

## **Pregnant Workers Fairness Act: Understanding Employer Obligations**

### ***Frequently Asked Questions: Medical Certifications***

#### **What is the Pregnant Workers Fairness Act?**

The PWFA is a federal law that requires employers to reasonably accommodate employees who need changes at work because of pregnancy, childbirth, and related medical conditions, unless to do so would create an undue hardship. To learn more about PWFA, see guidance from the [Equal Employment Opportunity Commission](#).

This briefing is intended to assist employers in understanding their rights and obligations under the new law with regard to requesting medical documentation of pregnancy-related health needs.

#### **What does the PWFA say about requesting medical certification?**

The PWFA does not explicitly authorize employers to request medical certification, unlike similar laws requiring work modifications such as the Americans with Disabilities Act (ADA) and Family and Medical Leave Act (FMLA). The regulations implementing the PWFA make clear that employers are never required to seek supporting documentation. However, the regulations allow employers to do so when it is “reasonable.”

#### **When are employers permitted to seek documentation from a healthcare provider?**

The regulations state that employers may seek supporting documentation “only when it is reasonable under the circumstances for the [employer] to determine whether the employee has a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions (a limitation) and needs an adjustment or change at work due to the limitation.”<sup>1</sup> The regulation provides a non-exhaustive list of five situations when it is *not* reasonable to request documentation.

#### **Employers are prohibited from seeking medical documentation under any of these circumstances:**

- The employee states, orally or in writing, that they are pregnant and need any of the following:
  - To sit or stand
  - To carry or keep water nearby to drink as needed
  - To take breaks as needed for going to the bathroom, eating, or drinking<sup>1</sup>
  - Changes related to pumping breast milk at work (like break time or private space)
  - Time to nurse a child during work hours (so long as the child is already near the normal working location, like at a nearby childcare center)<sup>2</sup>
- The limitation and accommodation are obvious.<sup>3</sup>

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<sup>1</sup> 29 C.F.R. §1636.3(l)(1).

<sup>2</sup> §1636.3(l)(1)(iii)-(iv). Note that the laws of some states and local jurisdictions also require employers to provide certain pregnancy accommodations upon request, without medical certification.

<sup>3</sup> §1636.3(l)(1)(i)

- When the employer already has sufficient information to determine whether the employee has a limitation and needs an adjustment or change at work (e.g., when an employee has already provided documentation from a healthcare provider stating a need for accommodation of an episodic condition related to pregnancy, the employer cannot seek additional or new documentation every time the condition arises).<sup>4</sup>
- When the employer’s policies or practices make the requested accommodation available to other employees without the need for documentation.<sup>5</sup>

In any of these situations, requesting documentation (or further documentation) puts an employer at legal risk.

### What health information may employers request?

When it is reasonable under the circumstances for an employer to seek supporting documentation, employers are limited to seeking documentation that is itself “reasonable.” The PWFA regulations define “reasonable documentation” as “the minimum that is sufficient”<sup>6</sup> to:

1. Confirm the physical or mental condition. This can be a “simple statement”<sup>7</sup> identifying the condition, which can be an impediment or problem (including ones that are modest, minor, and/or episodic); a need or problem related to maintaining the employee’s health/pregnancy; or an employee seeking health care.<sup>8</sup> For example, a statement that the employee: has a lifting restriction; is experiencing fatigue; needs to avoid certain physical activities such as running; or needs to attend a healthcare appointment.<sup>9</sup> Employers may not request a diagnosis.<sup>10</sup>
2. Confirm that the physical or mental condition is “related to, affected by, or arising out of pregnancy, childbirth, or related medical condition.” The documentation need not state that pregnancy, childbirth, or a related medical condition is the sole, original, or substantial cause of the physical or mental condition.<sup>11</sup>
3. Describe the adjustment or change at work that is needed. For example, the documentation can state the maximum amount of weight the employee can lift or estimate how often and for how long the employee should rest. The documentation does not need to recommend specific accommodations to implement the change.<sup>12</sup>
4. Provide an estimate of the expected duration of the need for accommodation.

Because the information employers may seek is limited, ***the use of typical ADA and FMLA paperwork would like violate the PWFA.***

<sup>4</sup> §1636.3(l)(1)(ii); §1636, App. A, sec. III, para. 130

<sup>5</sup> §1636.3(l)(1)(v).

<sup>6</sup> §1636.3(l)(2)(i).

<sup>7</sup> §1636.3(l)(4).

<sup>8</sup> §1636.3(l)(2)(i)(A).

<sup>9</sup> §1636, App. A, sec. III, para. 130.

<sup>10</sup> §1636, App. A, sec. III, para. 130.

<sup>11</sup> §1636, App. A, sec. III, para. 137.

<sup>12</sup> §1636, App. A, sec. III, para. 138.

## Which healthcare providers are qualified to provide supporting documentation?

When a documentation request is appropriate, an employer may require that the documentation come from a healthcare provider, which may include a doctor, midwife, nurse, nurse practitioner, physical therapist, lactation consultant, doula, occupational therapist, vocational rehabilitation specialist, therapist, industrial hygienist, licensed mental health professional, psychologist, or psychiatrist or other healthcare provider.<sup>13</sup>

Documentation from a telehealth provider is sufficient. Employers may not require that the health care provider submitting the documentation be the provider treating the employee for the condition, or that the employee be examined by a healthcare provider selected by the employer.<sup>14</sup>

## Ensuring Compliance

Requesting more than the 4 pieces of information identified above as “reasonable” could lead to legal liability. As described by the regulations and interpretive guidance, unreasonable requests may violate the PWFA’s retaliation and coercion provisions, even in situations where the employer ultimately provides the requested accommodation.<sup>15</sup> They may also result in a failure to accommodate under the PWFA<sup>16</sup> and/or a violation of other federal law protecting employee medical information.<sup>17</sup>

**The safest practice for avoiding legal liability is to not request medical documentation,** particularly when the employee has communicated a limitation that is typically associated with pregnancy or has already turned in a letter from a healthcare provider stating that they need an accommodation due to pregnancy/childbirth. In such cases, the best practice is to provide, without delay, an accommodation that does not impose an undue hardship to business operations.

For situations where it is reasonable to request documentation, and an employer decides to do so, it can reduce the risk of unnecessary litigation by following the best practices below.

## How to Request Medical Documentation

Employers can provide our [sample medical certification form](#) (the last page of this briefing) to employees for obtaining supporting documentation from their healthcare provider. This model form is designed to comply with the requirement that employers not seek more than the minimum permissible supporting documentation (the 4 pieces of information related to an employee’s health needs, above). Although employers may provide PWFA medical certification forms for an employee’s use in obtaining supporting documentation, employers may not *require* the use of any particular form. This means that if an employee’s healthcare provider writes a letter that includes reasonable documentation, the employer must accept it and should not require any further documentation.<sup>18</sup>

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<sup>13</sup> §1636.3(l)(3).

<sup>14</sup> §1636.3(l)(3).

<sup>15</sup> §1636, App. A, sec. III, para. 119.

<sup>16</sup> §1636, App. A, sec. III, para. 119.

<sup>17</sup> Improper requests for medical certification may violate employer limitations on disability-related inquiries and medical exams provided by the Americans with Disabilities Act. See 29 C.F.R. §1636, App. A, sec. III, para. 119.

<sup>18</sup> §1636.3(l)(2)(ii).

*Medical certification forms that have been designed for requests under the ADA and/or FMLA run afoul of the EEOC's guidelines, as those forms normally seek detailed information about the employee's health history and prognosis, consent to contact the medical care provider, and/or an evaluation of whether the employee can perform their various job functions. Such information and consent is not reasonable under the PWFA and should not be sought.*

### How to Avoid “Unnecessary Delay” When Seeking Supporting Documentation



Some pregnancy accommodations will be needed on an urgent basis to avoid health complications. Most pregnant people do not have immediate access to a medical care provider for completing paperwork. However, under the PWFA, an “unnecessary delay” in providing accommodation may result in a violation, even if the employer eventually accommodates. Thus, the best practice when waiting for an employee to obtain supporting documentation is to **provide temporary interim accommodations**. In fact, employers that offer an employee an interim accommodation are less likely to be found in violation of the PWFA's unnecessary delay provision.<sup>19</sup>

### How to Safeguard Confidential Health Information

Employers covered by the PWFA are also covered by the ADA, which requires confidentiality of medical information within an employer's possession.<sup>20</sup> As with FMLA and ADA paperwork, any medical information an employer receives as part of a PWFA request must be treated confidentially and kept separate from the employee's personnel file.

That an employee is pregnant, has recently been pregnant, or has a medical condition related to pregnancy is itself confidential health information. As explained by the interpretive guidance to the PWFA regulations, this means employers must keep confidential that an employee requested or is receiving an accommodation under the PWFA.<sup>21</sup>

Confidential health information can be shared with a supervisor only to the extent that disclosure is necessary to provide the accommodation, but the supervisor must also treat the information as confidential.

**Questions?** Contact the Center for WorkLife Law  
at the University of California, College of the Law, San Francisco:  
 [info@worklifelaw.org](mailto:info@worklifelaw.org)  (415) 703-8276

<sup>19</sup> §1636.4(a)(1). For purposes of decreasing the likelihood that unnecessary delay will be found, the interim accommodation should be one that enables the employee to keep working as much as possible; the provision of leave will not excuse delay, unless the employee selects, or requests, leave as an interim accommodation. See 29 U.S.C. §1636, App. A, sec. IV, para. 6.

<sup>20</sup> 42 U.S.C. 1211(d)(3)(B); 29 CFR 1630.14(b)(1), (c)(1), (d)(4).

<sup>21</sup> §1636, App. A, sec. III, para. 146.

**Medical Certification Form  
Accommodations for Pregnancy, Childbirth, and Related Medical Conditions**

**Employee Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Please identify the employee's workplace limitation(s).** A physical or mental condition, impediment, or problem, such as needing to rest, reduce risk, or alleviate pain. It may be modest, minor, or episodic. It also can be for maintaining the health of the employee or pregnancy (if applicable), such as obtaining healthcare or childbirth recovery. You are not required to identify the employee's symptoms or provide a diagnosis.

**Is the identified workplace need(s) related to, affected by, or arising out of pregnancy, childbirth, or a related medical condition?** Related medical conditions include pregnancy symptoms such as nausea and fatigue; conditions such as gestational diabetes and preeclampsia; complications of pregnancy and childbirth such as ectopic pregnancy; prenatal and postpartum mental health conditions; labor and delivery; termination of pregnancy; lactation and related conditions such as low milk supply and engorgement; (in)fertility; use of contraception; and changes in pregnancy-related hormone levels and menstruation. You can answer yes even if pregnancy, childbirth or a related medical condition is not the sole or primary cause of the limitation.

*Please circle one:* **YES** **NO**

**Describe the adjustment(s) or change(s) at work that would address the limitation.** You may, but are not required to, suggest a specific accommodation. You may state what the employee should or should not do.

**What is the expected duration of the need for the adjustment(s) or change(s)?**

**Certifying Health Care Provider Information.** Doctors, midwives, nurses, nurse practitioners, physical therapists, lactation consultants, doulas, occupational therapists, vocational rehabilitation specialists, therapists, industrial hygienists, licensed mental health professionals, psychologists, psychiatrists, and other health care providers may certify employees for pregnancy/childbirth/related accommodations.

**Provider Name:** \_\_\_\_\_

**Practice Name and/or Specialty:** \_\_\_\_\_

**Provider Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_