera or Web-conferencing platform
- The same break rules apply: unlimited breaks, time spent nursing is time worked



The PUMP Act

Employer Liability



- **Management training is crucial** because the PUMP Act requires employees to notify their employers of the failure to comply and give them a 10-day "cure period" to rectify the problem
- Training is also crucial to avoid supervisors making **statements that could create liability**, such as: "How many times do you have to pump?" or "Just find somewhere to do it and don't take too long"
- If an employer violates the law, remedies may include reinstatement, promotion, payment of wages lost, **liquidated damages and punitive damages**