

# MASSACHUSETTS EMPLOYMENT LAW

## Fair Employment – Pregnant Workers Fairness Act



The federal Pregnancy Discrimination Act prohibits employers with 15 or more employees from discriminating against individuals based on pregnancy or related medical conditions. Massachusetts has enacted a similar law that applies to a broader range of employers in the state. This Employment Law Summary provides an overview of Massachusetts' Pregnant Workers Fairness Act (PWFA), which was signed into law on July 27, 2017, and goes into effect as of **April 1, 2018**.

### STATE RESOURCES

**Massachusetts  
Commission Against  
Discrimination (MCAD)  
[website](#)**

#### **PWFA Text**

Text of the PWFA, which is effective April 1, 2018, is available [here](#).

#### **PWFA Q&As**

The MCAD provides questions and answers about the PWFA [here](#).

#### **PWFA Q&As**

The MCAD provides additional PWFA guidance for employers [here](#).

#### **PWFA Press Release**

The Massachusetts governor issued this [press release](#) after signing the PWFA into law.

### PWFA OVERVIEW

Effective **April 1, 2018**, the PWFA requires Massachusetts employers that have **six or more employees** to provide reasonable accommodation for their employees' pregnancies or pregnancy-related conditions upon request, unless it would cause undue hardship. The law also prohibits these employers from discriminating against employees and applicants based on pregnancy or related conditions. Under the PWFA, **conditions related to pregnancy include (but are not limited to) lactation and the need to express breast milk for a nursing child**.

### REASONABLE ACCOMMODATION REQUIREMENTS

If an employee or applicant is capable of performing the essential functions of a job but requests an accommodation for pregnancy or a related condition, the PWFA requires the employer to either:

- Provide the requested accommodation; or
- Engage in an interactive process with the individual to determine an effective, reasonable accommodation.

Examples of reasonable accommodations for pregnancy and related conditions include:

- More frequent or longer breaks (paid or unpaid);
- Time off to attend to a pregnancy complication or recover from childbirth (with or without pay);
- Acquisition or modification of equipment or seating;
- Temporary transfers to less strenuous or hazardous positions;
- Job restructuring;
- Light duty;
- Private non-bathroom spaces for expressing breast milk;
- Assistance with manual labor; and

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- Modified work schedules.

Other types of accommodations may be reasonable as well. However, the PWFA does **not** require employers to:

- Discharge or transfer any employees who have more seniority than an individual who needs an accommodation; or
- Promote any employee who is not capable, with or without a reasonable accommodation, of performing the essential functions of the job.

### **MEDICAL DOCUMENTATION**

Under the PWFA, employers may require employees to provide medical documentation regarding:

- The need for an accommodation; and
- Any extension of an accommodation beyond its original terms.

However, employers may **not** require medical documentation for any of the following accommodations:

- More frequent restroom, food or water breaks;
- Seating;
- Limits on lifting more than 20 pounds; and
- Private, non-bathroom space for expressing breast milk.

### **UNDUE HARDSHIP EXCEPTION**

An employer may deny a reasonable accommodation only if it can demonstrate that the accommodation would impose an undue hardship on its program, enterprise or business. “Undue hardship” is defined as an action requiring significant difficulty or expense. In making a determination of undue hardship, the following factors are considered:

- The nature and cost of the needed accommodation;
- The overall financial resources of the employer;
- The overall size of the employer’s business, in terms of the number of its employees and the number, type and location of its facilities; and
- The effect on expenses and resources or any other impact of the accommodation on the employer’s program, enterprise or business.

### **PROHIBITED PRACTICES**

The PWFA prohibits employers from:

- Denying an employment opportunity to an individual based on the employer’s need to make a reasonable accommodation for the individual’s known pregnancy or related condition;
- Failing to reinstate an employee to her original employment status or to an equivalent position with equivalent pay and benefits once she no longer requires a reasonable accommodation for pregnancy or a related condition;
- Requiring an individual to accept an accommodation that is not necessary to enable her to perform the essential functions of the job;
- Requiring an employee to take a leave of absence instead of another reasonable accommodation that may be provided without undue hardship on the employer’s program, enterprise or business; and

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- Discharging or in any other manner discriminating or retaliating against an individual because she requests or uses a reasonable accommodation.

### ENFORCEMENT

The PWFA is administered and enforced by the [Massachusetts Commission Against Discrimination](#) (MCAD). Individuals who believe their rights under the PWFA have been violated must file a complaint with the MCAD within **300 days** after the date of an alleged violation.

After a complaint is filed, the MCAD will conduct an investigation to determine whether probable cause exists for crediting the allegations in the complaint. If the MCAD determines that probable cause does exist, it may:

- Engage the employer in conference, conciliation or persuasion to eliminate the unlawful practice;
- Conduct a hearing;
- File a lawsuit in court against the employer; or
- Grant permission to the individual who filed the complaint to sue the employer in court.

In addition, an individual who files a complaint with the MCAD becomes authorized to file a lawsuit against the employer once 90 days have passed since the complaint was filed. To be valid, a lawsuit must be filed within **three years** after the date of the alleged violation.

If the MCAD or a court determines that an employer has violated the PWFA, the employer may be ordered to:

- Hire, reinstate or promote any individual who was affected by the violation;
- Pay back wages to any affected individual;
- Pay any costs or attorney's fees associated with the action; and
- Pay civil fines of up to \$50,000.

### NOTICE TO EMPLOYEES

Employers subject to the PWFA must provide written notice to each of their employees regarding the right to be free from employment discrimination based on pregnancy and related conditions. This notice may be included in a handbook, pamphlet or other written document and must be distributed **to all existing employees no later than April 1, 2018**. On and after that date, employers must give the notice to:

- Each new employee, at or prior to the commencement of his or her employment; and
- Any employee who notifies the employer of a pregnancy or related condition, within 10 days after receiving the employee's notification.

### MORE INFORMATION

Contact Compass Consulting Group or visit the MCAD's [website](#) for more information on employment discrimination laws in Massachusetts.