



HR COMPLIANCE SNAPSHOT

Pregnant Workers Fairness Act (PWFA): Proving Undue Hardship

The Pregnant Workers Fairness Act (PWFA) requires employers with 15 or more employees to provide reasonable accommodations for the known limitations of a qualified applicant or employee due to pregnancy, childbirth or related medical condition. However, an employer may be exempt from this requirement if it can prove that no effective accommodation can be made without imposing undue hardship on its business.

Individualized Assessment

The PWFA defines “undue hardship” as an action requiring significant difficulty or expense when considered in light of several specified factors. To prove undue hardship, an employer must perform an individualized assessment of current circumstances that show an accommodation would cause significant difficulty or expense.

Required Consideration Factors

Factors that must be considered when determining undue hardship include:

- The nature and cost of the accommodation needed;
- The overall financial resources of the facility;
- The number of employees at the facility;
- The effect on expenses and resources of the facility;
- The overall financial resources, size, number of employees, and, if applicable, the type and location of the employer’s overall facilities;
- The type of operation of the employer; and
- The accommodation’s impact on the operation of the facility.

Additional factors must be considered if the adjustment needed is a temporary suspension of an essential job function, which the PWFA may require under certain circumstances. These additional factors include the length of time the individual will be unable to perform the essential function, the nature and frequency of the essential function, and several others.

Undue Hardship

No Generalized Conclusions

Proving undue hardship requires an individualized assessment of current circumstances and the consideration of several specified factors.

All Options Considered

Employers must consider all possible accommodations and all sources of available funding when assessing whether a particular accommodation would be too costly.

Not Undue Hardship

Predicable Assessments

Certain accommodations—such as allowing a pregnant employee to carry water and take additional water, food and bathroom breaks—will virtually never be considered undue hardship under the PWFA.

Other Options Available

If one accommodation will cause undue hardship but a second one would be effective and not cause undue hardship, employers must provide the second accommodation.

Provided to you by Apex Benefits

This Compliance Snapshot is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice. © 2023 Zywave, Inc. All rights reserved.

ApexBenefits