

# JAN

Job Accommodation Network

Practical Solutions • Workplace Success

## Accommodation and Compliance Series

### Employees who are Pregnant

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A service of the U.S. Department of Labor's Office of Disability Employment Policy

## Preface

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# **JAN'S ACCOMMODATION AND COMPLIANCE SERIES**

## **Introduction**

JAN's Accommodation and Compliance Series is designed to help employers determine effective accommodations and comply with Title I of the Americans with Disabilities Act (ADA). Each publication in the series addresses a specific medical condition and provides information about the condition, ADA information, accommodation ideas, and resources for additional information.

The Accommodation and Compliance Series is a starting point in the accommodation process and may not address every situation. Accommodations should be made on a case by case basis, considering each employee's individual limitations and accommodation needs. Employers are encouraged to contact JAN to discuss specific situations in more detail.

For information on assistive technology and other accommodation ideas, visit JAN's Searchable Online Accommodation Resource (SOAR) at <http://AskJAN.org/soar>.

## **Information about Pregnancy and Work**

Women today are more likely to work while pregnant. Data collected by the Pew Research Center indicates that not only are a higher share of women who are pregnant continuing to work, but also are working longer into their pregnancies and returning to work much sooner after (Pew Research Center, 2015). While pregnancy can be a joyous and exciting time, it can also present challenges at work for some women who experience limitations or complications associated with pregnancy. As a result, women who continue working during pregnancy may require job accommodations during and after pregnancy.

Pregnancy affects women in different ways. Some women experience no, or very few, limitations affecting their ability to work. Others may experience limitations that lead to the need for accommodations. For example, fatigue, sickness, or pain may impact attendance; restrictions in lifting, standing, or bending may affect ability to meet the physical demands of a job; or the need to eat and drink frequently, or wear more comfortable clothing may affect adherence to certain policies. Limitations can sometimes result from pregnancy-related complications, like gestational diabetes, back pain, high blood pressure (known as preeclampsia), urinary tract infections, severe dehydration, and depression. Also, pregnancy and childbirth may exacerbate existing medical impairments.

## **Pregnancy-related Workplace Legislation**

### **Does federal law require employers to make accommodations for pregnant workers?**

Yes. There are two federal laws that may require an employer to accommodate a pregnant worker: the Pregnancy Discrimination Act (PDA), and the Americans with Disabilities Act (ADA).

### **What does the Pregnancy Discrimination Act require?**

The PDA is a federal statute that protects pregnant workers and requires covered employers to make job-related modifications for pregnant employees. The PDA forbids employment discrimination based on pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. The law requires employers to treat a pregnant employee who is temporarily unable to perform, or is limited in performing, the functions of her job because of pregnancy, childbirth, or a related medical condition in the *same manner as it treats other employees who are similar in their ability or inability to work* (EEOC, 2015).

Under the PDA, a covered employer is responsible for making job-related modifications (or accommodations) for pregnant workers when the employer does so for other employees who are similarly limited in their ability to perform job functions. A change in duties can include, for example, light duty, alternative assignments, additional breaks, or unpaid leave. For example, an employer with a policy of accommodating most non-pregnant employees with lifting limitations would be required to also accommodate pregnant employees with lifting limitations.

### **What does the Americans with Disabilities Act require?**

The ADA requires employers to provide reasonable accommodations to employees with disabilities, so long as doing so does not impose an undue hardship on the employer. Although pregnancy alone is not a disability under the ADA, many pregnancy-related conditions are disabilities that an employer may have to accommodate under the ADA.

To have a disability under the ADA, an individual must have an impairment that substantially limits one or more major life activities. Changes in the interpretation of the definition of the term “disability” resulting from enactment of the ADA Amendments Act (ADAAA) make it easier for employees who have pregnancy-related impairments to demonstrate that they have disabilities for which they may be entitled to reasonable accommodation (EEOC, 2015). For example, the following pregnancy-related conditions may be disabilities under the ADA: anemia, sciatica, gestational diabetes, preeclampsia, morning sickness, swelling in the legs, depression, or other impairments that substantially limit a major life activity or the normal functioning of a bodily system.

Accommodations can include a modified schedule, ability to have snacks or drinks at a workstation, a modified attendance policy, frequent breaks, sitting, light duty, or leave, among other solutions.

### **Are there state laws that require employers to accommodate pregnant workers?**

Yes. Various state and local laws provide protections against pregnancy discrimination, accommodation requirements, and leave rights for pregnant workers. Such state and local laws go above and beyond the requirements of federal law. For example, some states have enacted laws that expressly require covered employers to provide reasonable accommodations to employees who have work-related limitations due to pregnancy, childbirth, or related conditions, typically so long as such accommodations can be provided without undue hardship to the employer. Many states have enacted pregnancy-related legislation in response to the lack of clear federal mandates to provide accommodations for pregnant workers. Employers should be prepared to comply with state and local laws that offer broader protections than federal laws. The U.S. Department of Labor (DOL) maintains an interactive map that offers information about state-level employment protections for workers who are pregnant or nursing. To access this information, visit <http://www.dol.gov/wb/maps>.

### **Is light duty required for pregnant workers?**

Under federal law, an employer must treat women affected by pregnancy, childbirth, or related medical conditions the same as other employees who are similar in their ability or inability to work with respect to light duty. If light duty is provided to other employees who are similar in their ability or inability to work (e.g., those injured on the job), an employer may have to provide temporary light duty to an employee due to pregnancy. An employer that provides light duty to other employees cannot justify denying it to a pregnant worker just because it would be more expensive or less convenient to do so. Additionally, light duty may be an appropriate reasonable accommodation for individuals with pregnancy-related disabilities under the ADA.

For more information, see the EEOC's *Questions and Answers about the EEOC's Enforcement Guidance on Pregnancy Discrimination and Related Issues* at [http://www.eeoc.gov/laws/guidance/pregnancy\\_qa.cfm](http://www.eeoc.gov/laws/guidance/pregnancy_qa.cfm).

### **Can an employer require a pregnant worker to take leave even if she can perform job functions with or without accommodation?**

No. An employer may not force an employee to take leave because she is or has been pregnant, as long as she is able to perform her job duties. If an employee is limited in performing job duties and is entitled to an accommodation under the PDA or ADA (see above), reasonable accommodations may need to be provided to help her perform job duties. Requiring an employee to take leave against her wishes violates the PDA even if

the employer believes it is acting in the employee's best interest. If an employee has been absent from work as a result of a pregnancy-related condition and then recovers, her employer may not require her to remain on leave until the baby's birth; nor may an employer prohibit an employee from returning to work for a certain length of time after childbirth (EEOC, 2015).

### **Are employers required to provide leave for employees who are pregnant and/or for new parents?**

The Family and Medical Leave Act (FMLA) gives those who qualify the right to use up to twelve weeks of *unpaid* leave for prenatal medical appointments, morning sickness, pregnancy-related conditions, childbirth, and for bonding with new children (men are entitled to bonding leave too). State and local laws may provide additional leave or cover individuals who are not covered by the FMLA.

Federal law does not mandate any form of *paid* leave, though some employers do offer paid leave, and some states provide temporary, partial income replacement during periods of pregnancy leave or parental leave.

For information regarding the FMLA, contact the U.S. Department of Labor, Wage & Hour Division at 866-487-9243 or visit <http://www.dol.gov/whd/fmla/index.htm>.

### **Are employers required to accommodate nursing mothers?**

The Patient Protection and Affordable Care Act amended section 7 of the Fair Labor Standards Act (FLSA) to require covered employers to make certain accommodations for nursing mothers who are covered by the law's protections (employees are covered if they are entitled to receive overtime under the FLSA). Employers are required to provide such employees:

- Reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child's birth each time such employee has need to express the milk, and
- A place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

For additional guidance on the Patient Protection and Affordable Care Act, see the U. S. Department of Labor, Wage & Hour Division, Break Time for Nursing Mothers website at <http://www.dol.gov/whd/nursingmothers>.

Additionally, the PDA and Title VII of the Civil Rights Act of 1964 requires employers to accommodate nursing mothers under certain circumstances. Under the PDA, an employee must have the same freedom to address lactation-related needs that she and

her co-workers would have to address other similarly limiting medical conditions. For example, if an employer allows employees to change their schedules or use sick leave for routine doctor appointments and to address non-incapacitating medical conditions, then it must allow female employees to change their schedules or use sick leave for lactation-related needs under similar circumstances. (EEOC, 2015).

\* Thank you to Liz Morris, Deputy Director and Professor at the Center for WorkLife Law, University of California, Hastings College of the Law, who provided insight and expertise that contributed to the development of the pregnancy-related workplace legislation section of this document.

## **Accommodating Employees who are Pregnant or Nursing**

The following is an overview of some of the accommodations that might be useful for employees who are pregnant or nursing. For a more in depth discussion, access JAN's publications at <http://AskJAN.org/media/atoz.htm>. To discuss an accommodation situation with a consultant, contact JAN directly.

**Nausea and Vomiting:** Nausea and vomiting symptoms commonly occur in early pregnancy, during the first trimester, but some women can be affected by varying degrees of severity of these symptoms throughout their entire pregnancy.

- Allow for longer or more frequent work breaks to use the restroom
- Move workstation closer to the restroom
- Provide a private rest area to lie down during breaks
- Allow access to a refrigerator to store food and drinks
- Modify policy to allow eating/drinking at workstation/around facility to increase caloric intake and keep hydrated
- Adjust lighting
- Reduce noise
- Allow flexible schedule, reduced work schedule, flexible use of leave time
- Allow work from home

**Fatigue:** Fatigue is particularly common during the first and last trimesters of pregnancy. However, some women will experience fatigue throughout pregnancy.

- Reduce or eliminate physical exertion and workplace stress
- Schedule periodic rest breaks away from the workstation
- Modify policy to allow eating/drinking at workstation/around facility to increase caloric intake and keep hydrated
- Provide anti-fatigue matting on the floor if standing
- Implement ergonomic workstation design

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- Provide a private rest area to lie down during breaks
- Allow flexible schedule, reduced work schedule, flexible use of leave time
- Limit overtime
- Allow work from home

**Restroom Use:** Workers who are pregnant may need to use the restroom more frequently.

- Allow for longer or more frequent work breaks to use the restroom
- Move workstation closer to the restroom
- Modify schedule to allow additional break time

**Parking/Walking:** Workers who are pregnant may have difficulty walking long distances. Parking or mobility-related accommodations may be needed to provide easier access to the workplace.

- Provide parking as close to the work-site as possible
- Designate a parking space
- Provide a shuttle if parking is not located close to worksite
- Limit walking around the worksite
- Allow to access closest entrance to workstation or move workstation closer to entrance of building
- Provide a scooter or other mobility aid if walking cannot be reduced
- Allow flexible schedule to allow extra time to get to and from parking area
- Allow flexible schedule to access public transportation or car pool
- Allow work from home

**Attendance:** Attendance can be impacted during pregnancy for a number of reasons, including nausea, fatigue, pregnancy-related impairments, and medical appointments. Often, all that is needed is some flexibility with work schedule and where work is performed.

- Allow flexible schedule, reduced work schedule, flexible use of leave time
- Modify attendance policy
- Provide a straight shift instead of rotating shifts
- Provide a day shift
- Allow work from home

**Ergonomics:** Workers who are pregnant may require ergonomic modifications to enhance productivity and reduce the impact of pregnancy-related impairments and limitations, like carpal tunnel syndrome or back pain.

- Implement ergonomic workstation design

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- Adjust height of work surface and monitor
- Place materials and equipment within reach range
- Provide adjustable chair
- Provide adjustable sit/stand workstation to alternate between sitting and standing
- Provide lumbar pillow/back rest
- Provide foot rest
- Provide wrist rest with keyboard, keep wrists in a neutral posture and straight line
- Limit keyboarding
- Provide voice recognition software
- Provide headset if using the telephone frequently
- Limit reaching and bending

**Lifting/Bending/Twisting/Reaching/Pushing/Pulling:** Workers who are pregnant can be limited in their ability to lift, bend, twist, reach, push, or pull. Not all workers will be limited in the same way. A lifting restriction of 25-30 lbs. is common during pregnancy. When necessary, the worker's healthcare provider can provide information regarding specific limitations and restrictions. JAN can offer specific accommodation solutions based on the industry and job tasks involved. Here are some *general* ideas:

- Limit lifting, bending, reaching, pushing, and pulling
- Reallocate duties, if marginal
- Provide assistance moving objects or people
- Reduce weight to be lifted by separating items
- Provide compact lifting devices to lift, push, and pull items
- Provide a cart to move items
- Place frequently used tools and supplies at or near waist height
- Provide low task chairs for work that cannot be brought to waist height
- Provide a lazy Susan carousel or desktop organizer to access frequently used materials
- Temporarily reassign to light duty position or modify duties
- Medical Settings:
  - Train employees on proper lifting techniques and on proper use of patient lifting and transfer devices
  - Make patient lifting and transfer devices available
  - Reallocate duties, if marginal
  - Provide partner assistance moving objects or people
  - Temporarily reassign to light duty position
  - Provide powered beds for transporting patients
  - Provide adjustable exam tables
  - Provide a spring-bottomed linen cart

**Sitting:** Sitting for long periods of time can affect circulation and cause pain and discomfort.

- Implement ergonomic workstation design
- Allow frequent, short breaks to get up and walk around
- Provide adjustable sit/stand workstation to alternate between sitting and standing
- Provide adjustable chair
- Provide lumbar pillow/back rest
- Provide foot rest
- Provide headset if using the telephone frequently

**Standing:** Standing for long periods of time can lead to fatigue and cause pain and discomfort.

- Provide stool, lean stool, task chair
- Provide adjustable workstation to alternate between standing and sitting
- Allow frequent, short breaks to walk around
- Provide anti-fatigue matting on the floor
- Limit standing time
- Temporarily modify duties

**Temperature Sensitivity:** Workers who are pregnant can be sensitive to hot and cold temperatures.

- Modify work-site temperature
- Modify dress code
- Use fan/air-conditioner at the workstation
- Move workstation to cooler/warmer area or away from/under vent
- Redirect air conditioning and heating vents
- Provide an office with separate temperature control
- Allow flexible scheduling and flexible use of leave time
- Allow work from home during extremely hot or cold weather
- Use cooling clothing, when applicable

**Depression, Handling Stress and Emotions:** Everyone handles stress and emotions in different ways. Managing stress at work can help reduce emotional discomfort.

- Encourage use of stress management techniques
- Play soothing music or environmental sounds
- Reduce distractions
- Allow for longer or more frequent work breaks away from the workstation
- Allow presence of support animal

- Allow telephone calls during work hours to healthcare providers and others for needed support
- Provide backup coverage for when the employee needs to take breaks
- Increase natural light
- Provide praise and positive reinforcement
- Modify supervisory methods to improve communication
- Refer to counseling, employee assistance program (EAP)
- Allow flexible scheduling to exercise, participate in employee wellness program, or counseling
- Allow flexible use of leave time

**Traveling/Driving:** Driving and or traveling long distances may be limited due to pregnancy. The individual's healthcare provider should be consulted regarding any specific limitations.

- Limit traveling to between 14-28 weeks of pregnancy, if possible (consult healthcare provider)
- Limit driving to no more than 5 to 6 hours per day (consult healthcare provider)
- Limit traveling distance
- Make frequent stops to get up and move around
- Book an aisle seat to be able to stretch during a long flight
- Allow work from home to eliminate commute
- Allow to travel with a cooler
- Pair the employee with a co-worker who can drive to clients, meetings, or events
- Allow virtual participation to eliminate the need to travel
- Reassign the employee to a position that does not require driving/traveling
- Allow flexible scheduling to access public transportation or car pool

**Working Around/With Toxic Substances:** Pregnant workers may be limited in their ability to work around heavy metals like lead and mercury, chemicals such as organic solvents, certain biologic agents, and radiation. Exposures can happen through inhaling substances, absorption through skin, or ingestion.

- Provide Material Safety Data Sheets (MSDS) to discuss health hazards with healthcare provider
- Contact the Occupational Safety and Health Administration (OSHA) or National Institute for Occupational Safety and Health (NIOSH) for information regarding safety risks
- Substitute safer chemicals, when appropriate (i.e, non-toxic cleaning)
- Use personal protective equipment (PPE) for handling and working around hazardous substances (i.e., gloves, apron, respirator mask)
- Use proper ventilation and fume hoods, when appropriate

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- Reassign the employee to an alternative position, temporarily

**Nursing/Pumping:** A new mother who nurses her baby will need to either take time to nurse, or make time to pump breast milk while at work.

- Allow reasonable break time for an employee to express breast milk each time employee has need to do so
- Provide a private place, other than a restroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used to express breast milk
- Allow periodic rest breaks away from the workstation
- Provide access to a refrigerator and a secure place to store expressed milk
- Allow to travel with a cooler
- Allow work from home
- Allow a flexible schedule

## **Resources Specifically for People who are Pregnant or Nursing**

### **American Civil Liberties Union**

125 Broad Street, 18th Floor  
New York, NY 10004  
Local: (212)549-2500  
<https://www.aclu.org/know-your-rights>

For almost 100 years, the ACLU has worked to defend and preserve the individual rights and liberties guaranteed by the Constitution and laws of the United States.

### **National Conference of State Legislators (NCSL)**

<http://www.ncsl.org/research/health/breastfeeding-state-laws.aspx>

Information regarding state breast feeding laws and federal health reform.

### **National Women's Law Center**

11 Dupont Circle, NW, # 800  
Washington, DC 20036  
Local: (202)588-5180  
Fax: (202)588-5185  
[info@nwlc.org](mailto:info@nwlc.org)  
<http://www.nwlc.org>

The Center has worked for more than 40 years to protect and promote equality and opportunity for women and families. We champion policies and laws that help women and girls achieve their potential at every stage of their lives — at school, at work, at home, and in retirement. Our staff are committed advocates who take on the toughest challenges, especially for the most vulnerable women.

### **Office on Women's Health (OWH)**

Department of Health and Human Services  
200 Independence Avenue, SW Room 712E  
Washington, DC 20201  
Toll Free: (800)994-9662  
Local: (202)690-7650  
Fax: (202)205-2631  
<http://www.womenshealth.gov>

The Office on Women's Health (OWH), part of the U.S. Department of Health and Human Services (HHS), works to improve the health and sense of well-being of all U.S. women and girls. OWH serves as the focal point for women's health activities across HHS offices and agencies and leads HHS efforts to ensure that all women and girls achieve the best possible health.

**Pregnant@Work**

Local: (415)703-8276

hotline@worklifelaw.org

<https://www.pregnantatwork.org>

An online resource center that provides tools and educational materials about accommodating pregnant women at work.

**U.S. Department of Labor - Employment Protections For Workers Who Are Pregnant or Nursing**

<http://www.dol.gov/wb/map/index.htm>

Employment protections for workers who are pregnant or nursing.

**U.S. Equal Employment Opportunity Commission**

131 M Street, NE

Washington, DC 20507

Toll Free: (800)669-4000

TTY: (800)669-6820

Video Phone: (844)234-5122

info@eeoc.gov

<http://www.eeoc.gov>

The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

## References

Pew Research Center. (2015). Working while pregnant is much more common than it used to be. Retrieved November 2015 from <http://www.pewresearch.org/fact-tank/2015/03/31/working-while-pregnant-is-much-more-common-than-it-used-to-be>

Equal Employment Opportunity Commission (EEOC). (2015). Enforcement Guidance on Pregnancy Discrimination and Related Issues. Retrieved October 2015 from [http://www.eeoc.gov/laws/guidance/pregnancy\\_guidance.cfm](http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm)

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