



# HUMAN RESOURCES LEADERSHIP CORNER

"I'VE LEARNED THAT PEOPLE WILL FORGET WHAT YOU SAID, PEOPLE WILL FORGET WHAT YOU DID, BUT PEOPLE WILL NEVER FORGET HOW YOU MADE THEM FEEL." – MAYA ANGELOU

Yale  
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Health

## Pregnant Workers Fairness Act

The federal government recently passed the *Pregnant Workers Fairness Act* (PWFA). That act, along with the *Providing Urgent Maternal Protections for Nursing Mothers Act* (PUMP Act) both have implications for how we address employees regarding pregnancy and breastfeeding needs.

Connecticut has always required many of the provisions required for breastfeeding employees under the PUMP Act, such as a reasonable time to nurse and a private place to pump. PUMP expands our existing legal obligations to include allowing pumping breaks for nonexempt employees. As the PUMP Act is required by law, YNHHS has a policy in place to support our [Nursing and Lactating Employees](#).

The PWFA greatly expands the protections for employees who are or are attempting to get pregnant or have recently given birth. Below are five important changes we want all managers to be aware of:

- As an employer, we must make accommodations for all conditions surrounding *pregnancies*, not just pregnancy-related conditions which rise to the level of a disability. Practically speaking, this means that we must provide reasonable accommodation to an employee who is trying to get pregnant, is pregnant or was recently pregnant even if the employee does not have a disability.
- Importantly, and different than an ADA request, we may **not** require a medical certification or doctor's note before discussing the need for a reasonable accommodation with an employee or job applicant in these situations. In fact, in many instances, a medical certification should not be needed before discussing or granting the request.
- Unlike the ADA, the PWFA expressly provides that an individual may still be "qualified" if they are temporarily unable to perform an essential function due to pregnancy, childbirth, or a related condition. What does that mean? It means that even if an employee who needs an accommodation under the PWFA cannot perform the essential functions of the job, we may still need to provide the accommodation.
- An employee who informs their supervisor of limitations due to pregnancy or related conditions is entitled to an interactive process to figure out "reasonable accommodations."

Reasonable accommodations can include but are not limited to schedule changes, seated work assignments, extra bathroom breaks, or a respite from heavy lifting in an effort to enable the employee to stay in the workforce. This new requirement is interesting more for its legal effect than its practical effect. Under the ADA, it is the number one best practice to engage in the “interactive process” with any employee who asks for a reasonable accommodation because of a disability – *i.e.*, asks for help because of some medical issue. But while it is a best practice, it is not an automatic ADA violation if an employer does not do conduct the interactive process. However, under this section of the new PWFA, it is a violation of the law to require an employee to accept an accommodation unless it is arrived at through the “interactive process.”

- We cannot require an employee to take a paid or unpaid leave of absence if another reasonable accommodation can be made. As with the ADA, employees cannot insist on any specific accommodation and employers will have a defense to damages if they work with the employee in good faith to identify equally effective reasonable accommodations that do not cause an undue hardship. Requiring a leave under the PWFA should be a last resort.

Just as under the ADA, it is important to note that a one-size-fits-all approach to accommodations should not be taken and that engaging in and documenting the interactive process still is crucial. The types of accommodations we might need to provide in connection with **pregnancy** or childbirth are varied, depending on the underlying condition or restriction. For example, an employee on bed rest may require remote work; an employee with edema may need a chair and more frequent rest breaks; and a pregnant employee with hypertension or preeclampsia may need to limit their physical activity.

Employees requiring an accommodation should contact HR Connect at:

- [www.ynhhs.org/hrconnect](http://www.ynhhs.org/hrconnect)
- 1-844-543-21HR (Press 1)

If you have any questions on accommodating the needs of a pregnant or nursing employee, please reach out to your HR Business Partner.