

**To: Executive Staff**  
**From: Teri Overbey, Human Resources Director**  
**Date: August 29, 2023**  
**Re: Pregnant Employees and Nursing Mothers**

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## **INTRODUCTION**

New legislation has recently become effective, necessitating a review and update of our procedures for pregnant and nursing mothers. Specifically, the Pregnant Workers Fairness Act (PWFA) is a federal law effective June 27, 2023, that requires covered employers to provide reasonable workplace accommodations to qualified employees with known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship.

In addition to PWFA, the Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act is a federal law that recently expanded the existing employer obligations under the Fair Labor Standards Act (FLSA) for nursing mothers in the workplace.

Below is general information about each of these new Acts. While the regulations are effective now, details are still being defined by the Equal Employment Opportunity Commission (EEOC). Human Resources will be providing additional guidance including a Question and Answer with more specific information in the near future.

## **GENERAL – PWFA**

The PWFA regulations require employers to provide qualified employees reasonable workplace accommodations to known limitations related to pregnancy, childbirth, or a related medical condition. These may include current pregnancy, past pregnancy, potential pregnancy, lactation, use of birth control, menstruation, infertility and fertility treatments, endometriosis, miscarriage, stillbirth, or having or choosing not to have an abortion, among other conditions. It may also include pre-existing conditions exacerbated by pregnancy. The PWFA requires an interactive process between employers and qualified employees and job applicants to determine appropriate reasonable accommodations.

A qualified employee or job applicant shall be considered qualified if they are able to perform the essential functions of the job with or without reasonable accommodation **or** if the inability to perform an essential function is:

- for a temporary period;
- the essential function could be performed in the near future; and
- the inability to perform the essential function can be reasonably accommodated.

These physical or mental limitations do not have to meet the definition of disability under the Americans with Disabilities Act (ADA).

Reasonable accommodations under the PWFA may include, but are not limited to:

- ability to sit or drink water;
- receive closer parking;
- flexible work hours;
- receive appropriately sized uniforms and safety apparel;
- light duty work assignments;
- modifications to workstations;
- additional or modified breaks;
- leave or time off to recover from childbirth;
- assistance with heavy labor and lifting; and
- exemption from strenuous activities and/or activities that involve exposure to compounds not safe for pregnancy.

The purpose of this new regulation is to provide the employee with economic security during the temporary nature of pregnancy by not requiring the employee to take paid or unpaid leave if another reasonable accommodation is available.

## **ELIGIBILITY AND USE**

Human Resources has been handling all requests for accommodation under the ADA and will continue to do so in compliance with the PWFA as follows.

1. After the employee notifies the supervisor of a need for reasonable accommodation(s) due to pregnancy, childbirth, or a related medical condition, the supervisor or employee will contact the Human Resources Analyst who will provide the Reasonable Accommodation Request Form, Authorization for Release of Medical Information Form, and Work Status Summary Form to the employee if applicable.
2. The Human Resources Analyst will begin the interactive process and the employee is responsible for fully engaging in the interactive process including providing any required documentation. The Human Resources Analyst will work with the department to identify reasonable accommodation(s) and notify the supervisor of the reasonable accommodation(s) that were approved for the department to implement.

Employers cannot do the following:

- Require an employee to accept an accommodation, unless one has been requested and the employer has engaged in the interactive process;
- Require an employee to take leave (paid or unpaid) if another reasonable accommodation can be provided that would allow the employee to continue working;
- Deny employment opportunities to a qualified employee or applicant based on the person's need for a reasonable accommodation;
- Retaliate against an individual for reporting or opposing unlawful discrimination under the PWFA or participating in a PWFA proceeding (such as an investigation); or
- Interfere or retaliate against a qualified employee or applicant for requesting or using a reasonable accommodation under the PWFA.

Any employee allegations of discrimination or retaliation under PWFA should be considered subject to Management Policy 308 and directed to the City's Equal Employment Opportunity Office (EEOO).

## **GENERAL – PUMP**

The PUMP Act expands existing employer obligations under the Fair Labor Standards Act (FLSA) regarding breaks for employees to express milk. The FLSA already required employers to provide a non-exempt (hourly) employee with the following:

- Reasonable break time **each time** needed to express breast milk for the employee's nursing child for up to one year after the child's birth; and
- Provide space other than a bathroom for mothers to pump. The space should be private, shielded from view, and free from intrusion from coworkers and the public.

On April 28, 2023, the PUMP Act extended lactation protections to FLSA **exempt** status nursing employees. Further, the PUMP Act added a provision requiring employees to give the employer ten days' notice before filing an action if an employer fails to provide a private space other than a bathroom for an employee to express breast milk. This allows for the employer to rectify the situation prior to the employee filing an Equal Employment Opportunity Commission (EEOC) complaint.

The PUMP Act also protects employees who telework. Covered workers who telework must be free from observation by the required video systems including computer camera or web conferencing platform.

The City of Mesa has already been providing the required breaks and facilities to BOTH exempt and non-exempt employees. Please refer to the February 22, 2011, memo regarding Nursing Mothers for specific guidance on what is considered reasonable break time and an appropriate location where nursing employees can express milk.