

Empowering Workplaces: Legal Protections and Best Practices for Pregnant & Breast/Chestfeeding Employees

Virtual Program

Thursday, December 5, 2024
12:00pm to 1:30pm

RESOURCES

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NJ Office of the Attorney General, Division on Civil Rights

Overview

The New Jersey Division on Civil Rights (DCR) is the state agency charged with enforcing New Jersey's civil rights laws, including the [New Jersey Law Against Discrimination \(LAD\)](#), the [New Jersey Family Leave Act \(NJFLA\)](#), and the [Fair Chance in Housing Act \(FCHA\)](#). The mission of DCR is to protect the people of New Jersey from discrimination and bias-based harassment in employment, housing, and public accommodations. DCR publishes [fact sheets](#) in 14 different language that provide an overview of your rights and the issues DCR can help you with. If you believe your civil rights have been violated within the last 180 days, please visit DCR's online complaint portal and submit an intake form at the following link: [New Jersey Bias Investigation Access System \(NJBIAS\)](#). For a complete overview of the resources and trainings DCR offers, please visit njcivilrights.gov.

Contact Information

In order to file a complaint with DCR, you must first submit an intake form. You can submit the intake form:

- Online by creating an account and using the [NJ Bias Investigation Access System \(NJBIAS\)](#)
By calling 1. 833.NJDCR4U and asking a DCR receptionist to assist you in filling out the form on the [NJ Bias Investigation Access System \(NJBIAS\)](#)
 - NJBIAS is available in English and Spanish. DCR also offers translation services for people with limited English proficiency who speak other languages. Call 1. 833.NJDCR4U (833-653-2748) or email at NJDCR4U@njcivilrights.gov to request assistance with NJBIAS in a language other than English or Spanish.
 - To request a disability-related accommodation, please call 1. 833.NJDCR4U (833-653-2748) (voice), call the Relay Service at 711, or email NJDCR4U@njcivilrights.gov.
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NJ Office of the Attorney General, DCR Resource Links

- [The Law Against Discrimination](#)
- [How to File a Complaint with DCR](#)
- [The New Jersey Family Leave Act](#)
- [Diane B. Allen Equal Pay Act](#)
- [Race Discrimination in Employment](#)
- [Sexual Harassment in Employment](#)
- [Age Discrimination](#)
- [Discrimination or Harassment in Employment Based on Gender Identity or Expression](#)
- [Intersex Discrimination in Employment](#)
- [Religious Discrimination](#)
- [Hair Discrimination Guidance Document](#)
- [Addressing Bias on Campus](#)
- DCR Upcoming Trainings: [DCR's Education and Training Unit - New Jersey Office of Attorney General \(njoag.gov\)](#)

Pregnancy & Milk Expression Related Resources

- Guidance on Workplace Accommodations for Pregnant, Postpartum, Breastfeeding, and Lactating Employees: [DCR-Guidance-on-Pregnancy-Related-Workplace-Accommodations.pdf](#)
- Workplace Accommodations for Breastfeeding or Lactation: [Workplace Accommodations for Breastfeeding and Lactation](#)
- What Employers Need to Know About Workplace Pregnancy Accommodations: [What Employers Need to Know About Workplace Pregnancy Accommodations](#)
- What Employees Need to Know About Workplace Pregnancy Accommodations: [What Employees Need to Know About Workplace Pregnancy Accommodations](#)
- 5 Things You Should Know About Gender Discrimination: [Fact-Sheet Gender-Discrimination.pdf \(njoag.gov\)](#)
- 5 Things You Should Know About Accommodations for Pregnancy and Breastfeeding at Work: [fact_BRST.pdf \(njoag.gov\)](#)
- 5 Things You Should Know about Job-Protected Family Leave [fact-FLA.pdf \(njoag.gov\)](#)
- New Jersey Family Leave Act FAQ [Online](#) | [PDF](#)
- State of Black Maternal Health: Examining the Racial Disparity Webinar: [State of Black Maternal Health: Examining the Racial Disparity \(04/13/2023\)](#)

Equal Employment Opportunity Commission, Resource Links

- Pregnant Workers Fairness Act- [What You Should Know About the Pregnant Workers Fairness Act | U.S. Equal Employment Opportunity Commission](#)
- Tips for Asking for a Reasonable Accommodations Infographic: [PWFA Reasonable Steps Infographic](#)

Central Jersey Family Health Consortium, Resource Links

GENERAL RESOURCES

- US Department of Agriculture. WIC Breastfeeding Support. Talk to Your Employer about Pumping at Work. <https://wicbreastfeeding.fns.usda.gov/talking-your-employer-about-pumping-work>
- US Office on Women's Health. The Business Case for Breastfeeding. This comprehensive program and toolkit is designed to educate employers about the value of supporting breastfeeding employees in the workplace and provide policies and best practices for workplace accommodations.

<https://www.womenshealth.gov/breastfeeding/breastfeeding-home-work-and-public/breastfeeding-and-going-back-work/business-case>

- US Office on Women’s Health. Supporting Nursing Moms at Work. <https://www.womenshealth.gov/supporting-nursing-moms-work>

ADDITIONAL NEW JERSEY WORKPLACE LACTATION RESOURCES

- A Better Balance. Talking to Your Boss About Your Pump: New Jersey. <https://www.abetterbalance.org/resources/talking-to-your-boss-about-your-pump-new-jersey/>
- New Jersey Breastfeeding Coalition. Breastfeeding and Employment. Contains general information on NJ workplace lactation rights under the LAD, a downloadable handout for employers and employees plus a low literacy infographic in English and Spanish. <https://breastfeedingnj.org/breastfeeding-and-employment/>
- New Jersey Education Association. Lauren Zucker, PhD. Pumping at Work: What All Educators Need to Know. <https://www.njea.org/pumping-at-work/>

Division on Civil Rights’ PowerPoint

See end of document.

Equal Employment Opportunity Commission’s PowerPoint

See end of document.

Workplace Protections for Pregnant, Postpartum, and Breastfeeding Workers under the NJ Law Against Discrimination

Trish Perlmutter, Associate Director for Policy,
Outreach, and Community Relations
December 2024



NJ DIVISION ON
CIVIL RIGHTS



Law Against Discrimination

The New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.) makes it **unlawful to subject people** to discrimination or harassment in the following areas:

- Employment
- Housing & Real Estate
- Places of Public Accommodation



The Law Against Discrimination protects residents based on their protected categories...

This presentation is for information purposes only.

Law Against Discrimination

Protected Categories

Actual or Perceived



- Disability
 - Race/Color
 - Religion/Creed
 - National Origin, Nationality, or Ancestry
 - Gender or Sex
 - Gender Identity or Expression
 - Sexual or Affectional Orientation
 - Pregnancy or Breastfeeding
 - Liability for service in the US Military
 - Marital, Civil Union, or Domestic Partnership Status
- And in some cases:
- Familial status (in housing)
 - Age (in employment)
 - Genetic information (in employment)
 - Lawful source of income (in housing)

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Who is Protected?

“Affected by Pregnancy or Breastfeeding” means

- Pregnancy,
- Childbirth,
- Breastfeeding or expressing milk for breastfeeding, or
- Medical conditions related to pregnancy, breastfeeding, or childbirth, including recovery from childbirth.

N.J.S.A. 10:5-12(s)



MEDICAL CONDITIONS RELATED TO PREGNANCY, RECOVERY FROM CHILDBIRTH, AND BREASTFEEDING



No severity threshold for a condition to trigger obligation to provide accommodation

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Examples of Accommodations for Pregnancy-Related Limitations



More frequent breaks (restroom, increased water intake, to rest)

Breaks need not be paid, unless paid breaks are provided to similarly situated employees who are not affected by pregnancy.



Assistance with manual labor



Job restructuring



Modified work schedule



Temporary transfer to less strenuous work



Accommodations Process

- Parties must engage in good faith interactive process to determine appropriate accommodations
- Without undue delay

REASONABLE ACCOMMODATION PROCESS FOR PREGNANCY-RELATED CONDITIONS



The employee must request the accommodation based on the advice of their physician.



The employer must provide the accommodation unless it demonstrates that providing the accommodation would be an undue hardship on business operations.



Exception: Undue Hardship

- This is a case-by-case determination, rather than a blanket exemption. Each request must be evaluated to determine hardship and feasibility based on current circumstances.
- Undue hardship is an affirmative defense that falls on the employer.
- Even if an employee is unable to perform an essential function of the job, employer still must demonstrate why an accommodation would be an undue hardship.



Breastfeeding Accommodations in the LAD

Employers must provide employees who are breastfeeding:

- reasonable break time each day in which to express milk, and
 - a suitable room or other location
 - with privacy,
 - other than a toilet stall,
 - in close proximity to the work area
- Accommodations available as long as the employee requires them
 - Employer cannot request documentation



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What is a Suitable Location?

A suitable location for pumping or hand expressing milk should:



Be available when needed



Be close to a sink or other source of running water



Have appropriate seating



Be close to a place where the employee can store milk



Have accessible electrical outlet



Have a flat surface other than the floor



Be clean and have ventilation





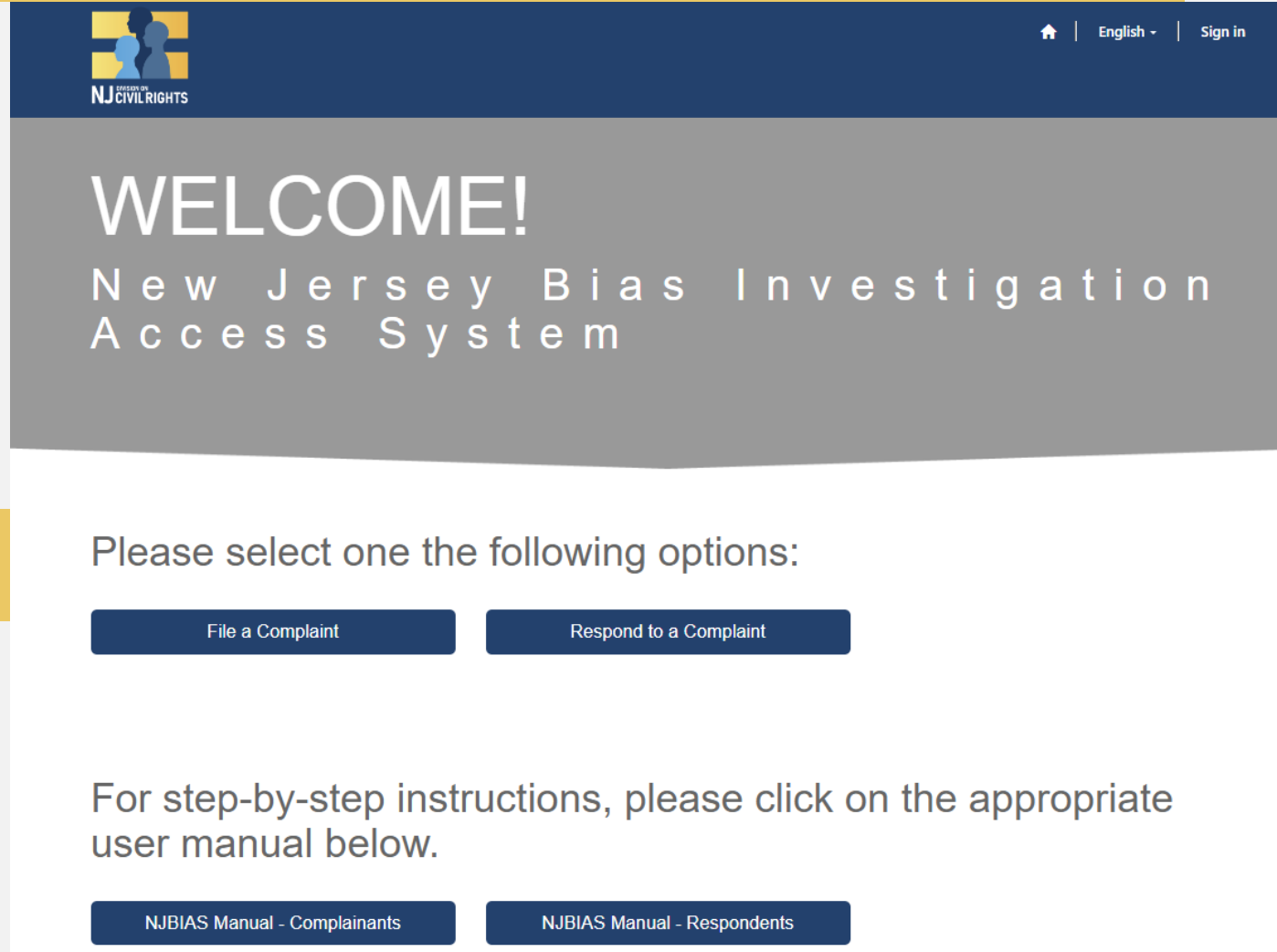
Protection Against Retaliation

- An employer cannot treat an employee differently as punishment for requesting or using a reasonable accommodation.
- For example, an employer cannot fire, demote, or reduce an employee's hours because they request or use an accommodation.

NJ Bias Investigation Access System

DCR's Online Portal to File a Complaint

bias.njcivilrights.gov



The screenshot shows the homepage of the NJ Bias Investigation Access System. At the top left is the logo for the Division on Civil Rights, featuring silhouettes of three people in blue and yellow. To the right of the logo are navigation links: a home icon, "English", and "Sign in". The main heading reads "WELCOME!" followed by "New Jersey Bias Investigation Access System". Below this, a prompt asks the user to "Please select one the following options:" with two buttons: "File a Complaint" and "Respond to a Complaint". A second prompt says "For step-by-step instructions, please click on the appropriate user manual below." with two buttons: "NJBIAS Manual - Complainants" and "NJBIAS Manual - Respondents".

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The Pregnant Workers Fairness Act

Thursday, December 5, 2024

Jane Duncan, State, Local & Tribal Coordinator
Philadelphia District Office



Pregnant Workers Fairness Act

The Pregnant Workers Fairness Act (PWFA) is a new law that went into effect in June 2023. It requires employers to provide reasonable accommodations to workers with known limitations related to, affected by, or arising out of pregnancy, childbirth or related medical conditions, unless the accommodation will cause the employer an undue hardship.

1. Known Limitation
2. Reasonable Accommodations
3. Undue Hardship



Pregnancy Not Required

- ▶ In addition to protecting currently pregnant workers the PWFA also provides protections for:
 - Health conditions triggered by a past pregnancy
 - Potential or intended pregnancy, including infertility treatments
 - Use of contraception
 - Lactation & breastfeeding



PWFA – Requesting an Accommodation

- First, the worker tells the employer that they have a limitation related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions.
- Second, the worker must communicate that they need an adjustment or change at work (i.e. making the limitation and need for an accommodation known to the employer)



PWFA – Interactive Process

- ▶ Once the worker asks for an accommodation, if the employer needs more information, the worker and the employer can engage in the “interactive process.”
- ▶ The worker should be temporarily accommodated during the interactive process.



PWFA – Some Examples of Possible Reasonable Accommodations

- ▶ Additional, longer, or more flexible breaks
- ▶ Adjusting work schedule or providing Telework
- ▶ Temporary reassignment, light duty or help with lifting or other manual labor
- ▶ Leave for appointments and to recover from childbirth
- ▶ Changing food or drink policies to allow a worker to have a water bottle or food
- ▶ Changing equipment, devices, or workstations such as providing a stool
- ▶ Changing a uniform or dress code or providing safety equipment that fits



Undue Hardship

- ▶ Undue hardship is defined as significant difficulty or expense.
- ▶ Because larger employers have more resources it will be harder for them to prove that a temporary accommodation under the PWFA constitutes an undue hardship.
- ▶ Employers are not expected to provide accommodations if doing so would put the worker or anyone else in danger, but should consider temporary reassignment as a potential accommodation if the job is no longer safe for the worker. Forced unpaid leave is not considered a valid accommodation under the PWFA.



Prohibited by the PWFA

- ▶ Taking an Adverse Employment Action due to a condition related to or arising from pregnancy such as failure to hire, demotion, discipline, reassignment to a less favorable position, or discharge.
- ▶ Retaliation against an employee for requesting an accommodation or opposing workplace discrimination.
- ▶ Coercion or interference with employees exercising their rights under the PWFA



PWFA – Procedures & How to File a Charge

- ▶ The individual must file a charge with the EEOC before the person can file a job discrimination lawsuit against the employer.
- ▶ To learn more about the charge filing process go to www.eeoc.gov.
- ▶ From the EEOC website you will be able to start the charge filing process via the EEOC Public Portal.



Thank You! Questions?



Jane Duncan, State, Local & Tribal Coordinator
Equal Employment Opportunity Commission
Philadelphia District Office

Feel free to reach out if you have follow up questions!

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