



SECTION BY SECTION

House Committee on Education and Labor

Chairman Robert C. "Bobby" Scott

Pregnant Workers Fairness Act (H.R. 1065)

Sec. 1. Short Title

The *Pregnant Workers Fairness Act* (the Act or this Act).

Sec. 2. Nondiscrimination with Regard to Reasonable Accommodations Related to Pregnancy

This section makes it unlawful for a covered entity to:

- Fail to provide reasonable accommodations for pregnant workers (Pregnant workers covered under the Act are qualified employees with “known limitations related to pregnancy, childbirth, or related medical conditions.” Covered entities do not have to provide a reasonable accommodation if doing so would cause them an undue hardship.);
- Require pregnant workers to accept an accommodation other than a reasonable accommodation arrived at through the interactive process set forth in Section 5;
- Deny employment opportunities to pregnant workers because of the need for a reasonable accommodation;
- Require a pregnant worker to take paid or unpaid leave if another reasonable accommodation can be provided; or
- Take adverse employment actions against a pregnant worker for requesting or using a reasonable accommodation.

Sec. 3. Remedies and Enforcement

In general, pregnant workers alleging pregnancy discrimination under the Act have the same rights and remedies available to those employees alleging discrimination on the basis of race, color, religion, sex, or national origin under Title VII of the *Civil Rights Act of 1964*, the *Congressional Accountability Act of 1995*, Chapter 5 of Title 3 U.S.C, Section 717 of the *Civil Rights Act of 1964*, and the *Government Employee Rights Act of 1991*. Remedies include equitable relief, back pay and reasonable attorney’s fees. Claimants may also be awarded compensatory and punitive damages.¹ However, punitive damages generally cannot be awarded to employees of the legislative, judicial, or executive branch. Below is a detailed description of the rights for the employees covered:

- *Employees Covered by Title VII of the Civil Rights Act of 1964* (Title VII) — For private sector employees working for employers with 15 or more employees, remedies include an employee’s right to seek relief

¹ Compensatory and punitive damages are subject to statutory caps. For employers with 15-100 employees, the limit is \$50,000. For employers with 101-200 employees, the limit is \$100,000. For employers with 201-500 employees, the limit is \$200,000. For employers with more than 500 employees, the limit is \$300,000.

by filing a charge with the Equal Employment Opportunity Commission (EEOC) and pursuing civil action. This section provides the EEOC with powers, remedies and procedures to prevent, investigate, conciliate, and litigate unlawful employment practices under the Act. This section authorizes the U.S. Attorney General to bring civil actions against a government entity and pattern and practice cases.

- *Employees Covered by the Congressional Accountability Act of 1995*— For legislative branch employees, remedies include an employee’s right to seek relief through the Office Congressional Workplace Rights (OCWR). Under the CAA employees have the right to file a claim, have a preliminary hearing, voluntarily opt into mediation (if both parties request), and adjudication through an administrative hearing or civil action, and appeal.
- *Employees covered by Chapter 5 of Title 3 U.S.C.*—For executive branch employees² covered under this provision, remedies include counseling with an agency equal employment opportunity (EEO) counselor, filing a formal complaint with the agency, agency investigation, a hearing with an EEOC administrative judge (AJ), the right to appeal agency decisions to the Merit Systems Protection Board (MSPB) in certain instances, and the right to civil action.³
- *Employees covered by the Government Employee Rights Act (GERA) of 1991*— For the policy and advisory staff of state and local elected officials, remedies include filing a complaint with the EEOC, a hearing before an administrative law judge (ALJ), and review by a federal court of appeals.⁴
- *Employees Covered by Section 717 of the Civil Rights Act of 1964*—For these executive branch employees,⁵ remedies include counseling with an agency equal employment opportunity (EEO) counselor, filing a formal complaint with the agency, an agency investigation, a hearing with an EEOC administrative judge (AJ), the right to appeal agency decisions to the Merit Systems Protection Board (MSPB) in certain instances, and the right to civil action.⁶

Prohibition Against Retaliation—The Act prohibits retaliation against individuals who exercised their rights under the Act. The Act makes it unlawful to coerce, intimidate, threaten, or interfere with any individual who has exercised rights provided.

Limitation—The Act provides covered entities with a good faith defense. The Act provides that damages may not be awarded if the covered entity demonstrates good faith in engaging in the interactive process with the pregnant worker to identify and make a reasonable accommodation. This provision mirrors a similar provision under the *Americans with Disabilities Act*.⁷

² Federal sector employees covered by Title 3 include those in the executive office of the president, presidential appointees not Senate-confirmed, those working in the White House residence, and those in the Vice President’s residence (but does not include those covered in Section 717 of the Civil Rights Act of 1964).

³ A federal employee can appeal an agency decision to the MSPB if the employee has a mixed claim, which includes both a discrimination claim and a claim covered by the Civil Service Reform Act

⁴ Unlike other employees covered by the *Pregnant Workers Fairness Act*, these employees can only go to court to appeal an EEOC decision. The EEOC brings in an administrative law judge (ALJ) from another agency to hear these cases, instead of using an EEOC administrative judge (AJ).

⁵ Section 717 covers the majority of federal personnel, including civilian personnel serving in military agencies, employees in the United States Postal Service, employees of non-appropriated fund agencies, employees in the competitive service in the judicial branch, and employees of the Smithsonian Institution, the Government Publishing Office, Government Accountability Office, and the Library of Congress.

⁶ *Supra* note 3.

⁷ See 42 USCS § 1981a; 42 U.S.C. § 12117. While this limitation only applies to damages, the shifting of fees and costs follows the determination of the “prevailing party.” There may be rare circumstances where injunctive relief is ordered and the respondent-employer is ordered to pay the costs and fees of the plaintiff-employee, but this would be a rare occurrence in light of the temporal nature of pregnancy.

Sec. 4. Rulemaking

The Act requires the EEOC to issue regulations, including examples of reasonable accommodations under the Act, within two years.

Sec. 5. Definitions

This section defines the following key terms used throughout the Act.

Commission—The Equal Employment Opportunity Commission (EEOC).

Covered Entity—A covered entity is a private sector employer who has 15 or more employees, employment agencies, labor organizations, legislative branch employers, executive branch employers, governmental agencies (including state and local government and the government of the District of Columbia), political subdivisions, units of the judicial branch of the Federal Government having positions in the competitive service, and the offices of state and local elected officials.

Employee—An employee is someone who is employed by a private-sector employer; this includes job applicants. The term employee also includes those in the legislative branch, the executive branch, certain federal judicial branch employees (those with positions in the competitive service), and state and local government employees, including those who work for elected officials.

Person—The term “person” has the same meaning as “person” under Title VII of the *Civil Rights Act of 1964*.

Known Limitation— A known limitation means a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth or related medical conditions that the employee has communicated to the employer, whether or not such limitation meets the definition of disability outlined in the *Americans with Disabilities Act*.

Qualified Employee— A qualified employee is an employee or job applicant, who, with or without reasonable accommodation, can perform the essential functions of the job. An individual is considered qualified if any 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.

Reasonable Accommodation—This definition adopts the requirement for a good faith interactive negotiation between employers and employees to determine a reasonable accommodation (commonly known as the “interactive process”). As defined in the *Americans with Disabilities Act*, a reasonable accommodation may include making existing facilities used by employees readily accessible; job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations; training materials or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities. A reasonable accommodation is defined the same way such term is defined under the *Americans with Disability Act*. Under this Act, the reasonable accommodations would be provided in light of the known limitations related to pregnancy, rather than a disability.

Undue Hardship—An undue hardship means an action requiring significant difficulty or expense, when considering factors such as the nature and cost of the accommodation and the employer’s overall financial

resources. An undue hardship is defined the same way such term is defined under the *Americans with Disabilities Act*.

Sec. 6. Waiver of State Immunity

This section makes clear that States shall not be immune from the Act under the Eleventh Amendment to the U.S. Constitution.

Sec. 7. Relationship to Other Laws

This section makes clear that nothing in the Act limits pregnant workers' rights under a federal, State, or local law that provides greater or equal protection.

Sec. 8. Severability

This section states that if any portion of the Act is found unconstitutional, the remainder of the Act shall not be affected.