

***New* Legal Protections for Pregnant and Nursing Employees & What to Expect When Accommodating Pregnant Students**

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Agenda

- Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act of 2022)
 - University Policy 101.20 – Lactation Break Policy
- Pregnant Workers Fairness Act (PWFA)
- Title IX of the Education Amendments of 1972
- The Americans with Disabilities Act (ADA) and The Americans with Disabilities Amendments Act (ADAAA)
- Scenarios

Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act of 2022)





PUMP Act

- *Breastfeeding accommodations in the workplace (29 U.S.C. Sec. 218d)*
- *(a) In general*
 - *An employer shall provide-*
 - *(1) a reasonable break time for an employee to express breast milk for such employee's nursing child for 1 year after the child's birth each time such employee has need to express the milk; and*
 - *(2) 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.*



PUMP Act

- Went into effect on **December 29, 2022**.
- This bill expands the requirement that employers provide certain accommodations for nursing mothers to cover salaried employees and other types of workers not covered under existing law.
- Almost entirely closes the coverage gap that left 1 in 4 women of childbearing age without federal protection of their right to break time and a private space to pump during the workday.
 - In March 2010, Section 4207 of the Affordable Care Act (ACA) amended the Fair Labor Standards Act to require covered employers to provide reasonable break time and a private place, other than a bathroom, for breastfeeding mothers to use a breast pump to express their breast milk during the workday for at least 1 year postpartum and applied it to all employees who are non-exempt under the Fair Labor Standards Act.
 - These new enforcement provisions are particularly important given that 60 percent of women have reported that their employers did not provide access to break time and space to pump after the break time law went into effect in 2010 (<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4690749/>).



PUMP Act

- Clarifies that pumping time counts as time worked when calculating minimum wage and overtime pay if an employee is not completely relieved from all their work duties during the pumping break.
- New Legal Remedies
 - Makes it possible for an employee to file a lawsuit against an employer that violates the law.
 - Employees may still file a complaint with the US Department of Labor
 - Before the PUMP Act became law, employees who were harmed when their employer did not provide break time and space were not able to seek a monetary remedy in court.



UNIVERSITY OF NORTH CAROLINA
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PUMP Act

Am I covered under the PUMP Act?

Thanks to the PUMP Act, more workers have the right to break time and private space to pump breast milk during the workday. Most nursing employees now have **the right to reasonable break time and space to pump at work** for up to one year after their child's birth.

What does my employer need to do?

Employers must provide **covered employees** with **space that is:**

- functional for pumping milk,
- shielded from view,
- free from intrusion,
- available as needed, AND
- **NOT a bathroom**

Scan the QR code

to find out if you're covered



Wage and Hour Division
U.S. Department of Labor

dol.gov/pump-at-work
1-866-487-9243



University Policy: 101.20 – Lactation Break Policy

1. Request for Time Off to Express Milk

- Nursing employees should provide reasonable notice to their supervisor of the intent to take lactation breaks. Supervisors should attempt to provide as much schedule flexibility and break time as reasonably possible to accommodate the employee's needs. Employees must give notice of breaks to supervisors and are required to provide notice to their supervisor when time for expressing breast milk is no longer required.

2. Reasonable Break Times

- Any employee who is breastfeeding her child will be provided reasonable break times to express milk for her newborn up to one year after the child's birth.
- **The number of breaks needed to express milk may depend on numerous factors such as the number of feedings and age of the child.** A nursing mother will typically need two to three breaks during an eight hour period; however, more reasonable break times may be necessary.
- Lactation breaks may be taken during existing break periods as designated by the employee's department. Lunch breaks may be shortened to account for a morning and an afternoon lactation break. If the employee uses time other than a regularly scheduled break time or if the employee's department does not have designated break times, then the employee will be required to either:
 - (1) make up that time during the same work day;
 - (2) use vacation leave; or
 - (3) take leave without pay for that period of time.
- Subject employees may also arrive at work earlier than the regular starting time or leave later than the regular departure time to account for lactation breaks.



Current List of Lactation Rooms

<u>Building</u>	<u>Room Number</u>
Atkins Library – Bldg. No. 4	Rm. G38 – A Mother’s Place Too
College of Health and Human Services (CHHS) – Bldg. No. 63	Rm. 305 – A Mother’s Place To reserve A Mother’s Place, please register at https://nursing.charlotte.edu/learning-resource-center/mothers-place/
Belk College of Business – Bldg. No. 35	Rm. 204
The Dubois Center	Rm. 402 – Wellness Room https://duboiscenter.charlotte.edu/resources/wellness-room/
CRI Campus – Grigg Hall – Bldg. No. 58	Coming Soon!

Pregnant Workers Fairness Act (PWFA)





PWFA

- On December 23, 2022, Congress passed the PWFA.
- President Biden signed into law on December 29, 2022.
- The PWFA went into effect on June 27, 2023.
- The purpose:
 - *To eliminate discrimination and promote women's health and economic security by ensuring reasonable workplace accommodations for workers whose ability to perform the functions of a job are limited by pregnancy, childbirth, or a related medical condition. (H.R. 1065)*

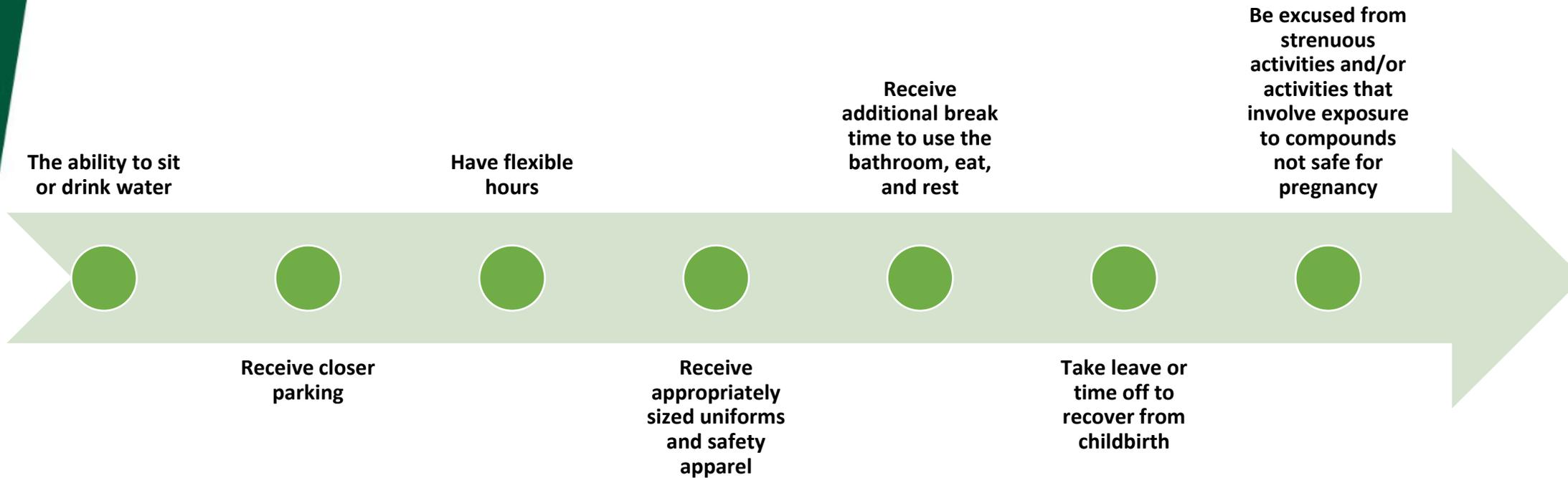


PWFA

- Expands existing federal law with respect to the accommodation of pregnant employees in at least three significant ways.
 1. *Requires employers to make reasonable accommodations for pregnancy-related medical conditions irrespective of whether those conditions rise to the level of a disability, as long as the accommodations do not impose an undue hardship on the employer.*
 2. *Employers may only require employees to use leave to accommodate pregnancy-related restrictions if no other reasonable accommodations are available.*
 3. *Pregnant employees must be provided with reasonable accommodations even if they cannot perform all essential functions of the job, as long as their inability to perform those essential functions is temporary.*

PWFA

What are some examples of “reasonable accommodations” for pregnant workers?





PWFA – Pending Regulations Timeline

- *The EEOC published proposed PWFA regulations on August 11, 2023*
- *Comment period ended on October 10, 2023*
- *The EEOC must issue final regulations to implement the PWFA by December 29, 2023*



PWFA – Key Takeaways

- *Interactive Process*
 - *PWFA uses the interactive process from the Americans with Disabilities Act (ADA) for determining what accommodation is appropriate when a pregnant employee is limited in the performance of her essential functions.*
- *Anti-Retaliation Clause*
 - *This PWFA prohibits retaliation against any employee who opposes unlawful behavior that has taken place under the Act or participates in a proceeding related to the Act. It is also unlawful under this section to coerce, intimidate, threaten, or interfere with any individual's exercising of their rights under this chapter.*
- *Employer's Legal Defense to Claim*
 - *This section indicates that if an employer makes a good faith effort to engage in the interactive process with an employee to identify an accommodation, they may be exempt from certain liability.*

Title IX of the Education Amendments of 1972





Title IX

- Title IX prohibits sex-based discrimination in a university's educational programs and activities, including:
 - Applying any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.
 - Discriminating against any student, or excluding any student from an education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom (unless the student requests voluntarily to participate in a separate portion of the program or activity).
 - Requiring a doctor's note to certify that a pregnant student is physically and emotionally able to continue participation unless such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.



Title IX

- Under Title IX, a university is required to:
 - Operate any separate education program or activity for pregnant students on a completely voluntary basis and ensure that such separate program or activity is comparable.
 - Treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any university medical or hospital benefit, service, plan, or policy.
 - Treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which they held when the leave began.

<https://www2.ed.gov/about/offices/list/ocr/docs/pregnancy.html>

The Americans with Disabilities Act 1990 (ADA)



The Americans with Disabilities Amendments Act 2008 (ADAAA)



ADA

- The Americans with Disabilities Act (1990): Anti-discrimination, civil rights statute that mandates equal access, including access to colleges and universities. Its purpose is to ensure that people with disabilities have the same rights and opportunities as everyone else.
 - Defines **disability** as a **physical or mental impairment that substantially limits one or more major life activities** (self-care, walking, talking, performing manual tasks, seeing, hearing, communicating, learning, working, sleeping, etc.)



ADAAA

- ADA Amendments Act (ADAAA): Expands the interpretation of *disability*, reiterating that the scope of the ADA was intended to be broad and inclusive. Major life activities now include **major bodily functions** (functions of the immune system, digestive, bowel, bladder, neurological, respiratory, circulatory, endocrine, reproductive functions, etc.)
- Temporary Impairments and Disability
 - ADAAA allowed for consideration of temporary conditions as disabilities, if severe enough to substantially limit a major life activity.
 - How severe must the temporary condition be to warrant ADA coverage? Colds, the flu, a sprain, no. **The severity and duration of the impairment both matter.**

A Little Practice...



Scenario 1



Scenario 2



Scenario 3



Questions?



Additional Resource/Reference Slides

Office of Civil Rights and Title IX

Title IX requires that pregnant students receive reasonable adjustments to coursework, schedules, or other requirements, if necessary, based on their pregnancy.

- What does CRTIX do (in relation to pregnancy and parenting students)?
 - Attempt to establish and engage in preventative/proactive efforts
 - Encourage open and transparent dialogue between students and faculty
 - Facilitate reasonable accommodation conversations
 - Partner/Consult with the Office of Disability Services
 - Serve as a resource for students and faculty
 - Address formal complaints as appropriate

<https://civilrights.charlotte.edu/students/pregnant-and-parenting-students>

Office of Disability Services

- What does the Office of Disability Services do?
 - Disability Services is the campus office designated to determine accommodations for UNC Charlotte students with disabilities.
 - We work to ensure that students with disabilities have access to education and campus life at UNC Charlotte.
 - The process of providing accommodations is interactive and ongoing. Students with documented disabilities may be eligible for a variety of accommodations that are individualized to meet their needs.

<https://ds.charlotte.edu/>

Human Resources

- University Reasonable Accommodation Policy is outlined in [PIM 50](#).
- To request a reasonable accommodation, an employee should submit an Accommodation Request Form outlining their need for accommodation to their supervisor, hiring official, or ADA Manager in the Human Resources Department.
- The [Accommodation Request Form](#) link can be found in PIM 50
- For questions about lactation space or pregnancy accommodation you may contact the Employee Relations Office or visit <https://hr.charlotte.edu/about-hr/whom-do-i-contact>

Documentation

- Office of Disability Services: In order to determine if a pregnancy-related diagnosis rises to the level of disability, our office requires appropriate documentation from the appropriate healthcare provider. That documentation is protected information and is not shared with faculty.
- CRTIX: We do not require documentation in order to verify pregnancy.
- Human Resources: May request reasonable supporting documentation for pregnancy accommodation.

Reasonable Accommodations

- CRTIX: Title IX Pregnancy Accommodation Request Letter comes from the Office of Civil Rights and Title IX. The letter serves as a request for consideration of reasonable accommodations and is offered to students but not required in order to facilitate possible accommodations.
 - For example: Attendance, Incomplete(s), Modification of Assignment(s), etc.
- Office of Disability Services: Accommodation Letter comes through the DS Portal and outlines specific, required accommodations for that student.
 - For example: Attendance, More Frequent Breaks, Ability to Sit as Needed, etc.