

PREGNANT WORKERS FAIRNESS ACT Ensuring Equality & Protection in the Workplace

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The issue of reproductive hazards is not new, but it is very complex. Reproductive and developmental toxicity includes adverse effects on sexual function and fertility in adult males and females, as well as toxicity in the embryo, fetus and offspring.

Damage may cause infertility, spontaneous abortion, birth defects or mutations that are passed on to future generations. In addition, agents may be passed to the baby through breast milk. The issue of reproductive hazards was identified and reviewed in a study as early as 1921, as evidenced by the article “The Pregnant Woman in Industry” published that year in *Journal of Industrial Hygiene*.

The present article discusses key provisions of the Pregnant Workers Fairness Act (PWFA), the procedure for filing a complaint with the Equal Employment Opportunity Commission (EEOC), and professionals who can help companies navigate the complexities of the law.

Although a qualitative and quantitative risk assessment process is periodically completed by OSH professionals as a part of the qualitative exposure assessment process, OSH professionals may be asked to conduct reproductive and developmental risk assessments for employees. This article provides information that may be useful for both male and female reproductive risk assessments performed by OSH professionals. However, for specific complex situations, this article should not be used for professional medical and legal representatives.

Reproductive and developmental risk assessment is normally completed by OSH professionals upon request by an employee, medical professional or management. Effective communications should be maintained between these groups, including human resources, throughout the evaluation. Reproductive and developmental hazard risk assessments are typically documented with the standard OSH report and shared with medical professionals, management and employees (ASSP, 2023).

Background on the PWFA

The PWFA closes a loophole in the federal Pregnancy Discrimination Act of 1978, which required employers to provide accommodations for workers only to the extent that their work

restrictions caused them to be “disabled” (Americans With Disabilities Act, 1990). The PWFA was included as an amendment to the 2023 federal appropriations bill and was signed into law on Dec. 29, 2022 (Consolidated Appropriations Act, 2022). The main objective of the PWFA is to ensure the safety and health of pregnant workers and protect their future children from workplace hazards such as prolonged standing, lifting excessive weight or overexposure to substances classified as carcinogenic, mutagenic or toxic for reproduction (Pregnant Workers Fairness Act, 2020).

This law represents a significant step toward ensuring fairness, equality and protection for pregnant workers in the U.S. Enacted on June 27, 2023, the PWFA seeks to address and eliminate discriminatory practices in the workplace by providing expanded protections for workers experiencing pregnancy, childbirth or related medical conditions. Employers should ensure that they post the correct, most current materials (posters are dated in the bottom right corner). Information and versions of the “Know Your Rights: Workplace Discrimination is Illegal” poster are available to view and download on the EEOC website (www.eeoc.gov/poster).

Workers can call the EEOC toll-free number (800) 669-4000 with questions about the PWFA. The EEOC provides information about the PWFA along with resources for workers and employers to familiarize themselves with the new law (<https://bit.ly/44NqGKc>). Resources include:

- tip sheet for employees on how to request accommodations
- “Know Your Rights” video series
- PWFA rights poster
- webinar for employers

Procedure for Filing a Complaint With the EEOC

Under the PWFA, workers who believe they have been subjected to discrimination due to pregnancy, childbirth or related medical conditions can file a

complaint with the EEOC. The complaint process follows these steps:

1) Individual contacts the EEOC.

First, workers should visit the EEOC website (www.eeoc.gov) or call to find the nearest EEOC office. Provide the necessary information and ask to file a complaint.

2) Complainant completes the intake questionnaire. The EEOC requires individuals to complete an intake questionnaire to gather information about the alleged discrimination. The questionnaire helps the EEOC evaluate the claim.

3) EEOC conducts an investigation.

Upon receipt of the complaint, the EEOC investigates the allegations. This may involve interviewing the employer, reviewing relevant documents and speaking with witnesses.

The EEOC may offer mediation services to resolve the dispute informally. If a settlement is reached, the complaint is closed. If mediation is unsuccessful or not pursued, the EEOC will issue a right-to-sue letter, enabling the complainant to file a lawsuit in federal court within a specified timeframe.

The PWFA ensures that workers experiencing pregnancy, childbirth or related medical conditions are entitled to expanded protections in the workplace. It prohibits employers from engaging in discriminatory practices based on pregnancy and provides guarantees such as:

• **Reasonable accommodations:** The PWFA requires employers to provide reasonable accommodations to pregnant workers unless such accommodations impose an undue hardship on the employer.

• **Nonretaliation:** Employers are prohibited from retaliating against employees who exercise their rights under the PWFA or file a complaint with the EEOC.

• **Equal treatment:** The PWFA mandates that pregnant workers should be treated equally in all aspects of employment, including hiring, promotions, pay and job assignments.

The PWFA applies to employers with 15 or more employees, including public

FIGURE 1 REPRODUCTIVE RISK ASSESSMENT SAMPLE CHECKLIST

A risk assessment checklist supports reproductive and developmental risk assessment for female employees. This sample checklist is expanded from the traditional review of the workplace chemical list to include other concerns such as ergonomics and PPE fit (Jankovic, 1996).

| Hazard | Present | Controls in place | Adequate | Further control(s) required |
|---|---------|--|----------|--|
| Material handling [Note: The U.S. Navy (2019) guideline contains AMA lifting guidance.] | Yes/No | <input type="checkbox"/> Ergonomic training <input type="checkbox"/> Colleagues to assist <input type="checkbox"/> Use of hoists, lifting aids <input type="checkbox"/> Work/rest cycles <input type="checkbox"/> Other (specify) _____ | Yes/No | <input type="checkbox"/> Ergonomic training <input type="checkbox"/> Colleagues to assist <input type="checkbox"/> Use of hoists, lifting aids <input type="checkbox"/> Work/rest cycles <input type="checkbox"/> Other (specify) _____ |
| Office ergonomics | Yes/No | <input type="checkbox"/> Ergonomic training <input type="checkbox"/> Ergonomic design <input type="checkbox"/> Micro breaks <input type="checkbox"/> Other (specify) _____ | Yes/No | <input type="checkbox"/> Ergonomic training <input type="checkbox"/> Ergonomic design <input type="checkbox"/> Micro breaks <input type="checkbox"/> Other (specify) _____ |
| Prolonged standing, sitting or walking [Note: The U.S. Navy (2019) guideline contains AMA lifting guidance function frequency/duration information.] | Yes/No | <input type="checkbox"/> More frequent breaks <input type="checkbox"/> Quality seating <input type="checkbox"/> Floor mats <input type="checkbox"/> Use of stairs versus ladders <input type="checkbox"/> Other (specify) _____ | Yes/No | <input type="checkbox"/> More frequent breaks <input type="checkbox"/> Quality seating <input type="checkbox"/> Floor mats <input type="checkbox"/> Use of stairs versus ladders <input type="checkbox"/> Other (specify) _____ |
| Noise [Note: ACGIH (2024) TLV booklet and U.S. Navy (2019) guideline contain specific recommendations for noise levels.] | Yes/No | <input type="checkbox"/> Remove from noise source <input type="checkbox"/> Shield noise source <input type="checkbox"/> Other (specify) _____ | Yes/No | <input type="checkbox"/> Remove from noise source <input type="checkbox"/> Shield noise source <input type="checkbox"/> Other (specify) _____ |
| Ionizing radiation [Note: U.S. NRC (10 CFR 20.1208) regulates embryo/fetus dose during declared pregnancy and requires individual monitoring if deep dose equivalent exceeds specified value.] | Yes/No | <input type="checkbox"/> Keep exposures as low as reasonably practicable and below the dose limit for pregnant women <input type="checkbox"/> Other (specify) _____ | Yes/No | <input type="checkbox"/> Keep exposures as low as reasonably practicable and below the dose limit for pregnant women <input type="checkbox"/> Other (specify) _____ |
| Thermal [Note: ACGIH (2024) TLV booklet and U.S. Navy (2019) guideline contain thermal guidance.] | Yes/No | <input type="checkbox"/> Thermal stress training <input type="checkbox"/> More frequent breaks <input type="checkbox"/> Frequent hydration <input type="checkbox"/> Thermal controls <input type="checkbox"/> Other (specify) _____ | Yes/No | <input type="checkbox"/> Thermal stress training <input type="checkbox"/> More frequent breaks <input type="checkbox"/> Frequent hydration <input type="checkbox"/> Thermal controls <input type="checkbox"/> Other (specify) _____ |
| Unable to wear PPE or uniform correctly | Yes/No | <input type="checkbox"/> PPE training: Purchase PPE that correctly fits wearer <input type="checkbox"/> Prohibit work if appropriate PPE is unavailable <input type="checkbox"/> Other (specify) _____ | Yes/No | <input type="checkbox"/> PPE training: Purchase PPE that correctly fits wearer <input type="checkbox"/> Prohibit work if appropriate PPE is unavailable <input type="checkbox"/> Respirator resize, fit test and medical consult <input type="checkbox"/> Other (specify) _____ |
| Biological agents [Note: The U.S. Navy (2019) guideline contains additional information.] | Yes/No | <input type="checkbox"/> Biohazard training <input type="checkbox"/> Infection control procedures <input type="checkbox"/> PPE <input type="checkbox"/> Prevent contact with biological agents known to cause harm in pregnancy or when breastfeeding <input type="checkbox"/> Other (specify) _____ | Yes/No | <input type="checkbox"/> Biohazard training <input type="checkbox"/> Infection control procedures <input type="checkbox"/> PPE <input type="checkbox"/> Prevent contact with biological agents known to cause harm in pregnancy or when breastfeeding <input type="checkbox"/> Other (specify) _____ |
| Chemical exposure (especially chemicals known to cause harm in pregnancy or when breastfeeding); carcinogens [Note: The references above can assist in risk assessment. SDSs may contain pertinent information as well.] | Yes/No | <input type="checkbox"/> HazCom training <input type="checkbox"/> Current qualitative exposure assessment <input type="checkbox"/> Current quantitative exposure assessment <input type="checkbox"/> Effective ventilation <input type="checkbox"/> PPE <input type="checkbox"/> Job rotation <input type="checkbox"/> Other (specify) _____ | Yes/No | <input type="checkbox"/> HazCom training <input type="checkbox"/> Current qualitative exposure assessment <input type="checkbox"/> Current quantitative exposure assessment <input type="checkbox"/> Effective ventilation <input type="checkbox"/> PPE <input type="checkbox"/> Job rotation <input type="checkbox"/> Other (specify) _____ |
| Specify other hazards | Yes/No | Specify controls | Yes/No | Specify further controls required |

agencies and private businesses. It covers various types of workplaces, including offices, factories, hospitals, schools and retail establishments, among others. These employers must comply with the PWFA and provide the necessary accommodations and protections outlined in the law (Trump-Steel et al., 2016).

Accommodations & Request Process

Under the PWFA, employers are required to provide reasonable accommodations to pregnant workers. Such accommodations may include:

- temporary job restructuring or modified work schedules
- permission to sit or stand, as needed
- additional breaks or time off for medical appointments
- assistance with manual labor or lifting restrictions

To request accommodations, employees should follow these steps:

1) Notify the employer: Inform the employer of the need for accommodations due to pregnancy, childbirth or related medical conditions. This notification should be made as early as possible.

2) Provide medical documentation: Employers may request medical documentation supporting the need for accommodations. Employees should provide this documentation promptly to facilitate the process.

3) Interactive process: Engage in an interactive process with the employer to discuss possible accommodations and reach an agreement that meets the needs of both parties.

To ensure compliance with the PWFA and effectively address questions or concerns, companies should consult with a team of professionals including OSH professionals, medical experts, legal advisors and human resources professionals. OSH professionals can provide guidance on implementing appropriate workplace policies, conducting risk assessments and ensuring a safe work environment for pregnant workers. Medical experts can help companies understand the specific needs and limitations of pregnant workers and assist in determining suitable accommodations. Legal professionals specializing in employment law can provide guidance on interpreting and complying with the PWFA, ensuring that companies meet their legal obligations and avoid potential litigation.

Human resources professionals should work with company leadership to review and revise existing policies to ensure

compliance with the PWFA. They should develop clear policies that prohibit pregnancy discrimination, outline reasonable accommodations for pregnant employees, and establish guidelines for handling pregnancy-related issues. This includes education of employees and supervisors about the provisions of the PWFA and their rights and responsibilities. Human resources professionals should maintain accurate records on pregnancy-related accommodations, complaints and other relevant information. This documentation helps demonstrate the organization's commitment to compliance and can be vital if legal issues arise.

The PWFA plays a crucial role in providing expanded protections and ensuring equality for workers experiencing pregnancy, childbirth or related medical conditions.

Helpful References for Risk Assessment

Global entities identify and evaluate risks to human reproduction. However, consistent criteria is not always utilized in reporting reproductive toxicity and in some cases the criteria used to determine whether a material can be classified as a reproductive or developmental toxicant is unknown. As a result, some caution should be exercised when referencing published lists of toxicants (e.g., California Proposition 65). The following reproductive and developmental references may be helpful in risk assessment:

• An "adverse effects" search is available via the Haz-Map database (<https://haz-map.com>) published by the National Library of Medicine. Criteria for identifying the agent as a reproductive toxin may or may not be available (Institute of Medicine, 2013).

• Jankovic and Drake (1996) define a method for determining whether a substance is a reproductive toxin. The authors identified 213 reproductive toxins using the CDC's Register of Toxic Effects of Chemical Substances, then used elements of the EPA's health risk assessment process to reduce the list to the final 213.

• The American Conference of Governmental Industrial Hygienists (ACGIH,

2024) has identified some reproductive toxicants. However, if reproductive toxicity is not the basis of the threshold limit value (TLV), then it is not identified as a reproductive toxin in the TLV booklet.

• The U.S. Navy and Marine Corps Public Health Center's 2019 technical manual, "Reproductive and Developmental Hazards: A Guide for Occupational Health Professionals," provides guidance in the evaluation and management of reproductive and developmental hazards. Included are a compilation of tables of reproductive toxins and developmental toxins from other lists (e.g., California Proposition 65) and guidelines for physical, biological and ergonomic concerns.

• The April 2009 NIOSH alert "Preventing Occupational Exposure to Lead and Noise at Indoor Firing Ranges" cites a report indicating blood lead levels greater than 5 µg/dL increase the risk of miscarriage of pregnant workers.

• The ACGIH TLV booklet contains guidance on blood lead levels for women of childbearing potential (ACGIH, 2024). Note that the OSHA lead in construction standard (29 CFR 1926.62) medical removal provision occurs at a higher blood lead level than the guidelines from NIOSH and ACGIH.

While some susceptibilities may be known to the worker, many may be unknown due to an absence of information such as family history or genetic testing results. Some susceptibilities may be transient due to exposure factors such as medication or pregnancy. Additionally, susceptibilities may be known to the worker but unknown to the organization due to factors related to employee privacy concerns, employment security, social stigma or other factors. Management of unknown susceptibility is one of several reasons why susceptibility should be considered early in the risk assessment process, and susceptibility should be treated as an additional factor in evaluating the risk presented by the exposure scenario, rather than being considered as a characteristic of the worker (Anthony, 2008).

Assessing and managing risks in the workplace is crucial for the well-being of employees and compliance with relevant laws and regulations. Employers often face challenges in understanding and implementing risk assessment protocols. Figure 1 (p. 23) provides a sample risk assessment checklist that helps to support reproductive and developmental risk assessment for female employees.

Additional resources that may aid employers struggling with risk assessment, with a focus on EU Registration, Evaluation, Authorization and Restriction of Chemicals (REACH) law, include:

- European Chemicals Agency (ECHA) (<https://echa.europa.eu>), which provides comprehensive information on the REACH regulations, including guidance documents, manuals and tools for compliance. Visit <https://echa.europa.eu>.

- REACH candidate list (<https://echa.europa.eu/candidate-list-table>) shows substances of very high concern and is regularly updated by ECHA. Employers can refer to this list to identify and manage substances that may pose risks.

- ECHA offers practical guides on various aspects of REACH compliance (<https://echa.europa.eu/practical-guides>) to help employers understand and implement the regulation effectively.

- REACH help desk service (<https://echa.europa.eu/contact/regulatory-support>) answers specific queries related to REACH. Employers can seek clarification on compliance issues or regulatory requirements.

Conclusion

Federal courts have generally relied on the 2015 U.S. Supreme Court decision in *Young v. United Parcel Service Inc.* when specifying accommodations for pregnant employees. According to this decision, under the Pregnancy Discrimination Act, employers making accommodations for other similarly situated workers must also provide pregnant workers with comparable accommodations. That standard has meant that pregnant workers have only been entitled to accommodations that their employer grants to workers who are not pregnant, but are otherwise limited in their ability to work, perhaps due to injury or disability. According to Bakst et al. (2021), lack of an acceptable nonpregnant comparator led two-thirds of pregnancy accommodation lawsuits after the *Young* ruling to fail. But courts have been inconsistent in their interpretation of the *Young* ruling. In August 2022, for example, Walmart convinced the Seventh Circuit that it did not have to grant light work duties to pregnant workers even though it allowed such arrangements for workers hurt on the job (Moreno, 2022). The retail company argued that it was not discriminating against pregnant workers because the policy was in place

to avoid liability under a state workers' compensation law.

The PWFA plays a crucial role in providing expanded protections and ensuring equality for workers experiencing pregnancy, childbirth or related medical conditions. Employers should review and update their policies and practices to ensure that they are prepared to provide reasonable accommodations to pregnant employees and applicants, including those with pregnancy-related medical conditions. Companies can be empowered to create an inclusive work environment that supports pregnant workers by understanding the procedures for filing a complaint with the EEOC, guarantees of expanded protections, accommodations and the rights provided by the PWFA. Seeking guidance from a team of professionals including OSH professionals, human resources professionals, medical experts and legal advisors can help companies navigate the complexities of the PWFA and promoting compliance with this essential legislation. **PSJ**

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