

Pregnancy & Other Related Conditions – PWFA & Employees

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Agenda

1. Title IX
2. Pregnancy Protections for Employees – PWFA and Other Related Laws
3. Documentations and Case Management

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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

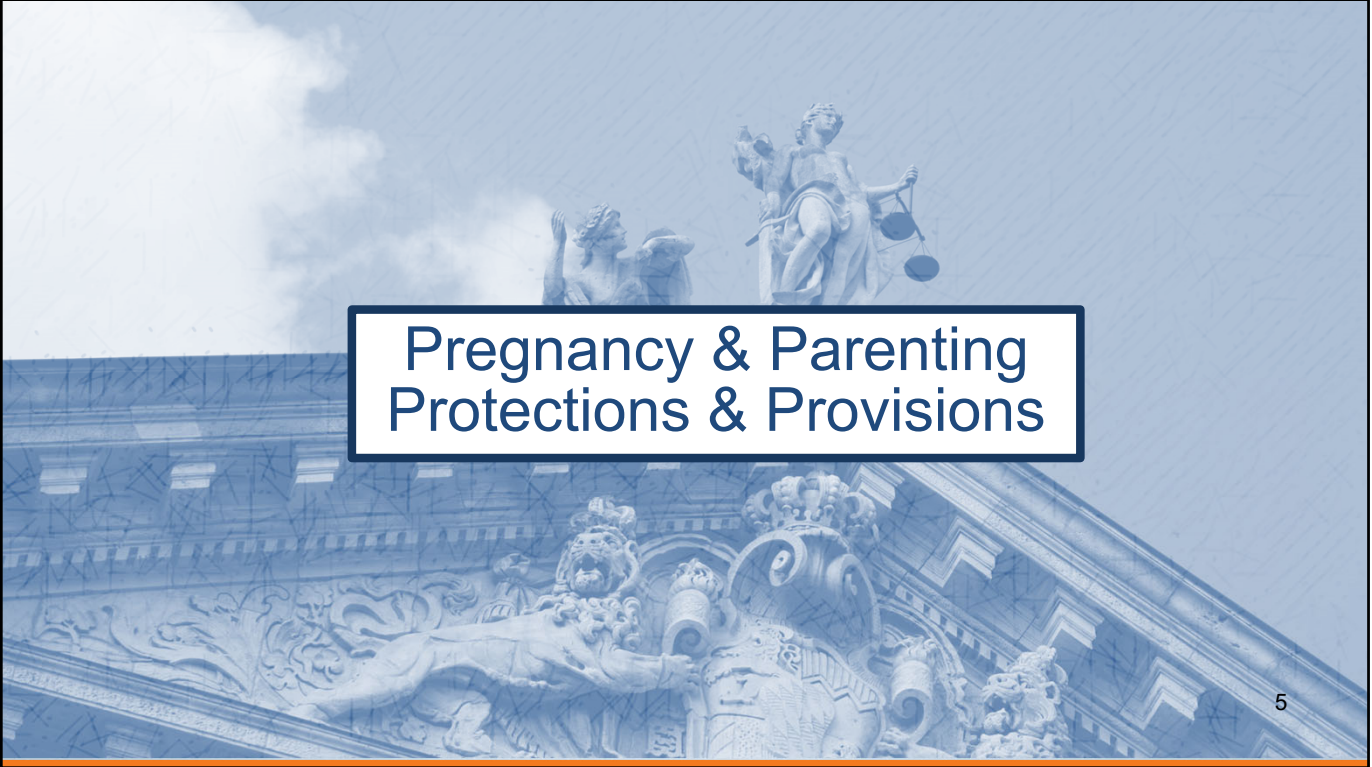
Title IX's prohibition of sex discrimination applies to **pregnancy** and **other related conditions...**



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Pregnancy & Parenting Protections & Provisions

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

Parental status

Marital status

Pregnancy

Childbirth

Miscarriage

False pregnancy

Recovery

Temporary disability
resulting from
pregnancy



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Title IX 34 CFR § 106.40; § 106.57

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Employment Pregnancy Laws

TITLE VII
Civil Rights Act

TITLE IX

ADA
Americans with Disabilities Act

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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

Work-related
Accommodations due
to pregnancy or
related conditions

Excused Work
Absences (Paid or
Unpaid Leave)

Changes in the Work
Environment

Alternative
Participation Options

Breast Milk
Expression



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Title IX - 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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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.

*Under ADA, accommodations that constitute **undue hardship** are not reasonable.*

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ADA Considerations

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Type of temporary disability

Severity

Limitations

Estimated duration of the temporary condition



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ADA 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 nationwide June 2023
- Similar to ADA obligations, requiring **reasonable accommodations** to employees and applicants due to pregnancy, childbirth, or related conditions *regardless of disability related status*, unless the accommodation would impose an **undue hardship**.
- Similar to ADA, incorporates an “**interactive process**” – good faith discussion between employer and employee to try to identify reasonable accommodations.
- **As of August 2025, 5th Circuit of Appeals reversed the previous Texas court injunction and is now in effect in Texas.**

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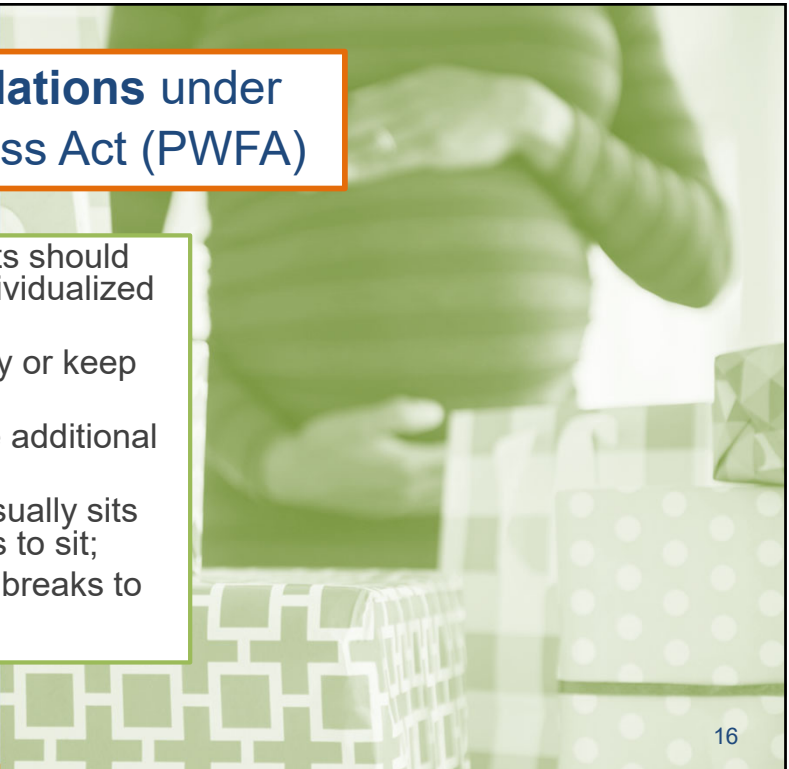
“Reasonable Accommodations” & “Undue Hardship” Definitions for Employees

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) 15

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Reasonable Accommodations under Pregnant Workers Fairness Act (PWFA)

Under PWFA, the following requests should be honored without much of an individualized assessment:

- a. Allowing the employee to carry or keep water near and drink it;
- b. Allowing the employee to take additional restroom breaks, as needed;
- c. Allowing an employee who usually sits to stand or who usually stands to sit;
- d. Allowing an employee to take breaks to eat and drink as needed.

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Other Examples of Reasonable Accommodations under PWFA

Under PWFA, the following are some examples of possible reasonable accommodations, depending on the circumstances:

- Additional, longer, or more flexible breaks to drink water, eat, rest, or use the restroom;
- Changing food or drink policies to allow for a water bottle or food;
- Changing equipment, devices, or workstations, such as providing a stool to sit on, or a way to do work while standing;
- Changing a uniform or dress code, or providing safety equipment that fits;
- Changing a work schedule, such as having shorter hours, part-time work, or a later start time;

- Telework;
- Temporary reassignment;
- Temporary suspension of one or more essential functions of a job;
- Leave for health care appointments;
- Light duty or help with lifting or other manual labor;
- Leave to recover from childbirth or other medical conditions related to pregnancy or childbirth.

****Many other reasonable accommodations may also exist. Also, an employee may need different accommodations at different times during the pregnancy or after childbirth.**



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EEOC: <https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act>

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Documentation under Pregnant Workers Fairness Act (PWFA)

Under PWFA, an employer is ***not required*** to request supporting documentation. It ***can*** if it is ***reasonable under the circumstances***.

An employer cannot require documentation when the limitation is obvious and when the employee tells the employer what the condition is and what is needed ("self-confirmation"), when the employer already has sufficient information about the limitation, or the requested accommodation relates to the expression of breast milk (either pumping or time to nurse during work hours).

Employers cannot justify failing to provide a reasonable accommodation because the employee failed to provide supporting documentation unless the employer sought the supporting documentation, doing so was reasonable, and the employer provided sufficient time for the employee to provide the documentation.



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Hypothetical 1

Jenny (employee) is pregnant, emails her supervisor requesting an accommodation related to the pregnancy:

“I need to take more bathroom breaks than usual – it’s related to my pregnancy.”

Jenny works as a receptionist and is responsible for greeting visitors in her department.

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Hypothetical 1

Jenny (employee) is pregnant, emails her supervisor requesting an accommodation related to the pregnancy:

“I need to take more bathroom breaks than usual – it’s related to my pregnancy.”

Jenny works as a receptionist and is responsible for greeting visitors in her department.

The supervisor doesn’t respond to Jenny’s email. Jenny sends a second email a week later and still no response.

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Employer's Response under PWFA

Under the PWFA, the employer should respond **promptly** to accommodation requests.

If the request does not cause an undue hardship to the employer's business, the employer generally has to provide a reasonable accommodation – either what the employee requests or another effective accommodation.



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EEOC: <https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act>

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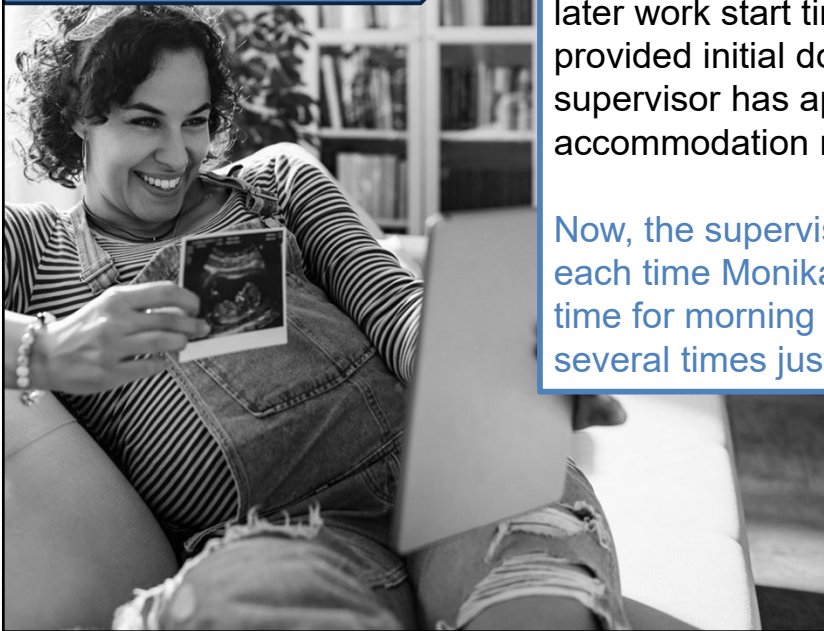
Hypothetical 2

Monika (employee) is pregnant and has been experiencing morning sickness, and requests a later work start time when this happens. Monika has provided the supervisor with documentation verifying the situation. The supervisor has approved Monika's accommodation request.

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Hypothetical 2



Monika (employee) is pregnant and has been experiencing morning sickness, and requests a later work start time when this happens. Monika provided initial documentation and the supervisor has approved Monika's accommodation request.

Now, the supervisor is requesting documentation each time Monika requests a later work start time for morning sickness, which has happened several times just in the past week.

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Documentation under PWFA

Under PWFA, an employer is ***not required*** to request supporting documentation. It ***can*** if it is **reasonable under the circumstances**.

An employer cannot require documentation when the limitation is obvious and when the employee tells the employer what the condition is and what is needed ("self-confirmation"), when the employer already has sufficient information about the limitation.

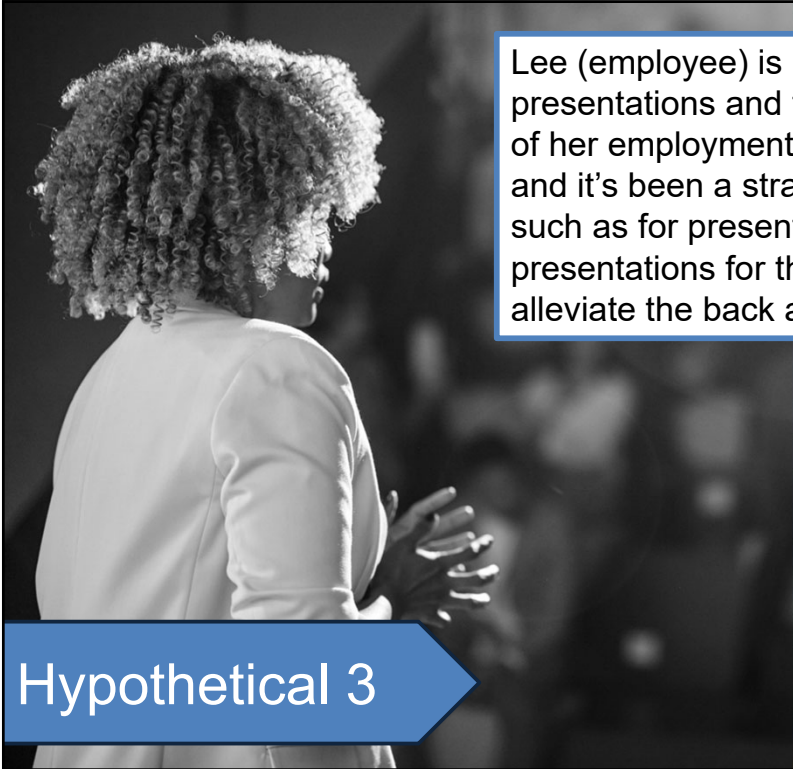


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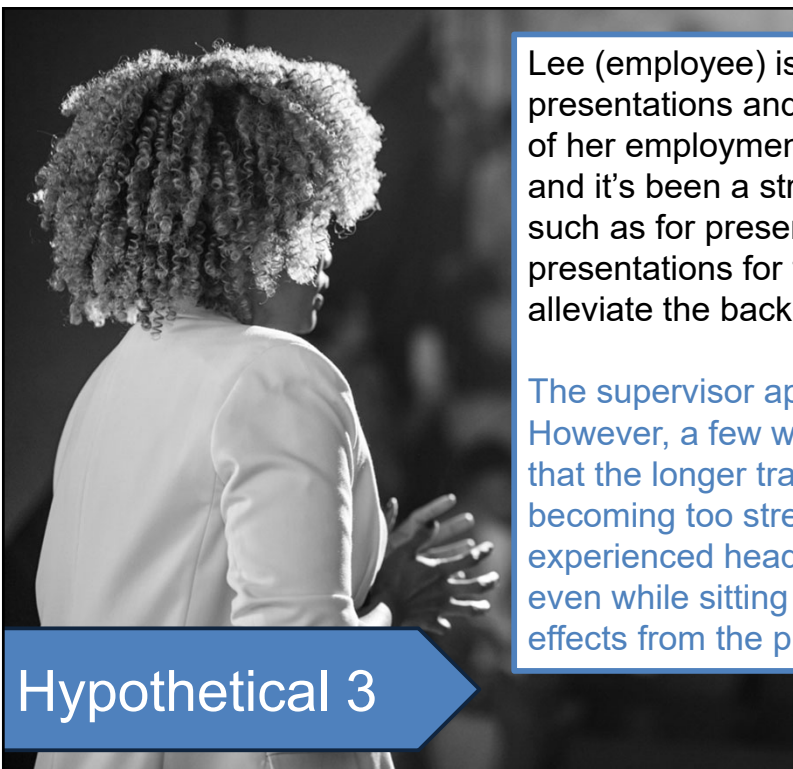


Lee (employee) is responsible for giving presentations and trainings on a regular basis as part of her employment role. Lee is six months pregnant and it's been a strain to stand for long periods of time, such as for presentations. Lee requests to sit during presentations for the remainder of the pregnancy to alleviate the back aches.

Hypothetical 3

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Lee (employee) is responsible for giving presentations and trainings on a regular basis as part of her employment role. Lee is six months pregnant and it's been a strain to stand for long periods of time, such as for presentations. Lee requests to sit during presentations for the remainder of the pregnancy to alleviate the back aches.

The supervisor approves Lee's accommodation. However, a few weeks later, Lee tells her supervisor that the longer trainings and presentations are becoming too strenuous to complete. Lee has experienced headaches and increased back pain, even while sitting through the presentations – all effects from the pregnancy.

Hypothetical 3

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Qualified Employee under PWFA

Under PWFA, if an employee **cannot** perform the essential job functions with or without a reasonable accommodations, an employee can be **qualified** even if they cannot do the essential job functions as long as:

- The inability is “temporary;”
- The employee could perform the functions “in the near future;” and
- The inability to perform the essential functions can be reasonably accommodated.

Essentially, the employee therefore needs light duty or a change in their work assignments as an alternative reasonable accommodation.



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EEOC: <https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act>

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Sandi (employee) just gave birth a couple of months ago and has returned from family leave to resume work duties. Sandi requests breaks for pumping and expressing breastmilk. There is a private room in the building (not a restroom) that is available for pumping.

Hypothetical 4

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Sandi (employee) just gave birth a couple of months ago and has returned from family leave to resume work duties. Sandi requests breaks for pumping and expressing breastmilk. There is a private room in the building (not a restroom) that is available for pumping.

Sandi says she needs at least 1x break per hour due to an overproduction of milk. The supervisor initiates an interactive process with Sandi and offers to allow breaks for Sandi for every 2-3 hours, so that it is less disruptive to Sandi's administrative tasks and it is still reasonable break time as well.

Hypothetical 4

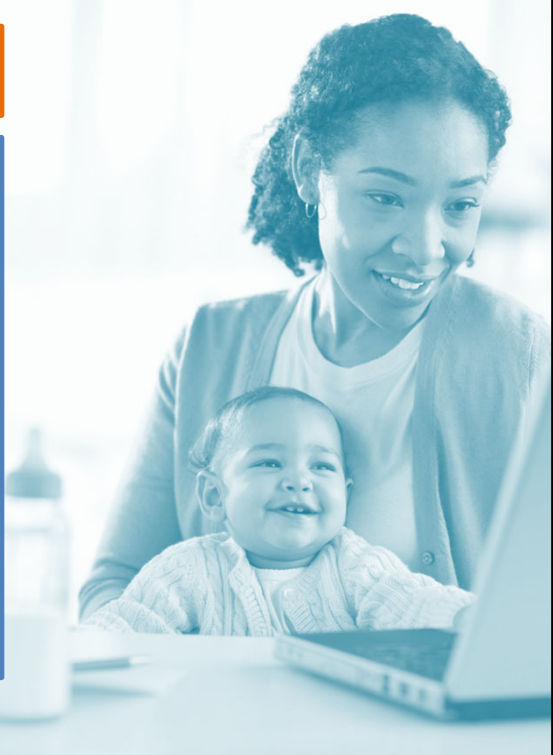
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Employees: **PUMP Act (2022)**

Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act

- Amended the Fair Labor Standards Act (FLSA) that requires employers to provide:
 - Reasonable break time** for an employee to **express breast milk** as they need to for one year after the child's birth; and
 - 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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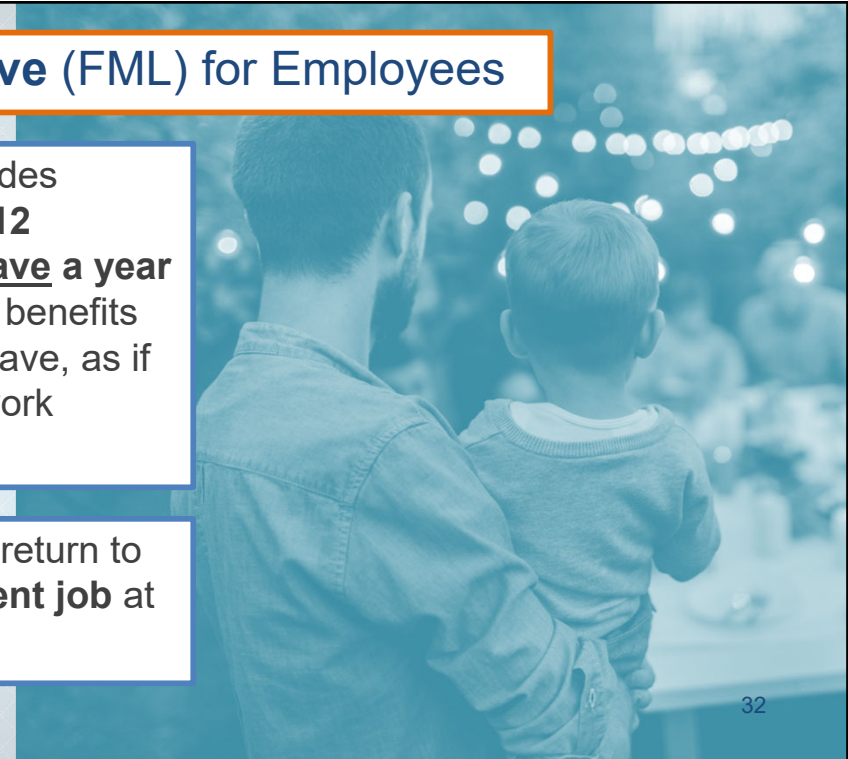
Hypothetical 4

Sandi (employee) just gave birth a couple of months ago and has returned from family leave to resume work duties. Sandi requests breaks for pumping and expressing breastmilk. There is a private room in the building (not a restroom) that is available for pumping.

Sandi says she needs at least 1x break per hour due to an overproduction of milk. The supervisor initiates an interactive process with Sandi and offers to allow breaks for Sandi for every 2-3 hours, so that it is less disruptive to Sandi's administrative tasks and it is still reasonable break time as well.

Sandi doesn't agree that the proposed modification is a reasonable accommodation. Sandi provides documentation that she experiences severe pain when she doesn't express milk on a more frequent basis.

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Family Medical Leave (FML) for Employees

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.

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Hypothetical 5

Ann (employee) is experiencing challenges with finding childcare when her infant is sick with a cold. Ann requests to telework from home while caring for the baby.

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Scope of PWFA

“Pregnancy, childbirth, or other related medical conditions” includes uncomplicated pregnancies, vaginal deliveries or cesarian sections, miscarriage, postpartum depression, edema, placenta previa, and lactation.

There are more examples in the PWFA regulations:

<https://www.federalregister.gov/d/2024-07527>



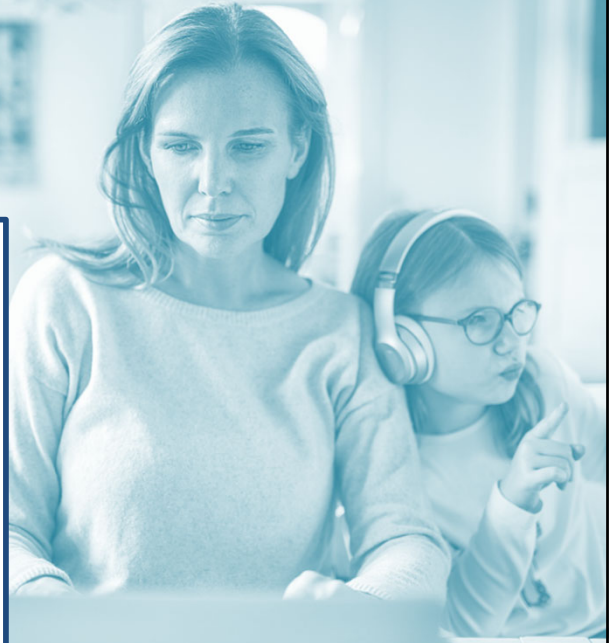
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Childcare and Children in the Classroom or Workplace

- Under Title IX, Title VII, PWFA, ADA, or state law, there are **no requirements** permitting student's children in the classroom, or employee's children in the workplace.
- Children in the classroom or workplace can **interfere** with the learning and working environments.
- **Childcare**, itself, is not considered "medically necessary" under Title IX, or a "pregnancy related medical condition" under PWFA.
- There are **no requirements** under Title IX for schools to provide childcare for students and employees, or excuse student's absences due to lack of childcare available.



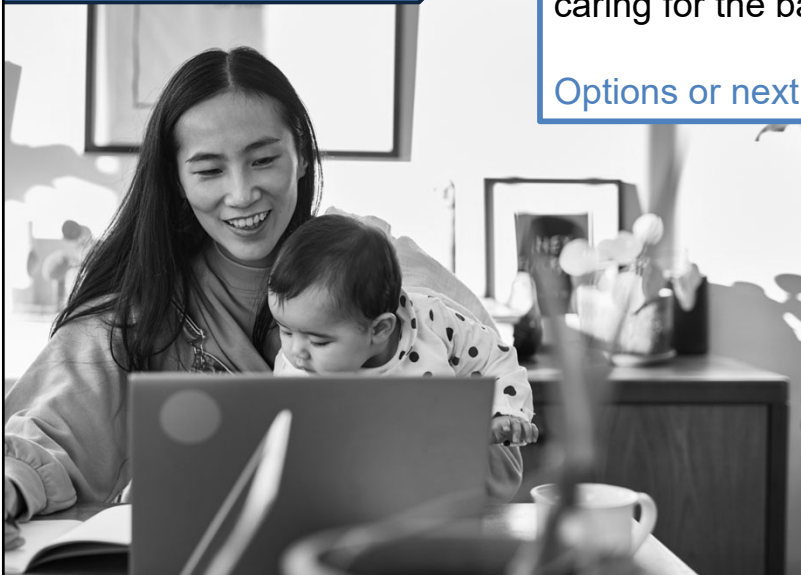
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Hypothetical 5

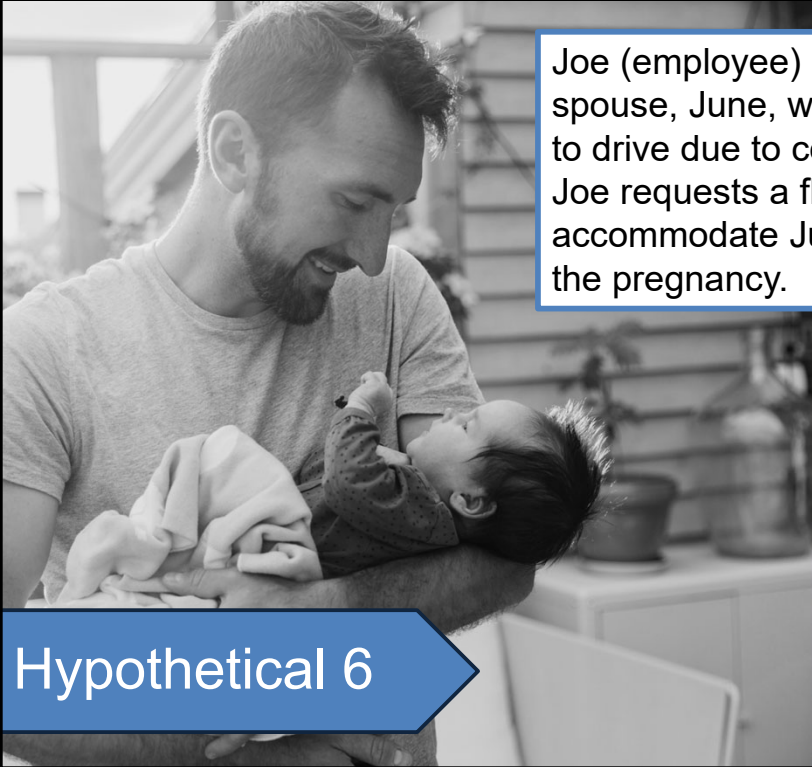
Ann (employee) is experiencing challenges with finding childcare when her infant is sick with a cold. Ann requests to telework from home while caring for the baby.

Options or next steps?



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Joe (employee) is expecting a baby with his spouse, June, who is pregnant. June is not able to drive due to complications with the pregnancy. Joe requests a flexible work schedule to accommodate June's appointments related to the pregnancy.

Hypothetical 6

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Scope of PWFA

"Pregnancy, childbirth, or other related medical conditions" includes uncomplicated pregnancies, vaginal deliveries or cesarian sections, miscarriage, postpartum depression, edema, placenta previa, and lactation.

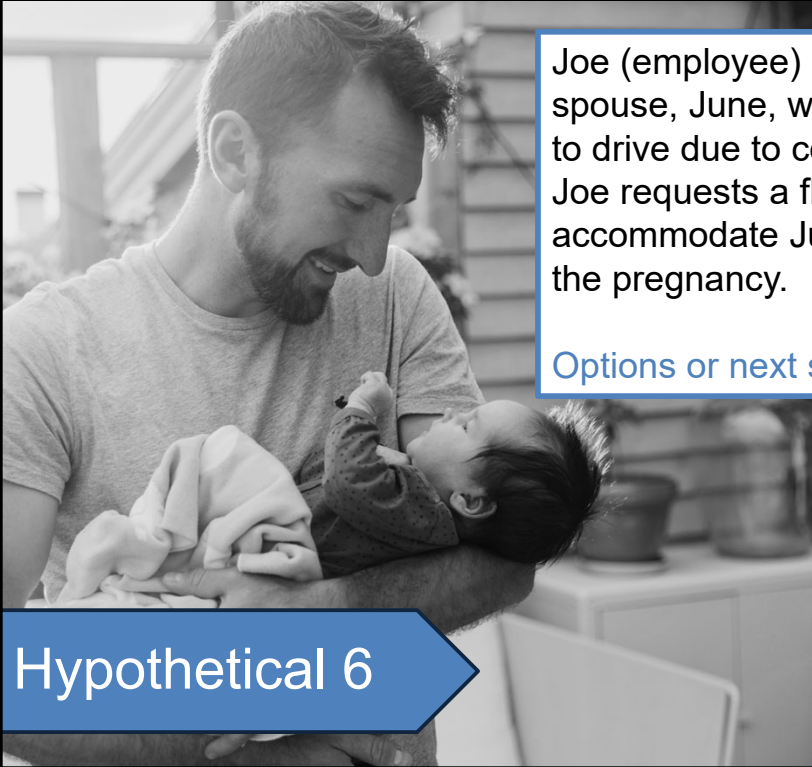
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Joe (employee) is expecting a baby with his spouse, June, who is pregnant. June is not able to drive due to complications with the pregnancy. Joe requests a flexible work schedule to accommodate June's appointments related to the pregnancy.

Options or next steps?

Hypothetical 6

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TIXC Documentation & Record Keeping - Examples

- Accommodation Requests
- Documentation for Requests (when applicable)
- Rationale for Approvals or Denials
- Modifications or Changes to Accommodations
- Concerns or Complaints
- Remedies or other Adjustments



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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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Q & A



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Contact Information

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