

New Federal Laws are Reshaping the Landscape for Women's Rights in the Workforce

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Commentary provided by [Alamea Deedee Bitran](#).

Two new pieces of federal legislation are reshaping and improving the landscape for women in the workforce by mandating reasonable pregnancy accommodations and expanding protections to employees who pump breastmilk at work. In light of these new federal laws, employers should promptly (i) consult with their employment law counsel, (ii) review and revise their accommodations and break policies, (iii) train management on how to respond to such requests, and (iv) designate appropriate space for employees to pump breast milk.

1. The Pregnant Workers Fairness Act ("PWFA")

The PWFA goes into effect on June 27, 2023 and requires covered employers to reasonably accommodate an employee's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship.

The PWFA marks a significant change in the law because under the Americans with Disabilities Act ("ADA"), most courts have concluded in the past that pregnancy is not a disability entitled to a reasonable accommodation. Under [Young v. United Parcel Service, 575 U.S. 206 \(2015\)](#), employers were previously only required to provide reasonable accommodations when an employee's pregnancy, childbirth, or related medical condition rose to the level of a disability under the ADA or when accommodations were made for other similarly situated non-pregnant employees. Some obstacles women previously faced under *Young* when seeking pregnancy accommodations included that it may be challenging as an employee to know what other accommodations similarly-situated non-pregnant employees have been granted. Now, the PWFA eliminates any ambiguities and explicitly requires employers to provide those reasonable accommodations to pregnant women in the workforce.

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Examples of **potential accommodations** under the PWFA include allowing the employee to sit or drink water, park closer, have flexible hours, receive additional break time to use the bathroom, eat, and rest, take leave to recover from childbirth, and be excused from strenuous activities. Employers should ensure they have a comprehensive policy in place to allow employees to request accommodations, engage in the interactive process, and provide reasonable accommodations.

1. **The PUMP for Nursing Mothers Act ("PUMP Act")**

The PUMP Act, effective April 2023, amended the Fair Labor Standards Act ("FLSA") and requires employers to provide reasonable break time for employees to express breast milk for one year after the employee's birth of a child. The PUMP Act mandates that employers provide a place that is not a bathroom for such employees to express breast milk and requires that such a place is shielded from view and free from intrusion.

The break time to pump breastmilk may be unpaid (unless otherwise required by federal, state, or local law), however, notably, the PUMP Act reiterates that the break time is considered hours worked (and should be paid) if employees are not completely relieved from their duties during the entirety of the pumping break.

Before the PUMP Act, those protections only extended to non-exempt (hourly) employees. The PUMP Act extends those protections to exempt (salaried) employees. Certain workers in the transportation industry are excluded from the PUMP Act and employers with less than 50 employees may be exempt from compliance if they establish that doing so would be an undue hardship.