

# PUBLICATION

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## Workplace Protections for the Working Mother

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**Many working mothers strive to attain some form of work life balance but may find that their jobs do not provide the flexibility and autonomy that they need to reach this goal. Women often feel like we are spinning one plate too fast and one plate too slow and will eventually drop them all. While many employers voluntarily provide a panoply of benefits to assist working mothers make the transition to motherhood and feel that they can have families and still thrive in their careers, other employers have to be forced to do so.**

Since its amendment via the Patient Protection and Affordable Care Act in 2010, the Fair Labor Standards Act (FLSA) has required employers to provide reasonable break time for employees to be able to express breast milk for up to one year after the birth of a child each time the employee has a need to express the milk. Furthermore, adequate space must be provided to the employee that allows the employee to be shielded from view and not in a bathroom. Expanding on those rights, President Biden recently signed into law the [Providing Urgent Maternal Protections for Nursing Mothers Act \(PUMP Act\)](#)!

The PUMP Act is the first standalone breastfeeding bill ([S. 1658/H.R. 3110](#)) to receive a recorded vote on the House and Senate floors. It took effect immediately once it was signed into law on December 29, 2022, but provided for a 120-day buffer, so enforcement-related provisions did not take effect until April 28, 2023.

In addition to the requirements already imposed by FLSA, the PUMP Act requires employers to pay employees for pumping breaks if the employer provides paid breaks to other employees. It also provides that time spent pumping should be considered hours worked unless the employee is completely relieved of duties during the entire break. If covered employers do not comply with these requirements, employees are entitled to a private right of action with back pay, front pay, liquidated damages, and attorneys' fees as potential remedies. With these amendments, the PUMP Act will give working mothers some much-needed support...being able to balance working and ensuring their child(ren) are properly cared for in their absence while having legal protection for their own self.

Another recent legislative change impacting current and soon-to-be pregnant employees is the [Pregnant Workers Fairness Act \(PWFA\)](#), which goes into effect on June 27, 2023. The PWFA is the first law to require employers to provide employees with "reasonable accommodations" for pregnancy-related limitations, even if those limitations might not rise to the level of a disability under the Americans with Disabilities Act or state disability laws. "Reasonable accommodations" are changes to the work environment or the way work is performed that allows someone with an impairment or limitation to participate in the application process or to perform essential job functions.

Reasonable accommodations include, but are not limited to, the ability to sit instead of standing; a parking spot closer to the building; flexible hours; appropriately sized uniforms and safety apparel; additional break time to use the bathroom, eat, and rest; leave or time off to recover from childbirth; and the removal of strenuous or hazardous activities, to the extent those activities are not essential functions of the job. Employers are required to provide a reasonable accommodation unless it would cause an undue hardship on the employer's operations. "Undue hardship" refers to a significant difficulty or expense – not a mere inconvenience.

Covered employers cannot require an employee to request or accept an accommodation; deny a job or other employment opportunity based on worker's accommodation; require a worker to take leave; or retaliate against or otherwise interfere with the worker's rights under the PWFA. The PWFA applies to private and public sector employers with at least 15 employees, as well as to Congress, Federal agencies, employment agencies, and labor organizations.

The PWFA does not replace other laws that apply to workers affected by pregnancy-related limitations. Title VII, the ADA, the Family and Medical Leave Act, and the PUMP Act may still provide rights for covered workers. It is important to note that the PUMP Act and PWFA are not preempted by state laws that may have more stringent requirements, so covered employers should be sure to comply with any applicable state laws as well.

Overall, creating areas of protection for working and expectant mothers such as the PUMP Act and the PWFA are critical pieces in creating a foundation of support for mothers who juggle work and family. They are also helping shift the corporate culture here in America in seeing the importance (and necessity) of providing support to working parents.

For more details regarding the obligations imposed by these newly enacted laws or other employment matters, contact the authors, any member of the [Baker Donelson Labor & Employment team](#), or our [Women's Initiative](#), which champions thoughtful, forward-thinking resources for new parents, such as the Firm's Breastmilk Shipping Reimbursement Program, the Back-Up Childcare Reimbursement Program and our Family Planning and Support Policy to ensure our working parents can continue to thrive in their careers.