

Breakfast **Bites**[®]

**ACCOMMODATING SUCCESSFULLY:
NAVIGATING THE ADA AND PWFA**

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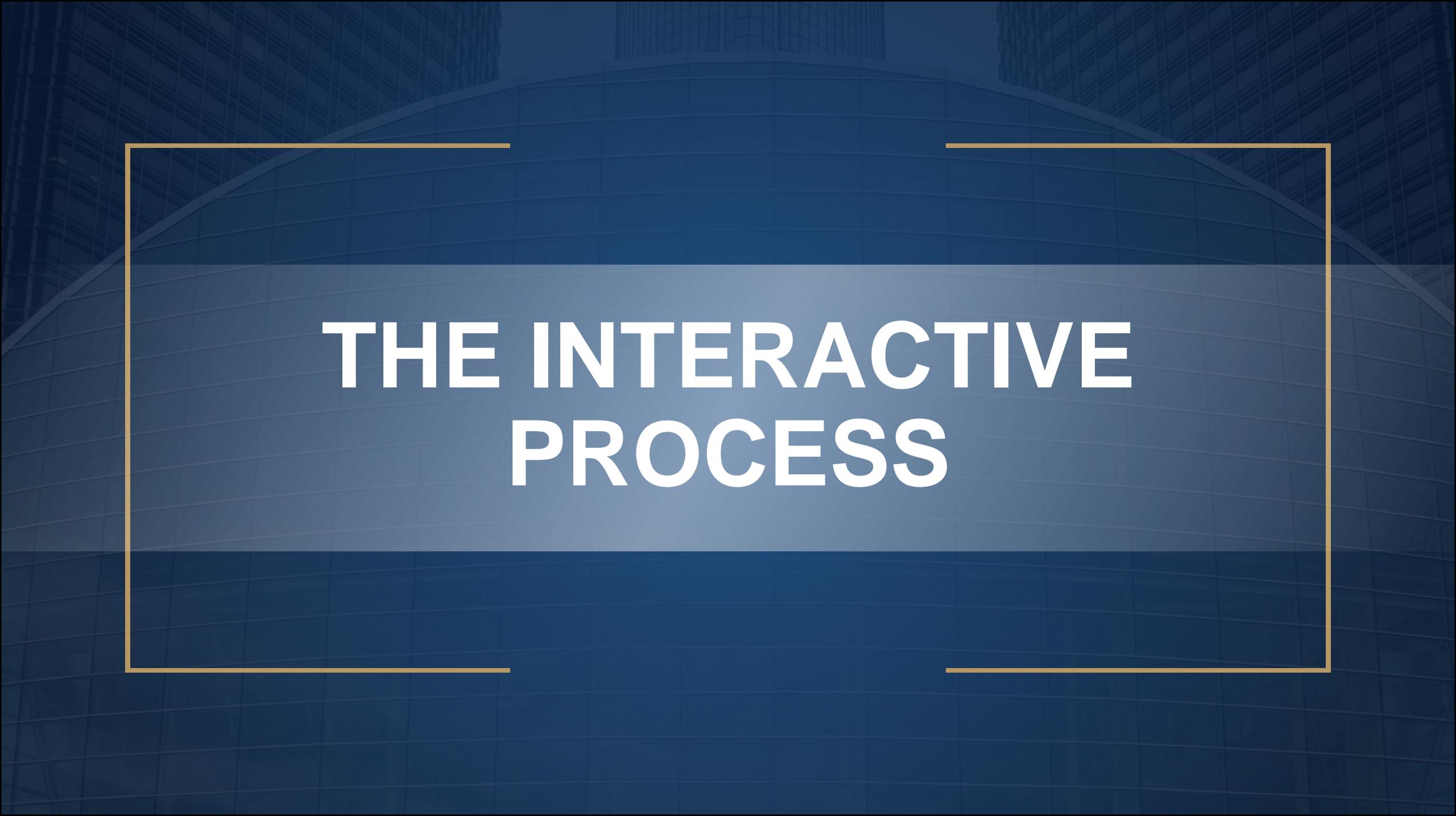
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Overview

- Overview of the ADA interactive process
- Common types of requests and accommodations available
- How the Pregnant Workers Fairness Act fits into this framework, and where additional assessment is needed



THE INTERACTIVE PROCESS

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- Steps:
 - Recognize an accommodation request
 - Request additional information
 - Engage in a discussion
 - Complete the process



RECOGNIZING AN ACCOMMODATION REQUEST

- Do not wait for an employee to use “magic words”
- Listen for where an employee indicates a problem
- **EXAMPLES:**
 - “I need six weeks off to get treatment for a back problem.”
 - “My wheelchair cannot fit under my desk.”



REQUEST ADDITIONAL INFORMATION

- Assess whether you need additional information
- If yes, assess what information is needed:
 - Specific accommodation?
 - Medical documentation?



ENGAGING IN THE INTERACTIVE PROCESS

- If possible, grant the accommodation.
- If you cannot grant the requested accommodation, consider alternatives.
- If no specific accommodation requested, engage employee to assess what their needs are.



COMPLETING THE PROCESS

- Find the mutually agreeable accommodation and grant it.
- Inform the employee no accommodation is available.
 - Document, document, document!



WHAT SHOULD YOU DO IF . . .

1. An employee refuses the accommodation you offer?
2. The employee has a history of performance issues and you were planning on terminating the employee anyway?

COMMON TYPES OF ACCOMMODATIONS

LEAVE

- Typically offered where:
 - There is no other effective accommodation;
 - Employee is not otherwise eligible for FMLA, or has exhausted FMLA;
 - Employee has exhausted, or is not otherwise eligible for other paid time off
- What happens if the employer offers other types of leave?

REASSIGNMENT

- Typically offered when an employee can no longer perform the essential functions with or without an accommodation, and ***an alternative position is available.***
- Does NOT require the employer to restructure a job or create a vacant position for the employee



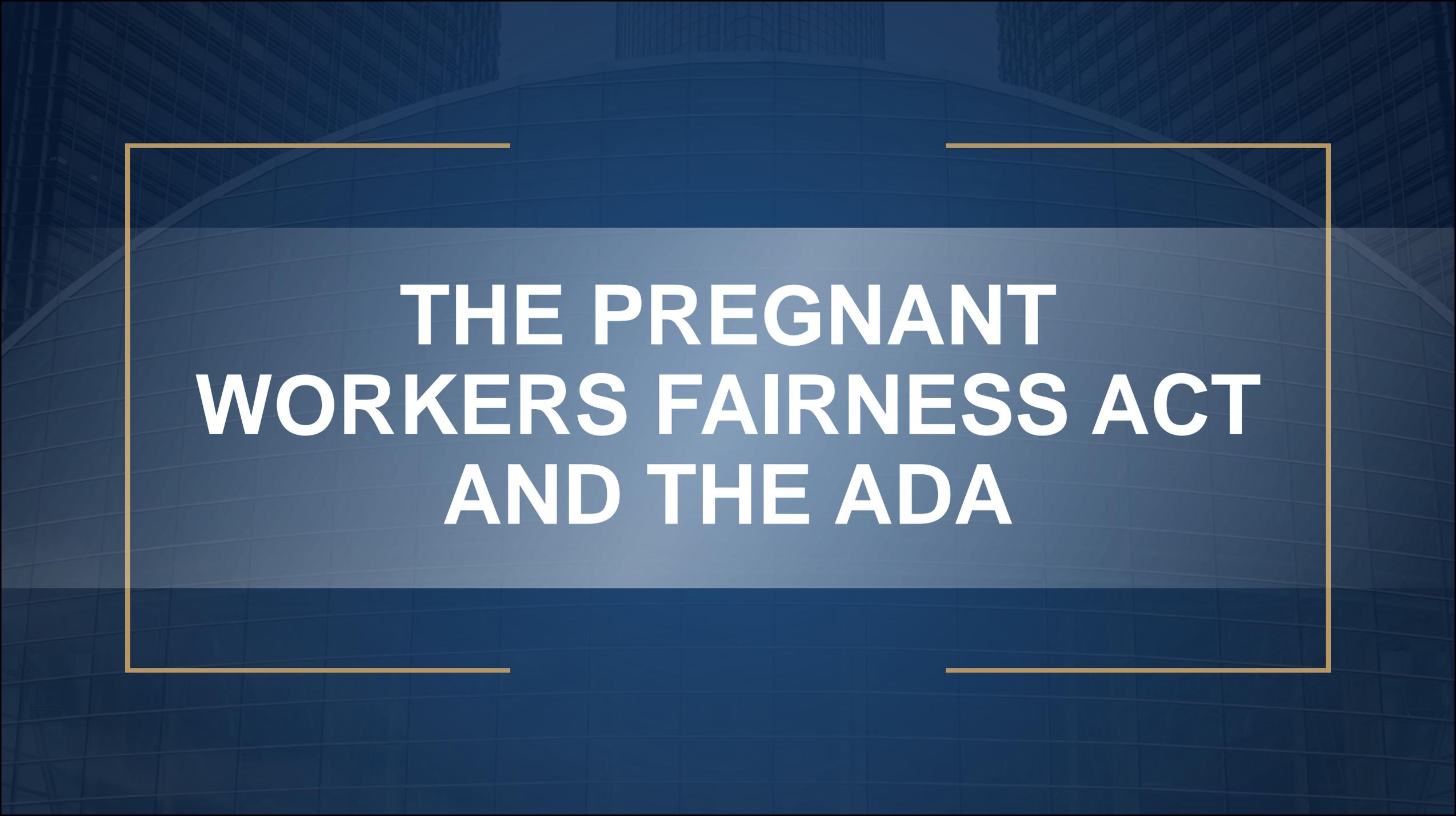
MODIFIED SCHEDULE

- Typically in the form of adjusting arrival or departure times, breaks, altering when certain functions are performed, or providing additional unpaid leave



TELEWORK

- Handling telework requests in the wake of COVID-19
- No obligation to accept telework if there is another accommodation available
- Review existing job descriptions to assess whether an essential function of the job must be performed in the office



**THE PREGNANT
WORKERS FAIRNESS ACT
AND THE ADA**

HOW DOES THE PWFA FIT INTO THE ADA DISCUSSION?

- Both provide reasonable accommodations for qualified individuals with limitations
- Certain pregnancy-related conditions may also be covered under the ADA
 - Note: pregnancy, itself, is not a disability under the ADA
- Both require employers to provide a reasonable accommodation, unless the accommodation would cause an undue hardship

DOCUMENTATION UNDER PWFA

- Encourages employers to minimize documentation
- Self-confirmation – informal process in which the employee can provide the employer with information about their pregnancy
- “Predictable assessment” – four requests that will not impose an undue hardship in ‘virtually all cases’

UNREASONABLE DOCUMENTATION REQUESTS

In certain circumstances, it is unreasonable to ask an employee for supporting documentation:

- Limitation/adjustment is obvious, and there is self-confirmation
- Employer has sufficient information;
- Request for a “predictable assessment;”
- Related to pumping/nursing during work hours;
- Otherwise available to all employees

REASONABLE DOCUMENTATION REQUESTS

- Confirm the physical or mental condition;
- Confirm condition is related to pregnancy; or
- Describe adjustment/change needed



UNDUE HARDSHIP UNDER THE PWFA

- If the employee can perform all of the essential functions – same meaning as ADA
- If the employee cannot perform all of the essential functions:
 - Consider the ADA definition; and
 - Additional relevant factors.



THE EEOC IS CRACKING DOWN

- *E.E.O.C. v. Lago Mar Properties, Inc.* (Florida) – former line cook requested leave to recover from physical, mental, and emotional effects of stillbirth child.
- *E.E.O.C. v. Kurt Bluemel, Inc.* (Maryland) – pregnant employee unable to perform manual labor duties during her pregnancy.
- *E.E.O.C. v. Polaris Industries, Inc.* (Alabama) – new employee informed employer at orientation that she was pregnant. Employee was ineligible for leave during initial 60-day period.
- *E.E.O.C. v. ABC Pest Control* (Florida) – pregnant employee requested an accommodation to attend monthly medical appointments.

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QUESTIONS

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THANK YOU



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