

Pregnancy & Other Related Conditions

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Agenda

1. Title IX Intro
2. Title IX Pregnancy Protections
 - Student Protections
 - Employee Protections
3. Other Related Laws
4. Unique Cases
5. Hypotheticals & Examples
6. Documentations and Case Management

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Introduction

TITLE IX

Key Concepts & Framework

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Title IX (Educational Amendments of 1972) prohibits discrimination **on the basis of sex** in educational programs or activities receiving federal financial assistance

Anyone participating in or attempting to participate in educational programs or activities



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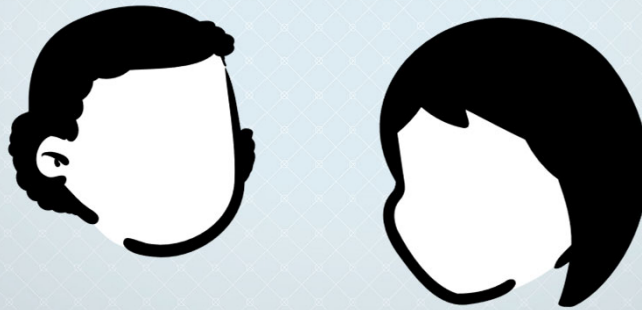
Title IX

Sex Discrimination
Sexual Harassment
Retaliation



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Title IX's prohibition of sex discrimination applies to **pregnancy** and other related conditions...



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Statistics

- Student-Parents are **10x less likely** to graduate college on time than their peers without children.
- **Without a degree**, women (who make up nearly 60% of all U.S. college students) could face long-running financial losses.
- Women with a **bachelor's degree** earn an average of **\$450,000 more** in median lifetime earnings than their peers with a high school degree.

U.S Department of Education, 2013; Tamborini,, Chang, and Sakamoto. 2015. "Education and Lifetime Earnings in the United States." *Demography* 52: 1383–1407.

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Title IX prohibits discrimination based on a student or employee's "actual or potential" status:



Schools must give students who might be, are, or have been **pregnant** equal access to school programs and extracurricular activities.



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Supporting the Academic Success of Pregnant and Parenting Students,
U.S. Department of Education (OCR), 2013

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Equal Participation



An institution shall not discriminate against any student or exclude any student from its education program or activity, including any class or extracurricular activities, based on such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the person **voluntarily participates** in a **separate program or activity** of the institution.

Title IX 34 CFR § 106.40(b)(1)



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Separate Programs

An institution which operates a portion of its education program or activity **separately** for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section (*Equal Participation*) shall ensure that the separate portion is **comparable** to that offered to non-pregnant students.

Title IX 34 CFR § 106.40(b)(3)



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Examples of Student-related Impacts & Needs

Class Attendance & Participation

Excused Absences

Make-up Coursework

Tutoring Accommodations

Breast Milk Expression

Extracurricular Activities

Intercollegiate Sports

Scholarship Status



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Supporting the Academic Success of Pregnant and Parenting Students,
U.S. Department of Education (OCR), 2013

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Excused Absences and Opportunity to Make-Up Coursework

The school must excuse a student's absences due to pregnancy or any related conditions for as long as their **doctor** says it is **medically necessary** for the person to be absent.

A student cannot be penalized for pregnancy or other related conditions.


There must be an equal opportunity given to earn credit from missed classes/assignments due to pregnancy.



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Doctor's Notes

The school cannot require a student to submit a **doctor's note** unless the school requires a doctor's note **from all students** who have a physical or emotional condition requiring treatment by a doctor, or for being hospitalized for other conditions.


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Student Hypothetical Part 1

Jin, a second-year undergraduate student, is in her third trimester and is due at the end of the semester. Jin has been missing classes continually due to medical issues from the pregnancy and frequent doctor's appointments as a result.

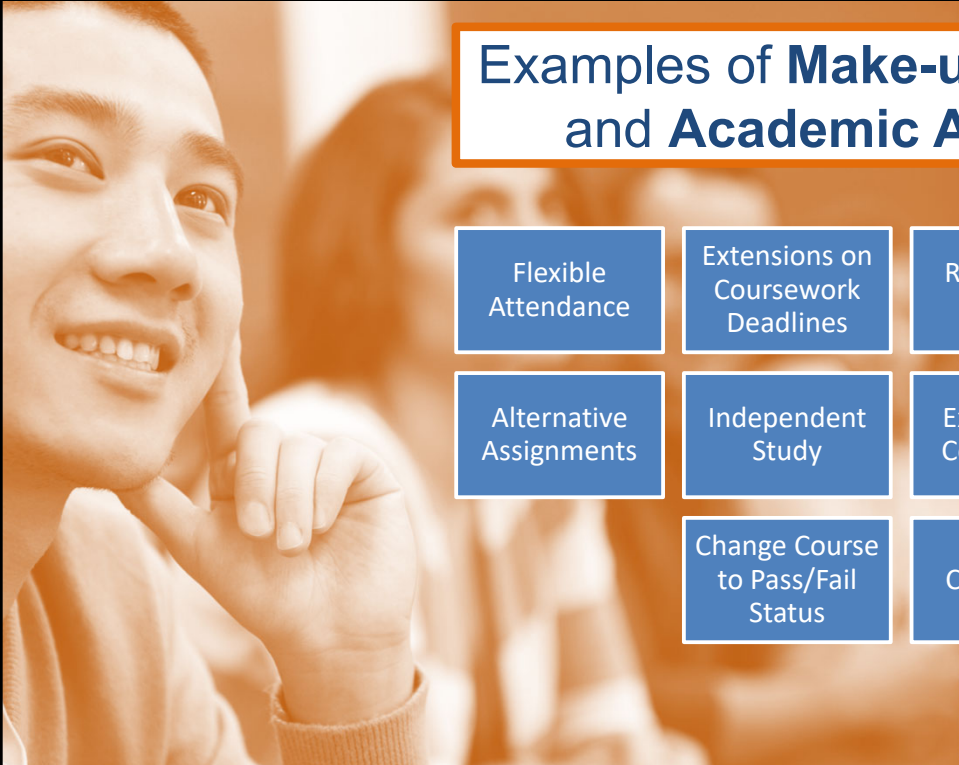
Jin isn't sure how to handle her absences or what accommodations are available.



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Examples of Make-up Coursework and Academic Alternatives

Flexible Attendance	Extensions on Coursework Deadlines	Reschedule Exam(s)	Re-weigh Curriculum Coursework %
Alternative Assignments	Independent Study	Extra Credit Coursework	Remote Participation (Zoom/Teams)
	Change Course to Pass/Fail Status	Reduced Courseload Status	

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ADA/Section 504


Federal law prohibits **disability discrimination** and requires institutions to provide reasonable accommodations to qualified individuals with a disability.
Applicable for students and employees.

A **disability** under ADA/504 is

1. A physical or mental impairment that substantially limits one or more **major life activities**;
2. A person who has a history or record of such an impairment; or
3. A person who is perceived by others as having such an impairment.

➔

Pregnancy itself is **not** a disability, but **complications from pregnancy or childbirth** may qualify.



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ADA Temporary Disability Accommodations (Student-Related Examples)

Scribe for Exams

Notetaking Assistance

Audio Recorder for Lectures

Extended Test Time

Computer for Essay Exams

With **required documentation** indicating the following:

Type of temporary disability

Severity

Limitations

Prognosis

Estimated duration of the disabling condition

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Temporary Disability Policies

An institution shall treat pregnancy, childbirth, false pregnancy, termination or recovery therefrom in the **same manner** and **under the same policies** as any other **temporary disability** with respect to any medical or hospital benefit, service, plan or policy which such institution administers, operates, offers, or participates in with respect to **students** admitted to the institution's educational program or activity.

Title IX 34 CFR § 106.40(b)(4)



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Student Hypothetical Part 2

Jin is due at the end of the semester. Jin has missed classes and assignments continually due to ongoing medical issues from the pregnancy. Jin's professors have all provided Jin with multiple opportunities to make-up assignments and exams.

In one of her classes, Jin has only completed about 25% of the coursework, even with the opportunities offered by the professor to allow Jin to make-up the coursework missed. There is only one week left of classes, and Jin is due for delivery at the end of the week. Jin says she is unable to make-up the remaining coursework by the end of the semester and asks for an incomplete for the course so she can make-up the remaining work next semester.

The professor typically only considers giving incompletes when the student has completed more than half (>50% of the coursework), and is unsure what to do.



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End of Semester Academic Options

Dropping the Course
(w/o academic penalty)

Leave of Absence --
Withdrawal from All
Classes
(w/o academic penalty)

Incomplete Grade
(w/ instructor's
approval)

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Leave of Absence (Withdrawal)

In the case of an institution which does not maintain a leave policy for its students, or the case of a student who does not otherwise qualify for leave under such a policy, an institution shall trust pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as a justification for a **leave of absence** (e.g. withdrawal from their academic program without penalty) for so long a period as it is deemed **medically necessary**.



Title IX 34CFR§ 106.40(b)(5)



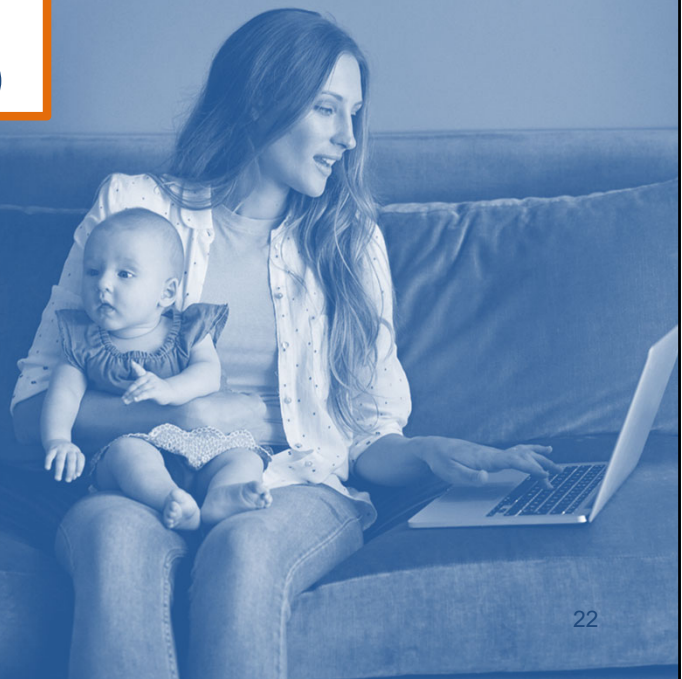
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Reinstated Status After a Leave (Withdrawal)

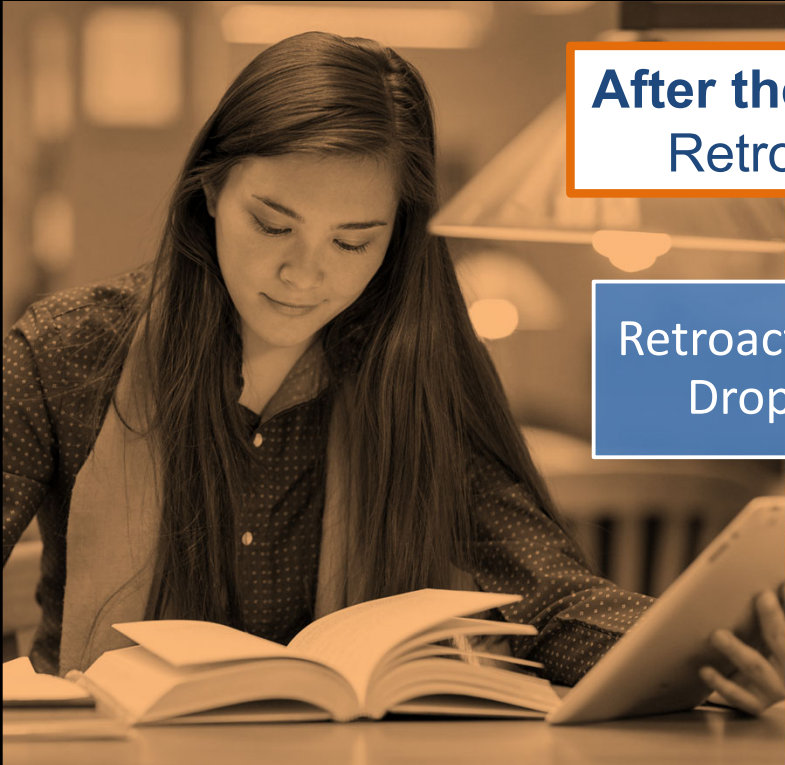
The school must allow the student to return to the **same academic and extracurricular status** as before their medical leave (withdrawal) began.



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After the Semester Ends Retroactive Options

Retroactive Drop

Retroactive Withdrawal

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Employee Protections Based on Pregnancy or Related Condition

Title IX prohibits sex discrimination of employees in education programs or activities, including pregnancy or related status.

Title VII as amended by the **Pregnancy Discrimination Act (PDA)**, which prohibits employment discrimination based on:

- Current pregnancy
- Past pregnancy
- Potential or intended pregnancy
- Medical conditions related to pregnancy or childbirth

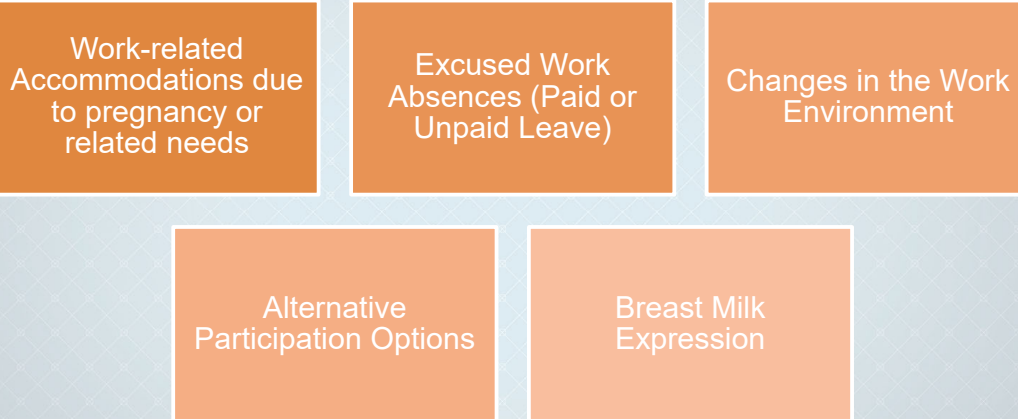


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Examples of Employee-related Impacts & Needs



Employees: Family Medical Leave (FML)

FML is a benefit that provides eligible employees **up to 12 workweeks of unpaid leave a year** and requires group health benefits to be maintained during leave, as if employees continued to work instead of taking leave.

Employees are entitled to return to their **same or an equivalent job** at the end of their FML.



Staff Hypothetical

Avery, a staff member in the School of Music, is pregnant. As her pregnancy progresses, Avery finds it difficult to fit at her office desk and concentrate.

Avery requests a larger chair and larger desk as a temporary accommodation. The Dept Supervisor isn't sure if the Dept budget can afford this unexpected expense.



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ADA/EEOC Reasonable Accommodations

A **reasonable accommodation** is a change in the workplace or in the way things are customarily done that enables an individual with a disability to apply for a job, perform a job's essential functions, or enjoy equal benefits and privileges of employment.

An employer may only deny a reasonable accommodation to an employee with a disability if it would result in an **undue hardship** (an action requiring significant difficulty or expense).

ADA Amendments of 2008, U.S. Equal
Employment Opportunity Commission (EEOC)

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ADA/EEOC Reasonable Accommodations (Employee-Related Examples)

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Redistributing **marginal functions** (i.e. non-fundamental/non-essential job duties).

Altering **how a job function is performed** (e.g. modifying standing, lifting, climbing, or bending requirements).

Modifying **workplace policies**.

Purchasing or modifying **equipment or devices** (e.g. foot stool, larger desk).

Modifying **work schedules**.

Temporary assignment to a **“light duty” position**.

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Pregnant Workers Fairness Act (PWFA)

- Effective June 2023
- Similar to ADA obligations, requiring **reasonable accommodations** to employees and applicants with **temporary physical or mental limitations** due to pregnancy or related conditions.
- Similar to ADA, incorporates an “interactive process” – good faith discussion between employer and employee to try to identify reasonable accommodations.

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Unique Student Scenarios

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Medical Certification



An institution may require such a student to obtain the **certification of a physician** that the student is physically and emotionally able to continue participation so long as such certification is **required of all students** for other physical or emotional conditions requiring the attention of a physician.

Title IX 34 CFR § 106.40(b)(2)

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Clinicals & Cohort Programs

- Pregnant students are allowed to continue participating in off-campus programs.
- If their program provides opportunities to work in the field, the program cannot deny participation based on pregnancy.
- Provide **reasonable adjustments** such as a larger desk or elevator access.



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Clinicals & Cohort Programs

- Programs cannot require a **doctor's note** for continued participation unless the school requires the same for all students who have a **medical condition**.
- If a student's doctor says participation is unsafe, the school must give them a chance to make-up assignment later.
- **Hospitals** that have a contractual arrangement formally integrating students through their education program, the hospital must also adhere to Title IX.



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Clinicals & Cohort Programs

- If a school does not have a leave policy, it must treat pregnancy and recovery therefrom as a justification for a leave of absence for so long as it is deemed **medically necessary**.
- The student must be **reinstated** to the status which was held when the leave began.



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Clinical Hypothetical

Jamie is enrolled in an accelerated dentistry program. Two months into the year-long program she finds out she is pregnant. The program has a strict absence policy based on required classes and clinicals. If a student misses more than two days of classes or clinicals, the student will be dismissed from the program.

The absence rule concerns Jamie since she has already missed 2 days of clinicals due to pregnancy-related sickness and she will need to miss a portion of her clinicals again due to additional doctor's appointments related to her pregnancy. Jamie looked at her program's course syllabus and there were no explicit exceptions or modifications addressed regarding pregnancy or related conditions.



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Student-Athletes

- A student-athlete with a pregnancy-related condition must be provided with the same types of **modifications** provided to other student-athletes.
- Pregnant student-athletes may continue participating in their sport or apply for a **red shirt season** (if pregnant).



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Student-Athletes

- Student-athletes can obtain the **medical certification** of a physician that the student is physically and emotionally able to continue participation in the normal education program or activity.
- A student-athlete's physician should make **medical decisions** regarding sports participation.



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Student-Athletes

- Pregnant student-athletes cannot be harassed due to pregnancy.
- **Athletic financial awards** cannot be conditioned on not becoming pregnant.
- A pregnant student-athlete's **financial award** is protected during the term of award.
- A student-athlete who has taken a leave for pregnancy-related condition must be reinstated.



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Participation Heavy Courses

- The school must **excuse** a student's absences due to pregnancy or any related conditions if their doctor say it's **medically necessary** to be absent.
- The school must allow the student an **opportunity** to make-up the coursework missed while they were out due to pregnancy or other related conditions.



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Participation Heavy Courses

- If there are “specific points or grades” assigned to **attendance or participation**, a student cannot be penalized when missing classes or participation based on pregnancy or other related conditions.
- There must be an equal opportunity given to **earn credit** from missed participation due to pregnancy.



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Lab Hypothetical

Scout is a senior neuroscience major and recently discovered they are pregnant. One of Scout's chem labs includes exposure to various chemicals for experiments, and grades are based heavily on attendance and lab participation.

Scout asks the professor to complete their labs remotely (Zoom) with another student facilitating the lab experiments in person simultaneously in real time. The professor doesn't usually allow for alternative lab participation but also doesn't think it's safe for a pregnant student to be exposed to chemicals. The professor recommends that Scout drop the course and re-take in the future.



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Labs/Chemical Exposure

- **Reasonable restrictions** for health & safety are permitted (as determined by a physician); though IHE administrators are **not permitted** to make this decision on behalf of pregnant students.
- Can recommend but **cannot restrict pregnant students** from chemical or disease exposure in lab settings; cannot impose penalties for pregnant students who choose to abstain from chemical or disease exposure.
- Cannot require a doctor's note from pregnant students, if it is not required for other students.



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Children in the Classroom & Childcare Issues

- Under Title IX, there are **no requirements** permitting student's children in the classroom.
- Children in the classroom can be disruptive to the other students and can impact students' ability to learn.
- Under Title IX, there are **no requirements** to provide childcare for students or excuse absences due to a lack of childcare available (childcare is not considered "medically necessary" under Title IX)



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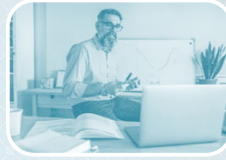
Breastfeeding Challenges



Time



A Safe Space



Accommodations

Free from
HarassmentFinding A Pump
or Other Support

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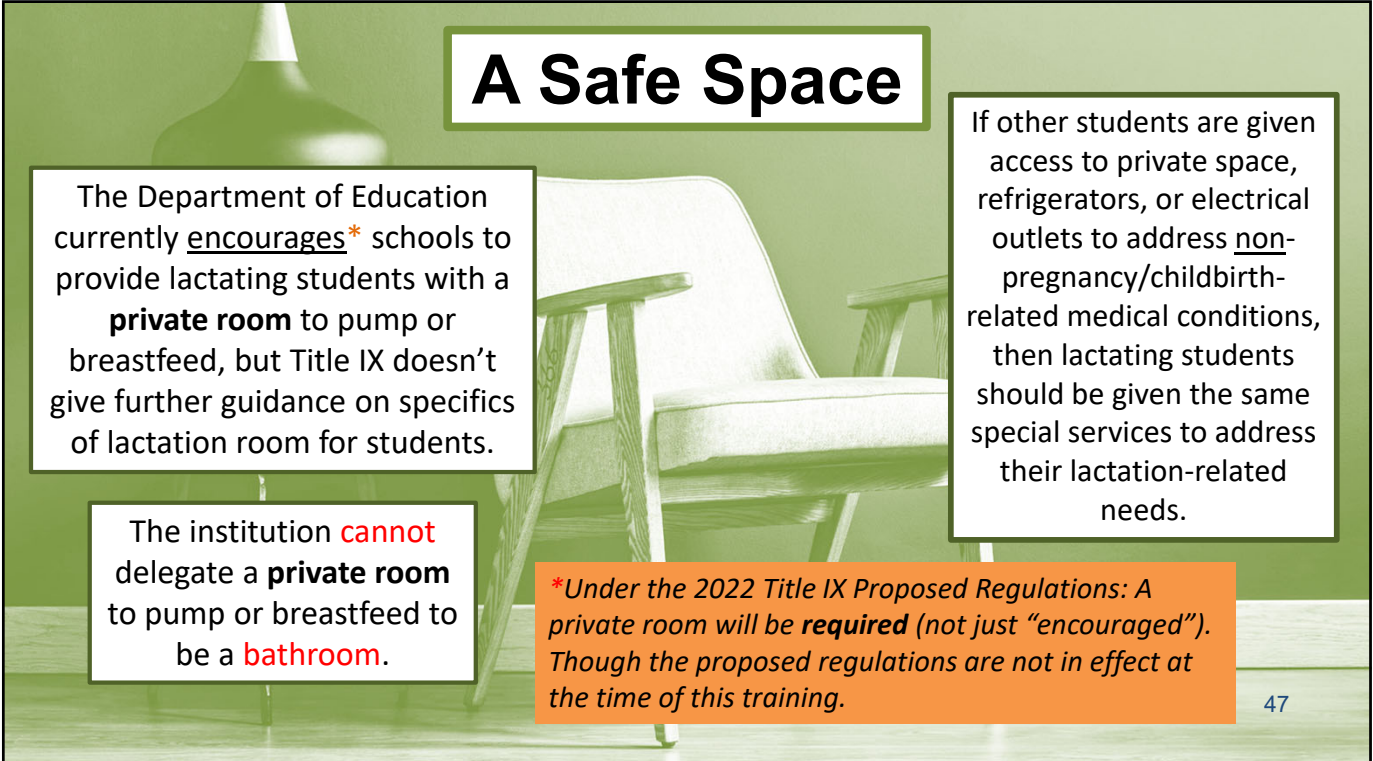
Time

Many universities don't have formal policies relating to lactation, but if a lactating student must miss class, they shouldn't be penalized.

Grades cannot be lowered due to poor attendance. Lactating students must be given the chance to make up work.

If lactating students have difficulty getting excused from absences for breastfeeding, they may need to provide a doctor's note stating that it is **medically necessary** for the student to pump on a certain schedule.

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A Safe Space

The Department of Education currently encourages* schools to provide lactating students with a **private room** to pump or breastfeed, but Title IX doesn't give further guidance on specifics of lactation room for students.

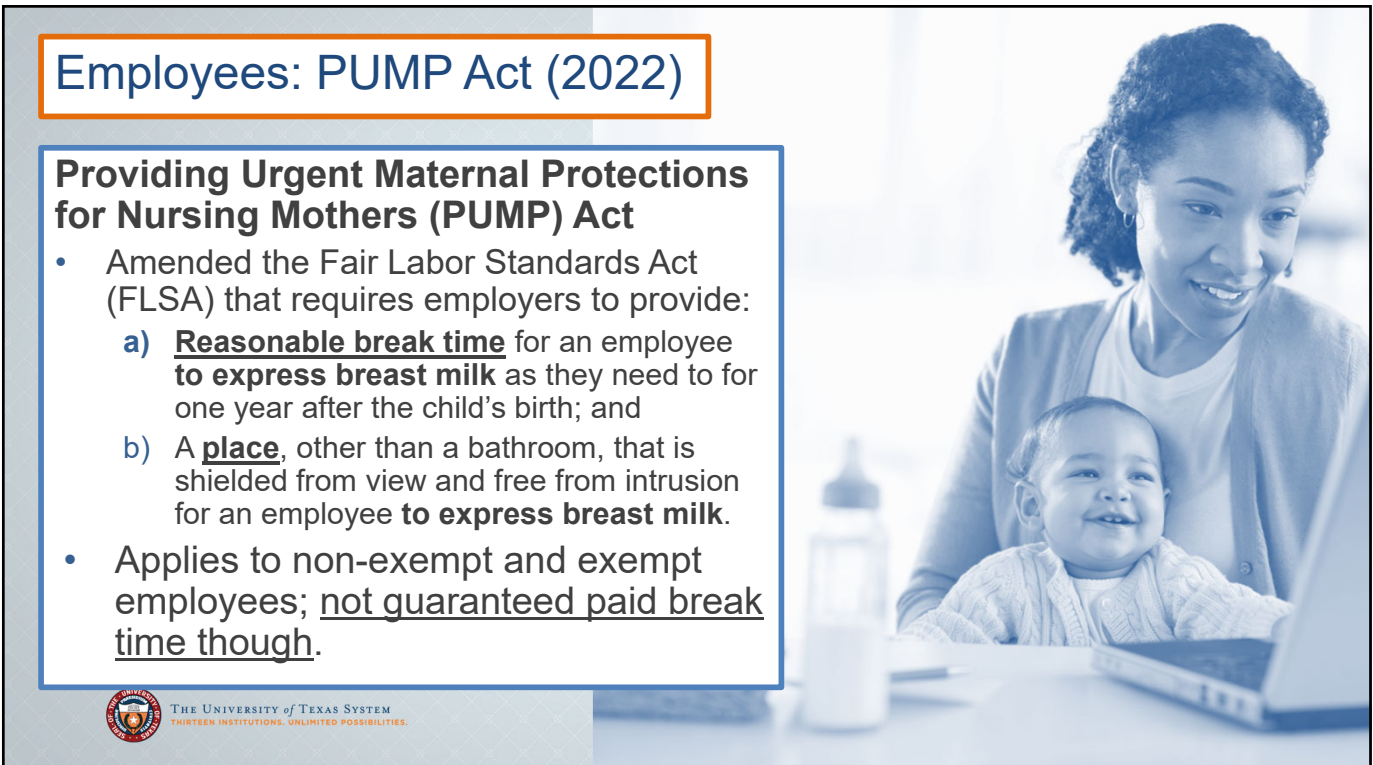
If other students are given access to private space, refrigerators, or electrical outlets to address non-pregnancy/childbirth-related medical conditions, then lactating students should be given the same special services to address their lactation-related needs.

The institution **cannot** delegate a **private room** to pump or breastfeed to be a **bathroom**.

Under the 2022 Title IX Proposed Regulations: A private room will be **required (not just "encouraged"). Though the proposed regulations are not in effect at the time of this training.*

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Employees: PUMP Act (2022)

Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act

- Amended the Fair Labor Standards Act (FLSA) that requires employers to provide:
 - a) **Reasonable break time** for an employee **to express breast milk** as they need to for one year after the child's birth; and
 - b) A **place**, other than a bathroom, that is shielded from view and free from intrusion for an employee **to express breast milk**.
- Applies to non-exempt and exempt employees; not guaranteed paid break time though.



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Accommodations

The school must accommodate any **lactation-related impairments**, such as serious infections, as with other **medical conditions** and accommodations.

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Free from Harassment

The school must protect students from pregnancy or nursing-related harassment or other discrimination, including having **policies** that prohibit sex discrimination, and having **grievance procedures** to respond to complaints.

Comments that may constitute prohibited harassment include, but are not limited to:

- Making sexual comments or jokes about the person's pregnancy;
- Calling the person sexually charged names;
- Spreading rumors about the person's sexual activity;
- Making sexual propositions or gestures toward the person.

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Finding a Pump & Other Support

The **Affordable Care Act** requires most health insurers to cover the cost of a breast pump and counseling on breastfeeding.

The **Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)** also provides pumps and other breastfeeding benefits.

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Breastfeeding Hypothetical

Celina, a graduate student, recently delivered her baby two months ago. At the beginning of the semester, Celina approached one of her professors about needing to miss class periodically due to Celina's lactation/pumping schedule, and the professor said, "*We'll figure something out.*"

Since then, Celina has missed parts of the class discussions, and two quizzes. When Celina attempted to make-up the quizzes and participation, the professor said that there will not be any make-up work, and the professor will just adjust the grading % to the other portions of coursework (e.g. research paper, end of semester exam).

Celina responds to the professor, saying that she prefers to make up the missed work instead. Since there are no academic policies regarding excusing absences for lactating students, the professor says they have discretion on how to make class accommodations, as long as it's "fair" and "reasonable."

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TIXC Documentation & Record Keeping - Examples

- Professor Notifications
- Supervisor Notifications
- Doctor Documentation regarding absences that are “medically necessary”
- Any other coordinated supportive measures or assistance



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Inclusive Language and Policies

- Language in various **laws** regarding pregnancy is generally not gender-inclusive.
- Students and employees of **many gender identities**, including cisgender women, non-binary people and transgender men, might be pregnant or have the capability to become pregnant.
- Regardless of a student or employee’s gender-identity, the person is protected through their status as a **pregnant person**.



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Q & A



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