



DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON
WASHINGTON, DC 20310-0111

SAMR-EI (690-12)

27 June 2023

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Department of the Army Interim Guidance for Complying with the Pregnant Workers Fairness Act

1. References.

- a. Pregnant Workers Fairness Act, H.R.1065. 117th Congress (2021-2022)
- b. Rehabilitation Act of 1973, as amended, Public Law No. 114–95, Enacted 10 December 2015.
- c. Part 1630, Title 29, Code of Federal Regulations, Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities.
- d. AR 690-12 (Equal Employment Opportunity and Diversity), 12 December 2019.

2. This memorandum provides interim guidance on complying with the Pregnant Workers Fairness Act (PWFA), which was enacted in December 2022 and took effect on 27 June 2023. The Equal Employment Opportunity Commission (EEOC) has not yet issued the implementing regulations required by the PWFA but has stated that it will process claims under the PWFA for situations that arise on or after June 27, 2023. The Department of Defense guidance is also pending as of the date of this memorandum. Further Department of the Army (DA) guidance will follow these issuances.

3. The PWFA amends the Rehabilitation Act of 1973, as amended (Rehabilitation Act), under which covered employers, to include the DA, provide reasonable accommodation (RA) to qualified applicants and employees with disabilities. The PWFA expands that coverage by requiring federal agency employers to provide RA for a worker's known limitations related to pregnancy, childbirth, or pregnancy-related medical conditions, regardless of whether the conditions qualify as disabilities, unless the accommodations would impose an "undue hardship" on the employer's operations, as defined in 29 Code of Federal Regulation 1630.2(p).

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a. The RA process under the Rehabilitation Act involves an individualized assessment and interactive process between the individual and the designated decision-maker to determine if the individual is qualified for the job they hold or desire, if they have a covered disability, and if they require RA to apply for a job, perform the essential functions of the job, or enjoy the benefits and privileges of employment.

b. The RA process under the PWFA is the same, except that eligibility is not dependent on the existence of a disability and, thus, the definition of “qualified” is different. Under the PFWA, pregnancy, childbirth, and certain related medical conditions are not disabilities in and of themselves. The PWFA also specifically covers temporary inability to perform an essential job function, whereas the Rehabilitation Act does not require removal of any essential job functions as RA.

4. Individuals who wish to request an accommodation under the PWFA should follow the RA procedures outlined in Army Regulation (AR) 690-12, Appendix C and posted on the Army website: <https://www.army.mil/armyequityandinclusion#org-accessibility>. Individuals requesting RA are to contact their supervisor and/or their servicing Equal Employment Opportunity (EEO) Office. Where the need for accommodation is due entirely to functional limitations covered by the PWFA, medical information related to disability is not applicable, and should not be collected. The sample template provided at AR 690-12 Figure C-2 is readily adaptable for this purpose.

5. The DA EEO Officers will oversee and manage the RA process in their serviced areas, retain all records relating to PWFA RA requests, and report to the Deputy Assistant Secretary of the Army (Equity and Inclusion Agency) by 29 December 2023, the number of PWFA RA requests received in calendar year 2023, the number of requests approved, and the number of requests denied, along with the reason for denial.

6. The PWFA also requires covered employers to post a notice describing the law's protections. An infographic and fact sheet on the PWFA provided by the EEOC are enclosed for posting at your facility in places where such notices are normally posted.

7. Point of contact for questions concerning the PWFA is Ms. Rosemary Salak, DA Disability Program Manager at rosemary.salak.civ@army.mil.

Encls

LYLE J. HOGUE
Acting Deputy Assistant Secretary of the Army
(Equity and Inclusion Agency)

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