



U.S. Environmental Protection Agency Interim Reasonable Accommodation Procedures under the Pregnant Workers Fairness Act

Issued September 2026

Revision History:
Procedures issued September 2026

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The purpose of this document is to provide interim Agency procedures for reasonable accommodation under the Pregnant Workers Fairness Act (PWFA). The interim procedures address the manner in which EPA employees and applicants can request an accommodation under the PWFA, and the manner in which EPA processes the request to include providing a reasonable accommodation when warranted.

The PWFA covers reasonable accommodation(s) for a qualified applicant or qualified employee's known limitation(s) related to pregnancy, childbirth, or related medical conditions.¹ The Agency must provide a qualified applicant or employee with a reasonable accommodation unless doing so will cause undue hardship on the operation of the Agency.

These procedures apply only to accommodations requested under the PWFA. Accommodations under the PWFA are temporary. For requests for accommodations under the Rehabilitation Act, *i.e.*, for persons with disabilities, please refer to the Agency's [Procedures for Providing Reasonable Accommodation for EPA Employees and Applicants with Disabilities](#).

I. Definitions

- Decision-maker (DM): the person who decides and implements the PWFA reasonable accommodation request. In most cases, for employees, the employee's immediate supervisor or other supervisor in their supervisory chain is the DM. For applicants, the Agency's human resources personnel or hiring official for the applicable job announcement will function as the DM.
- Employee's representative: an individual who has agreed in writing to represent the employee or applicant such as a family member, friend, union representative, health care provider, or other representative of the employee.
- Health care provider (HCP): professional who provides health care services. A HCP includes, but is not limited to, a doctor, midwife, nurse, nurse practitioner, lactation consultant, doula, vocational rehabilitation specialist, therapist (*e.g.*, mental health, physical, occupational, etc.), industrial hygienist, licensed mental health professional, psychologist, and psychiatrist.
- Interactive process: an informal dialogue between the DM and the employee or applicant seeking a PWFA accommodation.²

¹ See [Title 42 of the United States Code, Chapter 21G](#) and [Title 29 of the Code of Federal Regulations, Part 1636](#). You can find additional information on the PWFA at the Equal Employment Opportunity Commission's PWFA site: [What You Should Know About the Pregnant Workers Fairness Act](#).

² For additional details on the interactive process for employees, see Section II(4); for additional details on the interactive process for applicants, see Section III(2).

- Known limitation: a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the applicant, employee, or their representative has communicated to the Agency.
- Qualified applicant: an applicant for a job announcement, who with or without a reasonable accommodation meets the initial job announcement requirements to be considered for the position.
- Qualified employee:
 - (1) An employee who, with or without reasonable accommodation, can perform the essential functions of the employment position; or
 - (2) An employee who cannot perform one or more essential functions if:
 - A. Employee's inability to perform an essential function(s) is for a temporary period, where "temporary" means lasting for a limited time, not permanent, and may extend beyond "in the near future";
 - B. Employee can perform the essential function(s) in the near future. This determination is made on a case-by-case basis. If the employee is pregnant, it is presumed the employee can perform the essential function(s) in the near future because the employee could perform the essential function(s) within generally 40 weeks of the Agency suspending the function; and
 - C. Agency can reasonably accommodate the inability to perform the essential function(s).
- Reasonable Accommodation ("PWFA RA"): a change in the work environment or work procedures. PWFA RA may include:
 - (1) Modifications or adjustments to a job application process that enable the Agency to consider a qualified applicant with a known limitation under the PWFA for the position the qualified applicant seeks;
 - (2) Modifications or adjustments to the work environment or to the manner or circumstances under which the position held or desired is customarily performed, which enable a qualified employee with a known limitation under the PWFA to perform the essential functions of the position;
 - (3) Modifications or adjustments that enable a qualified employee with a known limitation under the PWFA to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without known limitations; or
 - (4) Temporary suspension of essential function(s) and/or modifications or adjustments that permit the employee to perform the remaining essential function(s).
- Supporting Reasonable Documentation: the minimum information needed to:
 - (1) Confirm the physical or mental condition for which an accommodation is sought;
 - (2) Confirm that the physical or mental condition is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions;

(3) Describe the adjustment or change at work that is needed due to the limitation.

The Agency may seek the above material from an employee who requests a PWFA accommodation when it is reasonable under the circumstances.³ The Agency may require that the HCP provide supporting reasonable documentation.

- Undue Hardship: significant difficulty or expense. In assessing undue hardship, the DM should consider the following factors:
 - (1) The nature and net cost of the accommodation needed under the PWFA;
 - (2) The overall financial resources of the facility or facilities involved in the provision of the PWFA RA, the number of persons employed at such facility, and the effect on expenses and resources;
 - (3) The Agency's overall financial resources and size;
 - (4) The Agency's type of operation or operations, including its composition, structure, workforce functions, *etc.*; and
 - (5) The impact of the PWFA RA upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

II. Interim Procedure for Employees

1. Request Submission:

An employee (or their representative) must communicate that the employee requires an adjustment or change at work due to a known limitation (*i.e.*, a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions).

A PWFA RA request is submitted verbally or in writing to the employee's supervisor, another manager in their chain of command, human resources personnel, or the Office of Civil Rights and Adjudication (OCRA) [National Reasonable Accommodation Coordinators \(NRACs\)](#) and/or accommodations@epa.gov mailbox. The employee also may submit the PWFA RA request using the optional PWFA RA Request Form (Appendix B).

2. Request Confirmation:

The person who receives the employee's initial notification of the PWFA RA request is the Recipient. The Recipient must acknowledge receipt within one (1) business day to the

³ The following situations are examples of when it is not reasonable under the circumstances to seek supporting documentation: the limitation is obvious, the Agency already has supporting documentation; the request involves "simple" accommodations (*e.g.*, additional breaks for eating, drinking water, using the restroom, and standing or sitting as needed); the request involves a time or place to pump in the office; or the accommodation can be accommodated under other Agency policies. The Agency can request additional information if it believes a circumstance, *e.g.*, the condition, limitation, or work duty, has changed.

extent practical. Also, the Recipient immediately must forward a copy of the request to OCRA's NRACs and/or accommodations@epa.gov mailbox.

3. OCRA Notification and Initial Processing Steps:

OCRA will record and track the PWFA RA request upon notice of it.

After receiving notice, OCRA will confirm receipt of the PWFA RA request and:

- 1) Notify the employee's supervisor and include the employee;
- 2) Inform the supervisor that the employee's office has five (5) business days to inform OCRA and the employee as to who will serve as the decision-maker (DM). If the office does not provide a response, then the supervisor is deemed the DM;
- 3) Ask the DM to confirm whether the Agency needs supporting reasonable documentation.
- 4) Remind the DM to promptly engage in the interactive process with the employee.

During the process, the NRACs will provide the following as needed:

- 1) Offer contact information for guidance if the DM has questions or requires additional information for decision-making.
- 2) Advise the DM of the process to request an extension if the DM needs additional time to make a decision.
- 3) Identify supporting documentation request parameters, including due date;
- 4) Provide the PWFA RA Decision Reporting Form (Appendix D) and due date to DM.

4. Interactive Process:

Once the DM confirms they are serving as the DM to OCRA and the employee, the DM has five (5) business days to engage in the interactive process and submit a completed PWFA RA Decision Reporting Form (Appendix D) to the NRAC unless the DM requests supporting documentation. See Supporting Reasonable Documentation Section, below.

The interactive process should help identify and clarify: 1. the employee's known limitation; 2. the requested adjustment or change at work that is needed due to the limitation; and 3. the effective PWFA accommodations that may be available. There is no rigid format or steps to follow. The interactive process may occur by meeting in-person or virtually, by email, etc.

During the interactive process, the DM may:

- Clarify the employee's known limitation;
- Discuss how the requested adjustment or change at work addresses the known limitation;
- Assess the expected duration of the known limitation and requested accommodation; and
- Explore alternative accommodations from those proposed by the employee.

If the DM is not the immediate supervisor, the DM may confer with the employee's immediate supervisor as needed to gather information to make a decision on the PWFA request (*e.g.*, essential job functions, work assignments, work location, *etc.*).

If the DM has questions regarding the PWFA RA request process, the DM can contact the NRACs.

If the DM has employee relations questions or seeks legal counsel regarding the PWFA RA request, the DM may consult with the Region or Program Office's Labor and Employee Relations (LER) point of contact, Office of General Counsel (OGC) and/or Office of Regional Counsel (ORC).

The DM should consider all effective accommodations proposed. As appropriate, the Agency must provide an effective accommodation, *i.e.*, one that meets the qualified employee's needs or limitations. If there is more than one effective accommodation, the employee's preference should be given consideration. However, the DM has the ultimate discretion to choose among effective reasonable accommodations. The DM may choose, for example, the less expensive accommodation, the accommodation that is easier for it to provide, or, generally, the accommodation that imposes the least hardship. In the situation where the DM is choosing among effective reasonable accommodations and does not provide the accommodation that is the employee's preferred accommodation, the Agency does not have to show that it is an undue hardship to provide the employee's preferred accommodation.

If the DM decides to deny an accommodation, the DM must consult with LER or OGC/ORC prior to issuing a final decision.

If the DM or employee needs an extension during the interactive process, they must submit a written request and justification to the NRAC. The NRAC will grant an extension only for extenuating circumstances.

The DM should document the interactive process, and, at a minimum include the date(s) of discussion and the accommodations considered.

5. Supporting Reasonable Documentation:

If the DM requests supporting reasonable documentation, the NRAC will provide the employee with the PWFA RA Supporting Reasonable Documentation (Appendix C). Failure to provide the requested supporting reasonable documentation may result in denial of the accommodation request.

The employee will have up to ten (10) business days to provide the supporting reasonable documentation. If the employee needs an extension to provide supporting reasonable documentation, the employee must submit a written request to the DM and NRAC.

The DM may grant an extension up to an additional ten (10) business days for submitting supporting documentation. Longer extensions must be agreed to by the DM and approved by the NRAC.

Upon receipt of the documentation, the NRAC will have up to two (2) business days to determine whether the documentation is sufficient, and if so, to issue a known limitation determination to the DM, unless there is an extenuating circumstance. If the NRAC determines the employee has a known limitation, NRAC will provide DM with a PWFA RA Decision Reporting Form (Appendix D), and a due date, to issue a decision. If the NRAC determines the documentation is not sufficient, the employee will have the option to provide additional documentation. If there are no known limitations, the NRAC will let the employee and DM know.

When the NRAC provides the DM with a PWFA RA Decision Reporting Form (Appendix D), the DM then will have up to five (5) business days to engage in the interactive process, if necessary, and submit a completed PWFA RA Decision Reporting Form (Appendix D) to the NRAC. If DM believes extenuating circumstances exist preventing timely completion, DM may request an extension. The DM must submit the extension request to the NRAC in writing and include a justification. The NRAC will grant an extension only for extenuating circumstances.

6. Interim Accommodation(s):

The DM may consider and provide an interim accommodation at any point during the interactive process. Interim accommodation decisions should be based on information available to the DM, including the employee's PWFA RA request and information gathered through the interactive process. Interim accommodation decisions should, at minimum, be informally documented (*e.g.*, via email). An approved interim accommodation will cease: if the employee withdraws the request; when the DM completes the PWFA RA Decision Reporting Form (Appendix D) and implements an approved accommodation or denies the accommodation request; or if the DM otherwise closes the request (*e.g.*, employee departed EPA).

7. Accommodation Decision:

The DM must document the decision in the PWFA RA Decision Reporting Form (Appendix D), see above, and provide the completed form to the employee and the NRAC. The NRAC will record and track the decision.

When choosing among effective accommodations, the DM must select an accommodation that provides the employee the opportunity to attain the same level of performance or to enjoy the same level of benefits and privileges available to similarly situated employees without a known limitation. The DM must include a written explanation of the reason for their decision in the PWFA RA Decision Reporting Form (Appendix D).

8. Implementation of the Accommodation:

If the DM approves a PWFA RA request, the DM must take steps to implement the accommodation promptly and without unnecessary delay. As applicable, once the DM issues the decision, OCRA and LER may provide further guidance for implementation (*e.g.*, appropriate time codes, reminders to order equipment, or to make other adjustments such as a seating reassignment) as quickly as possible.

9. Revisiting Process:

Reasonable accommodations under the PWFA are temporary in nature. An employee's known limitation(s) may change through the course of pregnancy, childbirth, or postpartum. If a limitation changes or a new limitation develops, the interactive process must be reinitiated as appropriate. The employee, the employee's supervisor, and/or DM can revisit the accommodation at any time and can contact OCRA for assistance doing so.

III. Interim Procedure for Applicants:

PWFA RAs for qualified applicants are limited to the application and hiring process, *e.g.*, an accommodation requested for an interview due to pregnancy (such as flexibility for breaks to drink, eat, rest, or use a restroom); an adjusted onboarding date due to birth; etc.

The NRAC will assist the DM in processing and documenting a decision on a qualified applicant's PWFA RA request.

1. Request Submission:

A qualified applicant or their representative must communicate to the DM a request for an adjustment or change of the application or hiring process due to a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions. The applicant may submit the PWFA RA request verbally or in writing, such as by e-mail.

2. Interactive Process

As needed, the DM will engage in an interactive process with the qualified applicant and/or their representative to identify and clarify the known limitation and the requested adjustment or change needed due to the limitation. The DM and applicant will consider potential effective accommodations.

3. Accommodation Decision:

The DM should issue a decision in an expedited manner, generally within five (5) business days. If the decision is to grant an accommodation, DM should implement it in an expedited manner, generally within five (5) business days.

DM must document the decision in writing to the applicant, the applicant's representative, if any, and the NRAC.

IV. Appealing PWFA RA Decisions

If an individual believes the Agency has discriminated or retaliated against them because of pregnancy (to include pregnancy-related postpartum) or pregnancy-related disability, they can file an Equal Employment Opportunity (EEO) complaint. The individual generally must file **within forty five (45) calendar days** from the date of receipt of the DM's decision.

Applicants and employees at Headquarters Program Offices that seek to initiate an EEO complaint should contact [OCRA, Equal Employment Opportunity Division \(EEO\)](https://www.epa.gov/ocr/employment-complaint-resolutions-points-contact) (<https://www.epa.gov/ocr/employment-complaint-resolutions-points-contact>). Applicants and employees at a Region Program office that seeks to initiate an EEO complaint should contact their [EEO](https://www.epa.gov/ocr/employment-complaint-resolutions-points-contact) Officer or OCRA (<https://www.epa.gov/ocr/employment-complaint-resolutions-points-contact>).

Appendix A

Selected Pregnant Workers Fairness Act Reasonable Accommodation Resources

The PWFA is codified in [Title 42 of the United States Code, Chapter 21G](#), and implementing regulations are at [Title 29 of the Code of Federal Regulations, Part 1636](#).

U.S. Equal Employment Opportunity Commission (EEOC): <https://www.eeoc.gov>
Also see EEOC's PWFA site: [What You Should Know About the Pregnant Workers Fairness Act](#).

EPA's National Maternal Wellness Program: <https://work.epa.gov/health-and-wellness/epas-national-maternal-wellness-program>. Internal website, which includes information for EPA employees, such as leave policies, lactation rooms, *etc.* The Agency's human resources personnel or hiring official, if applicable, can answer questions related to these matters.

Job Accommodation Network (JAN): <https://askjan.org> The Job Accommodation Network (JAN) is funded by the U.S. Department of Labor, Office of Disability Employment Policy and serves as source of free, expert, and confidential guidance on workplace accommodations.

Appendix B

Pregnant Workers Fairness Act Reasonable Accommodation (PWFA RA) Request Form

An employee or their representative can request an accommodation under the PWFA verbally or in writing, such as by email. EPA offers employees this optional form to initiate a PWFA request.

Section I: Requestor Information

1. Legal Name of employee requesting PWFA RA: (Please include any other applicable names used at the agency or in medical documentation.)
2. EPA Email Address: (If do not have one, on leave, etc., provide an alternative email address):
3. Name of Supervisor:

Section II: Accommodation Information

1. Date PWFA accommodation requested:
2. What accommodation(s) are you requesting:
3. How long do you think you will need an accommodation:

4. Briefly describe the limitation(s) related to the pregnancy, childbirth, or related medical condition. Provide general information; do not provide medical diagnoses, etc.:

Requestor's Signature:

Date:

Please return this completed form to the supervisor of the employee requesting a PWFA RA and the NRAC.

Privacy Notice: Authority: Title 42 of the United States Code, Chapter 21G and Title 29 of the Code of Federal Regulations, Part 1636.

Principle Purpose(s): The information collected on this optional form is used to facilitate the reasonable accommodation process for qualified employee's or applicant's known limitation(s) related to, affected by, or arising out of pregnancy, childbirth, or related medical condition(s).

Routine Use(s): Information you provide may be disclosed as permitted by the Privacy Act of 1974, pursuant to any applicable routine uses listed in EPA's Privacy Act System of Records Notice for the Reasonable Accommodation Management System EPA-73 (or its updated SORN upon updating) (<https://www.federalregister.gov/documents/2021/12/08/2021-26432/privacy-act-of-1974-system-of-records>), and pursuant to EPA's General Routine Uses A, B, C, F, I, J, K (<https://www.federalregister.gov/documents/2008/01/14/E8-445/amendment-to-general-routine-uses>). **Providing information and participating in the PWFA process is Voluntary. Failure to provide the information required may result in a denial of the requested reasonable accommodation.**

Appendix C

Pregnant Workers Fairness Act Reasonable Accommodation (PWFA RA) Supporting Reasonable Documentation

The Genetic Information and Nondiscrimination Act of 2008 (GINA), which prohibits EPA and other entities covered by GINA Title II from requesting or requiring genetic information of employees or their family members. In order to comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information.

“Genetic Information,” as defined by GINA, includes an individual’s family medical history, the results of an individual’s or family member’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

The purpose of the supporting reasonable documentation is to obtain information about the limitations and how the limitations relate to the accommodation(s) requested. Please provide the following supporting reasonable documentation:

1. Confirm the employee has a physical or mental condition (*i.e.*, an impediment or problem that may be modest, minor, and/or episodic that results in a need or a problem related to maintaining the employee’s health or the health of the pregnancy; or an employee seeking health care related to pregnancy, childbirth, or a related medical condition itself). The condition need not meet the definition of a disability as specified in section 3 of the Americans with Disabilities Act of 1990, 42 U.S.C. 12102; and
2. Confirm that the physical or mental condition is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions; and
3. Describe the adjustment or change at work that is needed due to the limitation.
 - Reasonable supporting documentation to describe the adjustment or change at work that is needed due to the limitation can include a request for an estimate of the expected duration of the need for the adjustment or change.
 - Reasonable supporting documentation does not need to include a medical diagnosis, only a medical condition. Pregnancy or childbirth does not need to be the sole or original cause of the condition, only related.

Appendix D

Pregnant Workers Fairness Act Reasonable Accommodation (PWFA RA) Decision Reporting Form

1. Name of Employee Requesting PWFA RA:
2. Date PWFA accommodation requested:
3. What accommodation(s) was requested?
4. Name of decision-maker (DM):
5. Decision date:
6. PWFA accommodation request decision:
 - ☐ Approved
 - ☐ DM Providing Accommodation Employee Requested
 - ☐ DM Providing Alternate Accommodation
 - ☐ Denied - No accommodation provided.
 - ☐ Withdrawn
 - ☐ At request of employee
 - ☐ Parties resolved outside the PWFA RA process.
 - ☐ Closed
 - ☐ Employee no longer employed at EPA
 - ☐ Other

7. Approved PWFA Accommodation (including timeframe/duration of accommodation):
8. Did the employee provide supporting reasonable documentation voluntarily (when making a request) to the DM?
- ☐ Yes
☐ No
9. Did the DM request supporting reasonable documentation?
- ☐ Yes
☐ No
10. Did the NRAC provide a known limitations determination letter?
- ☐ Yes
☐ No

Additional Comments (optional):

Decision-Maker's Signature and Date:

Please return this completed form to the employee requesting a PWFA RA and the NRAC.

Privacy Notice: Authority: Title 42 of the United States Code, Chapter 21G and Title 29 of the Code of Federal Regulations, Part 1636.

Principle Purpose(s): The information collected on this optional form is used to facilitate the reasonable accommodation process for qualified employee's or applicant's known limitation(s) related to, affected by, or arising out of pregnancy, childbirth, or related medical condition(s).

Routine Use(s): Information you provide may be disclosed as permitted by the Privacy Act of 1974, pursuant to any applicable routine uses listed in EPA's Privacy Act System of Records Notice for the Reasonable Accommodation Management System EPA-73 (or its updated SORN upon updating) (<https://www.federalregister.gov/documents/2021/12/08/2021-26432/privacy-act-of-1974-system-of-records>), and pursuant to EPA's General Routine Uses A, B, C, F, I, J, K (<https://www.federalregister.gov/documents/2008/01/14/E8-445/amendment-to-general-routine-uses>). **Providing information and participating in the PWFA process is Voluntary. Failure to provide the information required may result in a denial of the requested reasonable accommodation.**