The Pregnant Workers Fairness Act (PWFA), 42 U.S.C. §§ 2000gg to 2000gg-6, requires most employers with 15 or more employees to provide “redthe final regulations

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, the PWFA prohibits employers from: (1) failing to make a reasonable accommodation for the known limitations of a qualified employee or applicant related to pregnancy, childbirth, or related medical conditions, unless the accommodation would cause an undue hardship; (2) requiring an employee to accept an accommodation other than a reasonable accommodation arrived at through the interactive process; (3) denying a job or other employment opportunities to a qualified employee or applicant based on the person’s need for a reasonable accommodation; (4) requiring an employee to take paid or unpaid leave if another reasonable accommodation can be provided that would let the employee keep working; (5) punishing or retaliating against an employee or applicant for requesting or using a reasonable accommodation under the PWFA, reporting or opposing unlawful discrimination under the PWFA, or participating in a PWFA proceeding (such as an investigation); or (6) interfering with or coercing individuals who are exercising their rights or helping others exercise their rights under the PWFA. *See* 29 CFR §1636.1, §1636.4.

The PWFA and its regulations overlap with requirements in other laws that may provide greater or different protections for workers. Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e – 2000e17 and the Americans with Disabilities Act, 42 U.S.C. §12101 *et seq*., for example, prohibit discrimination based on sex and disability, respectively. These laws cover a wide range of employment decisions including termination, while the PWFA applies only to accommodations. State and local laws may provide additional protections for workers. The regulations make clear that the PWFA does not limit those protections.

In its 2024 final regulations, the EEOC provides detailed definitions of terms, explanations of how and when

Reasonable accommodations may include:

- Frequent breaks;
- Breaks and space for lactation;
- Sitting/standing;
- Schedule changes, part-time work, and paid and unpaid leave;
- Telework;
- Parking;
- Light duty;
- Making existing facilities accessible or modifying the work environment;
- Job restructuring;
- Temporarily suspending one or more essential functions;
- Acquiring or modifying equipment, uniforms, or devices; and
- Adjusting or modifying examinations or policies.

29 CFR §1636.3(h).

An unnecessary delay in making a reasonable accommodation perform an essential function, apply for the job, or obtain a temporary suspension of an essential function), then the employee or applicant will not be considered "qualified." 29 CFR §1636.4(2).

Like the ADA, PWFA requires an employer to accommodate a covered employee unless to do so would be an "undue hardship." The PWFA regulations list factors to be considered in determining whether an accommodation would be an undue hardship on an employer, such as the nature and cost of the accommodation, the overall financial resources of the facility or facilities involved, the overall financial resources of the covered entity, the type of operation or operations of the covered entity, and the impact of the accommodation upon the operation of the facility. 29 CFR §1636.3(j)(2).

The regulations list additional factors that may be considered when determining if the temporary suspension of an essential function causes an undue hardship, such as the length of time that the employee will be unable to perform the essential function(s); whether there is work for the employee to do, whether other employees are able to cover the tasks, whether other employees have been similarly accommodated, and whether the essential functions may be postponed. 29 CFR §1636.3(j)(3).

A limited number of specific, simple modifications will, in virtually all cases, be found to be reasonable accommodations that do not impose an undue hardship when requested by a pregnant employee. According to the regulations, for these modifications, "the necessary individualized assessment should be particularly simple and straightforward."

- Carrying/keeping water near and drinking it as needed;
- Additional restroom breaks, as needed;
- Sitting/standing as needed;
- Breaks to eat and drink, as needed.

29 CFR §1636.3(j)(4).

Like under the ADA, employers must go through an interactive process with an employee or applicant to identify the known limitation and the adjustment at work that is needed, if that is not clear from the request, and potential reasonable accommodations. 29 CFR §1636.3(k). The regulations do not require an employer to seek supporting documentation from an employee or applicant who requests an accommodation under the PWFA. Employers only may do so if it is reasonable to require documentation under the circumstances for the employer to determine whether the employee or applicant has a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions (a limitation) and needs a change or adjustment at work due to the limitation. Even then, an employer only may require "reasonable documentation," the minimum documentation that is sufficient to: (1) confirm the condition; (2) confirm that the condition is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, and (3) describe the change or adjustment at work needed due to the limitation. 29 CFR §1636.3(k)(2) and (3).

An employer cannot justify failing to make a reasonable accommodation based on the employee's failure to provide supporting documentation unless: (1) the employer asks for the documents; (2) it is reasonable for