

**MCAD Guidance**  
**PREGNANT WORKERS FAIRNESS ACT**  
**Issued 1/23/2018**

The Pregnant Workers Fairness Act (“the Act”) amends the current statute prohibiting discrimination in employment, G.L. c. 151B, §4, enforced by the Massachusetts Commission Against Discrimination (MCAD). The Act, effective on April 1, 2018, expressly prohibits employment discrimination on the basis of pregnancy and pregnancy-related conditions, such as lactation or the need to express breast milk for a nursing child. It also describes employers’ obligations to employees that are pregnant or lactating and the protections these employees are entitled to receive. Generally, employers may not treat employees or job applicants less favorably than other employees based on pregnancy or pregnancy-related conditions and have an obligation to accommodate pregnant workers.

**Under the Act:**

- Upon request for an accommodation, the employer has an obligation to communicate with the employee in order to determine a reasonable accommodation for the pregnancy or pregnancy-related condition. This is called an “interactive process,” and it must be done in good faith. A reasonable accommodation is a modification or adjustment that allows the employee or job applicant to perform the essential functions of the job while pregnant or experiencing a pregnancy-related condition, without undue hardship to the employer.
- An employer must accommodate conditions related to pregnancy, including post-pregnancy conditions such as the need to express breast milk for a nursing child, unless doing so would pose an undue hardship on the employer. “Undue hardship” means that providing the accommodation would cause the employer significant difficulty or expense.
- An employer cannot require a pregnant employee to accept a particular accommodation, or to begin disability or parental leave if another reasonable accommodation would enable the employee to perform the essential functions of the job without undue hardship to the employer.
- An employer cannot refuse to hire a pregnant job applicant or applicant with a pregnancy-related condition, because of the pregnancy or the pregnancy-related condition, if an applicant is capable of performing the essential functions of the position with a reasonable accommodation.
- An employer cannot deny an employment opportunity or take adverse action against an employee because of the employee’s request for or use of a reasonable accommodation for a pregnancy or pregnancy-related condition.
- An employer cannot require medical documentation about the need for an accommodation if the accommodation requested is for: (i) more frequent restroom, food or water breaks; (ii) seating; (iii) limits on lifting no more than 20 pounds; and (iv) private, non-bathroom space for expressing breast milk. An employer, may, however, request medical documentation for other accommodations.
- Employers must provide written notice to employees of the right to be free from discrimination due to pregnancy or a condition related to pregnancy, including the right to reasonable accommodations for conditions related to pregnancy, in a handbook, pamphlet, or other means of notice no later than April 1, 2018.

**MCAD Q&A**  
**PREGNANT WORKERS FAIRNESS ACT**  
**Re-Issued 2/27/18**

The Pregnant Workers Fairness Act, effective April 1, 2018, amends Massachusetts' current law against discrimination in employment, G.L. c. 151B, §4, to expressly forbid discrimination against employees due to pregnancy or conditions related to pregnancy. The Act also requires employers to provide "reasonable accommodations" to an employee who is pregnant or who has a condition related to pregnancy. The law is enforced by the Massachusetts Commission Against Discrimination (MCAD). Frequently Asked Questions (FAQs) are answered below.

**Q1. What does the Act do?**

**A1. Under the Act, employers:**

- Cannot discriminate against employees due to pregnancy or a condition related to pregnancy.
- Must grant an employee a "reasonable accommodation" for an employee's pregnancy or condition related to pregnancy, unless doing so would impose an "undue hardship" on the employer. For definitions of "condition related to pregnancy," "reasonable accommodation" and "undue hardship," please see Q&A 2, 3, and 4.
- Cannot deny an employment opportunity to, or take an adverse (negative) action against, an employee because of the employee's request for or use of a reasonable accommodation.
- Cannot make an employee accept a particular accommodation if another reasonable accommodation would allow the employee to perform the essential functions of the job, or require an employee to take a leave if another reasonable accommodation may be provided without undue hardship.
- Cannot refuse to hire a person who is pregnant because of the pregnancy or a pregnancy-related condition, if the person can perform the essential functions of the position with a reasonable accommodation.
- Must communicate with the employee in a timely, good faith, interactive process, once an employer is on notice of the need for an accommodation, in order to determine what accommodation may be needed.
- Must provide written notice to employees of their rights under the Act no later than April 1, 2018. The notice must be given to (1) new employees; and (2) an employee who notifies the employer of a pregnancy or a pregnancy-related condition, not more than 10 days after notification.

**Q2. What is a "condition related to pregnancy?"**

**A2.** A condition related to pregnancy can be during or after pregnancy. Examples include, but are not limited to, morning sickness, lactation, or the need to express breast milk. For example, if a pregnant employee needs to start her workday later than her usual start time due to morning sickness, the employee may be covered by the Act.

**Q3. What is a "reasonable accommodation"?**

**A3.** A reasonable accommodation is a modification or adjustment that allows an employee to perform the "essential functions" of the employee's position. Some examples of reasonable accommodations are: (1) more frequent or longer breaks; (2) time off; (3) providing equipment or seating; (4) temporary transfer to a less strenuous or hazardous job; (5) job restructuring; (6) light duty; (7) private space for expressing breast milk; (8) assistance with manual labor; and (9) a modified work schedule. Employers are not required to discharge or transfer another employee with more seniority, or to promote an unqualified employee, as an accommodation.

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**Q10. What kind of space does the employer have to provide for an employee to breastfeed or express milk?**

A10. The employer must provide an employee a private, non-bathroom space to express breast milk or to breastfeed. Examples include, but are not limited to, a private room or office. The space should be free from intrusion by other employees, visitors, and the public. The space should be convenient enough for the employees that traveling to and from the space does not materially impact an employee's break time.

**Q11. What does the space have to contain?**

A11. Besides being a private, non-bathroom space, the space should allow employees to comfortably express breast milk and/or breastfeed. Examples of features that should be included in the space are sufficient electrical outlets for breast pumps, tables or other surfaces to hold breast pumps and other needed items, and seating.

**Q12. Can an employee be permitted to breastfeed or express milk in their personal workspace during the break, rather than taking additional unpaid time to travel to the designated private space?**

A12. Yes. If the employee's space is equivalent to a private, non-bathroom space, the employee may breastfeed or express breast milk at the workspace.

**Q13. Can an employee continue working while she breastfeeds or expresses breast milk, rather than taking an unpaid break?**

A13. Yes. If an employee has a private, non-bathroom space in which to work, and is able to work while breastfeeding or expressing breast milk, the employee may continue working while doing so.

**Q14. Is it an undue hardship for an employer if an employee requests that another employee cover the employee's job responsibilities while taking a break to breastfeed or express breast milk?**

A14. Whether it is an undue hardship depends on the facts of each individual case. For example, an employer may be able to have another employee cover an office's reception desk while the receptionist takes a break to breastfeed or express breast milk. Some jobs may not require another employee to cover them at all. Other jobs, such as a manufacturing line, may be more difficult for employers to accommodate. Employers and employees should attempt to resolve these issues during the interactive discussion phase of the process.

**Q15. Does an employer have to provide a space for expressing breast milk for employees, if none of its employees currently need to do so?**

A15. No. However, once the employer is on notice that an employee will need such a space, the employer should prepare the space promptly so that it is ready when needed. Additionally, employers are free to set up such a space in advance, even if none of its employees currently need one.