



LABOR AND EMPLOYMENT LAW DIVISION



Pregnant Workers Fairness Act (PWFA)

- The PWFA was signed into law on December 29, 2022 and it **goes into effect on June 27, 2023.**
- The PWFA is distinct from the Pregnancy Discrimination Act of 1978 (PDA)
 - The PDA amended Title VII to prohibit discrimination on the basis of sex, by specifying that “the basis of sex” includes pregnancy, childbirth, or related medical conditions.
 - This protected against **disparate treatment** relative to similarly situated comparators who were not pregnant.
- The PWFA amends the ADA/Rehabilitation Act to cover employees and applicants who are pregnant.
 - The PWFA does not identify pregnancy itself as a disability
 - However, it creates an affirmative **obligation** for federal employers **to provide reasonable accommodations** to known **functional limitations related to the pregnancy**, whether or not they would otherwise be considered disabling under the ADA/Rehabilitation Act
 - The Army has always followed established reasonable accommodation procedures for functional limitations **caused by a medical condition** related to pregnancy, but not by pregnancy itself.
- Notably, the definition of “qualified employee” is different under the PWFA than the Rehabilitation Act:
 - The PWFA specifically covers **temporary inability to perform essential functions**; whereas
 - The Rehabilitation Act does not require removal of essential functions as a reasonable accommodation.



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- The EEOC has two years from enactment to issue regulations to carry out the PWFA (implementation, enforcement, reporting, etc.), pursuant to which the ASA (M&RA) may revise AR 690-12 and AR 690-600 to incorporate the additional protections.
- In the interim, ODASA-Equity & Inclusion Agency will work on preparing an Army Directive and an EEO Policy Memorandum, and develop supplemental training for EEO Officers, Counselors and Disability Program Managers.

The PUMP Act

- The Providing Urgent Maternal Protections for Nursing Mothers Act (“PUMP Act”), also enacted on 29 December 2022, **takes effect on April 28, 2023.**
- In contrast to PWFA, the PUMP Act **does not amend discrimination laws** enforced by the EEOC.
- **It amends the Fair Labor Standards Act (FLSA)** by expanding the requirement to provide a reasonable break time and a private place (other than a bathroom) that is shielded from view and free from intrusion to express breast milk at the worksite to include salaried employees.
 - Previously, the FLSA break time requirements applied only to employees who were eligible for overtime pay.
 - The Pump Act provides, further, that **time spent to express breast milk must be considered hours worked if the employee is also working.**
 - It also **extends the period of entitlement to such protections from one year to two.**
- Lactating employees do **not need** to go through the **reasonable accommodation** process to obtain these benefits.