



Guidance on Workplace Accommodations for Pregnant, Postpartum, Breastfeeding, and Lactating Employees

December 2024

The New Jersey Office of the Attorney General and the Division on Civil Rights (DCR) issue this guidance¹ to clarify the workplace accommodations the New Jersey Law Against Discrimination (LAD) affords to employees for pregnancy, lactation, and related medical conditions.

New Jersey law provides comprehensive anti-discrimination protections for pregnant and lactating employees. In 2014, the New Jersey Legislature enacted the Pregnant Workers Fairness Act (New Jersey PWFA). The New Jersey PWFA expanded the LAD's protections for employees who are pregnant or have pregnancy- or childbirth-related medical conditions, including by requiring reasonable accommodations in the workplace. In 2018, the Legislature added "breastfeeding" as a protected characteristic under the LAD and required employers to grant reasonable accommodations for employees who are lactating or have lactation-related medical conditions, as well.

The LAD requires every covered New Jersey employer to grant reasonable accommodations to employees for pregnancy, childbirth, lactation, and medical conditions related to pregnancy, childbirth, or lactation, unless doing so would constitute an undue hardship on the employer. The LAD also prohibits employers from penalizing employees for requesting or using such accommodations, and it prohibits employers from engaging in unequal or unfavorable treatment of employees who are pregnant, are lactating, or have a pregnancy-, childbirth-, or lactation-related condition.

This guidance document summarizes the workplace protections the LAD affords to employees who are pregnant, recently gave birth, are lactating, or have a pregnancy-, childbirth-, or lactation-related condition.

Table of Contents

I. OVERVIEW OF THE LAW 3

 A. The LAD’s Protections for Pregnancy, Childbirth, and Lactation 3

 B. Terminology Under the LAD..... 3

II. PROVIDING REASONABLE ACCOMMODATIONS TO WORKERS WHO ARE PREGNANT, RECENTLY GAVE BIRTH, ARE LACTATING, OR HAVE A RELATED CONDITIONS 7

 A. Overview of Reasonable Accommodations for Pregnancy, Childbirth, Lactation, or Related Conditions 7

 B. Reasonable Accommodations for Pregnancy, Childbirth, or Related Conditions..... 8

 C. Reasonable Accommodations for Lactation or Related Conditions 10

 D. Multiple Reasonable Accommodations Related to Pregnancy, Childbirth, Lactation, or Related Conditions 12

 E. Medical Documentation for Reasonable Accommodations for Pregnancy, Childbirth, Lactation, or Related Conditions 12

 F. Undue Hardship on an Employer’s Business Operations 13

 G. Interactive Process Required..... 15

 H. Employer’s Obligation to Respond Promptly to Accommodation Requests..... 16

 I. New Jersey Attorney General Guidelines Regarding Accommodations for Pregnant Law Enforcement Officers and Lactating Officers 17

III. PROHIBITION ON PENALTIES, INCLUDING RETALIATION, FOR REQUESTING OR USING AN ACCOMMODATION 18

IV. EQUAL TREATMENT OF EMPLOYEES WHO ARE PREGNANT, RECENTLY GAVE BIRTH, OR ARE LACTATING 19

V. REMEDIES AND RELIEF FOR VIOLATIONS OF THE LAD 21

VI. FEDERAL LAWS AND REGULATIONS FOR PREGNANCY, CHILDBIRTH, AND LACTATION ACCOMMODATIONS IN THE WORKPLACE..... 22

VII. MORE INFORMATION 22

I. OVERVIEW OF THE LAW

The New Jersey Legislature created the New Jersey Division on Civil Rights (DCR) to enforce the New Jersey Law Against Discrimination (LAD)² and to “prevent and eliminate discrimination” in the State of New Jersey.³ The LAD prohibits discrimination and harassment based on protected characteristics in employment, housing, places of public accommodation, credit, and contracting.⁴ Protected characteristics in the employment context include pregnancy, breastfeeding, sex, gender identity, gender expression, sexual orientation, race, religion, national origin, age, and disability, among others.⁵

A. The LAD’s Protections for Pregnancy, Childbirth, and Lactation

In enacting the New Jersey PWFA, the Legislature found that “pregnant women are vulnerable to discrimination in the workplace in New Jersey, as indicated in reports that women who request an accommodation that will allow them to maintain a healthy pregnancy, or who need a reasonable accommodation while recovering from childbirth, are being removed from their positions, placed on unpaid leave, or fired.”⁶

To address such discrimination, in 2014, the New Jersey PWFA added “pregnancy” as an LAD-protected characteristic in the employment context, as well as in the contexts of housing, places of public accommodation, credit, and contracting. “Breastfeeding,” meanwhile, was added to all contexts in the LAD in 2018. As a result, the LAD prohibits discrimination and harassment in the workplace against employees who are pregnant or lactating.⁷

The New Jersey PWFA added to the LAD the following additional protections for employees who are pregnant or lactating:

1. An employer must provide a reasonable accommodation to an employee the employer knows, or should know, is pregnant or lactating, unless doing so would constitute an undue hardship to the employer’s business;
2. An employer is prohibited from penalizing an employee who is pregnant or lactating in terms, conditions, or privileges of employment for requesting or using an accommodation; and
3. An employer is prohibited from engaging in “unequal” or “unfavorable” treatment of an employee who is pregnant or lactating.⁸

Employers who do not fulfill their obligations under the LAD risk liability for failure to accommodate, unlawful penalization, and unequal or unfavorable treatment. Employers’ obligations to employees who are pregnant or lactating and such employees’ rights and protections in the workplace under the LAD are detailed below.

B. Terminology Under the LAD

This subsection clarifies the terminology related to employees who are pregnant, recently gave birth, or are lactating as used in the LAD and this guidance document.

1. Employer

An “employer” includes all employers in New Jersey, with the exception of the federal government.⁹ An employer need not have a minimum number of employees for the LAD to apply; even one employee is enough.¹⁰ To the extent an employer delegates responsibility for employment decisions related to reasonable accommodations to supervisors, managers, human resources personnel, or others, it may be responsible for the acts of these individuals and should ensure they are properly trained on the requirements of the LAD and this guidance.

2. Employee

All New Jersey employees, including domestic workers, are covered by the LAD.¹¹ The LAD covers full-time, part-time, seasonal, per-diem, and temporary employees, as well as employees hired through a staffing agency.

The law protects workers regardless of tenure and number of hours worked. An employer may not impose any policy, such as a “90-day probationary policy” for new employees, that limits accommodations (including time off) to only those employees who have worked for a certain amount of time. The protections of the LAD apply on day one of employment.

The LAD does not apply to any federal government employee. In addition, N.J.S.A. § 10:5-12(s), which sets forth the express requirements for accommodating an employee who is pregnant or lactating, does not apply to independent contractors, who are not considered employees under the LAD.

3. Reasonable Accommodations

Reasonable accommodations are modifications to practices, policies, procedures, physical structures, or other workplace conditions or working arrangements to enable employees to continue working safely while maintaining a healthy pregnancy or maintaining their health while pregnant, recovering from childbirth, lactating, or experiencing related medical conditions.

4. Pregnancy, Childbirth, and Related Conditions

As used in this guidance, the term “pregnancy” includes pregnancy and childbirth, and the term “pregnancy-related conditions” includes medical conditions related to pregnancy or childbirth, including recovery from childbirth, as well as postpartum conditions.¹² Recovery from childbirth includes recovery from vaginal and caesarian deliveries and recovery from childbirth involving either a live birth or a stillbirth. The terms refer not only to employees who are pregnant or recently gave birth but also to employees with medical conditions related to pregnancy or childbirth, as described below.

An employee does not have to be pregnant or postpartum to have a medical condition related to pregnancy or childbirth. Medical conditions related to pregnancy or childbirth can include those related to current, past, or potential pregnancy, and can include physical and mental conditions. Some medical conditions related to potential pregnancy, such as those related to fertility, may be

experienced before pregnancy. Other medical conditions related to pregnancy, such as gestational diabetes or placenta previa, are only experienced during pregnancy. Others may be pre-existing conditions exacerbated by, and therefore related to, pregnancy or childbirth, such as high blood pressure, anxiety, or carpal tunnel syndrome. Some medical conditions related to pregnancy, such as postpartum depression or recovery from a caesarian section, occur after a pregnancy.¹³ Under the LAD, these medical conditions need not meet a severity threshold; rather, they may be modest, minor, or episodic impediments or needs. For ease of reading in this document, the term “pregnancy” should be read to include pregnancy-related medical conditions, unless otherwise noted.

5. Lactating, Breastfeeding, Milk Expression, and Related Conditions

There are many terms used to describe directly and indirectly feeding a child human milk. The LAD uses the term “breastfeeding,” defining it to include breastfeeding, expressing milk for breastfeeding, and related medical conditions.¹⁴ The guidance uses the term “breastfeeding” where referencing specific statutory text and in quotations where the term is used. This term does not align with some people’s gender identity or how they identify their anatomy, however, and the LAD contains express protections against discrimination in employment based on gender identity and expression.¹⁵ Rather than “breastfeeding,” some people prefer the terms “chestfeeding” or “bodyfeeding.”

As used in this guidance, the inclusive terms “lactating” and “lactation” mean all methods of feeding a child human milk, including breastfeeding, chestfeeding, bodyfeeding, and expressing milk to feed a child. Breastfeeding, chestfeeding, and bodyfeeding are all forms of directly feeding milk to a child. The terms “expressing milk” and “milk expression” include indirectly feeding a child by pumping milk—the process of removing milk from the body using a device—and hand expressing milk—the process of removing milk from the body manually by hand. All these terms apply to any person who directly feeds a child from their body or expresses milk to feed a child, even if they did not give birth to the child. DCR recognizes that these terms have many other meanings in different contexts.

As used in this guidance, the term “lactation-related conditions” includes medical conditions related to breastfeeding, chestfeeding, bodyfeeding, and expressing milk, as described below. Under the LAD, these medical conditions need not meet a severity threshold; rather, they may be modest, minor, or episodic impediments or needs. For ease of reading in this document, the terms “lactating” and “lactation” should be read to include lactation-related conditions, unless otherwise noted.

6. Examples of Medical Conditions Related to Pregnancy, Childbirth, or Lactation

Medical conditions related to pregnancy, childbirth, or lactation may include the following *non-exhaustive* list of examples:

Gastrointestinal

- Changes in thirst and appetite
- Constipation
- Dehydration
- Diarrhea
- Gastroesophageal reflux (GERD)
- Hemorrhoids
- Hyperemesis gravidarum (severe nausea and vomiting)
- Indigestion and heartburn
- Nausea and vomiting (“morning sickness”)
- Urinary tract or bladder infections

Cardiovascular & Blood

- Anemia or bleeding
- Deep vein thrombosis
- Gestational diabetes
- High blood pressure
- Lightheadedness
- Lower blood sugar
- Preeclampsia and eclampsia
- Blood clots

Pain

- Carpal tunnel syndrome
- Cramps
- Endometriosis
- Increased bodily pain
- Migraines
- Sciatica

Sleep & Rest

- Fatigue
- Insomnia
- Need for rest and reduced activity (“bed rest”)

Fertility, Family Planning, and Pregnancy Loss

- Fertility-related conditions or use of fertility treatments
- Menopause
- Menstruation, including menstruation-related pain or illness
- Termination of pregnancy, including via miscarriage, stillbirth, or abortion
- Use of contraception, including birth control

Mental Health

- Anxiety, including perinatal and postpartum anxiety
- Depression, including perinatal and postpartum depression
- Psychosis or other mental health conditions

Lactation

- Engorgement
- Fungal infections
- Low milk supply
- Mastitis
- Plugged milk ducts

An employee need not have a disability in order to request or receive reasonable pregnancy-, childbirth-, postpartum-, or lactation-related accommodations under the LAD. Under the law, such reasonable accommodations include those that may prevent a disability from arising.

Nonetheless, regardless of whether an employee's physical or mental limitations or needs related to pregnancy, childbirth, postpartum, or lactation are covered by the LAD, an employer should always consider whether limitations or needs may separately qualify as "disabilities" within the meaning of the LAD.¹⁶

II. PROVIDING REASONABLE ACCOMMODATIONS TO WORKERS WHO ARE PREGNANT, RECENTLY GAVE BIRTH, ARE LACTATING, OR HAVE A RELATED CONDITIONS

Under the LAD, an employer has an affirmative obligation to make a reasonable accommodation available to an employee who the employer knows, or should know, needs an accommodation because of pregnancy or lactation.¹⁷ This section describes the scope of this obligation.

A. Overview of Reasonable Accommodations for Pregnancy, Childbirth, Lactation, or Related Conditions

The LAD, as amended by the New Jersey PWFPA, requires an employer to grant a reasonable accommodation for needs related to pregnancy or childbirth when an employee, based on the advice of their physician,¹⁸ requests the accommodation, unless the employer can show that doing so poses an undue hardship to the employer's business.¹⁹ An employer is also required to grant a reasonable accommodation for needs related to lactation when an employee requests the accommodation, unless the employer can show that doing so poses an undue hardship to the employer's business.²⁰

Pregnant and postpartum employees or employees who are lactating may seek an accommodation in order to maintain their health, maintain the health of their pregnancy, avoid more serious consequences stemming from pregnancy, childbirth, or lactation, alleviate an increase in pain or risk to health, or address a pregnancy-related or lactation-related limitation. For example:

- A pregnant employee may seek an accommodation for assistance lifting items weighing more than 10 pounds (or another weight, in accordance with their physician's recommendation) due to pregnancy-related limitations around lifting;
- A pregnant employee may seek an accommodation to attend pregnancy-related medical appointments, including, but not limited to, chiropractic, acupuncture, maternal fetal medicine, internal medicine, and specialty care such as cardiology or endocrinology;
- An employee trying to conceive may seek an accommodation to attend appointments to receive fertility treatments;
- An employee who must stop taking their usual medication while pregnant or trying to conceive may seek an accommodation related to symptoms they experience as a result of discontinuing the medication;²¹
- A postpartum employee may seek an accommodation to work from home due to postpartum depression or anxiety; or
- A lactating employee may seek an accommodation to wear a looser-fitting uniform than the uniform required by their employer to prevent an increase in pain associated with lactation and reduce the risk of blocked milk ducts.

An employer is required, absent an undue hardship, to grant a reasonable accommodation when requested by an employee to enable the employee to continue working safely while maintaining their health while pregnant, postpartum, lactating, or experiencing related medical conditions.

At the outset, two important points bear mention. First, the LAD sets no severity threshold for a physical or mental medical condition or limitation to trigger an employer's obligation to provide a reasonable accommodation. This means that reasonable accommodations must be provided for even modest, minor, and/or episodic problems or needs, absent undue hardship to the employer. This includes granting a reasonable accommodation when requested by an employee who is returning to work after giving birth, experiencing a miscarriage or stillbirth, or terminating a pregnancy, as well as granting a reasonable accommodation for other conditions described above.

Second, an employee is also not required to use any particular words to request an accommodation. For example, a pregnant employee who requests more frequent bathroom breaks need not use the words "reasonable accommodation" or reference any law when making the request. Additionally, a representative for the employee, or any other person acting on the employee's behalf, may make a request for a reasonable accommodation, and likewise need not use the words "reasonable accommodation" or reference any law when making the request. An employer's obligation to provide reasonable accommodations is triggered by a request related to an employee's pregnancy, childbirth, or lactation.

The remainder of this section describes in greater detail reasonable accommodations for pregnancy and childbirth, reasonable accommodations for lactation, the undue hardship analysis, the need for an interactive process, and other key requirements related to reasonable accommodations.

B. Reasonable Accommodations for Pregnancy, Childbirth, or Related Conditions

The LAD requires employers to provide reasonable accommodations to a pregnant or postpartum employee or employee with related medical conditions unless an employer can demonstrate that providing the accommodation would be an undue hardship on its business operations. The LAD expressly provides the following *non-exhaustive* list of examples of reasonable accommodations:

1. Bathroom breaks;
2. Breaks for increased water intake;
3. Periodic rest;
4. Assistance with manual labor;
5. Job restructuring or modified work schedules; and
6. Temporary transfers to less strenuous or hazardous work.²²

The reasonable accommodations expressly listed in the statute are not the only accommodations an employer may be required to provide to a pregnant or postpartum employee and employees with related medical conditions. Employers, for example, may be required to provide additional accommodations that relieve pain or discomfort or reduce health risks for employees who are pregnant.²³ Other examples of reasonable accommodations related to pregnancy, childbirth, and related conditions may include, but are not limited to, the following *non-exhaustive* list:²⁴

Pain, Discomfort, and Health Risks

- Ergonomic support for backs, hands, or wrists
- Limiting exposure to noise, fragrances, odors,²⁵ or bright lights
- Modifications, adjustments, or alternate product uses to reduce exposure to potential reproductive hazards, such as teratogens
- Moving a workstation to permit movement or stretching of extremities, or to be closer to a bathroom
- Provision of a fan at workstation
- Provision of seating or allowing more frequent sitting if a job requires an employee to stand or more frequent standing if a job requires sitting
- Use of gloves, protective clothing, or other personal protective equipment
- Workstation modification, for example, to allow elevation of legs

Uniform/Dress Code

- Adjustments to uniform requirements or dress codes
- Properly sized uniforms or safety gear

Breaks

- Breaks for increased or more frequent food intake
- Breaks to take medication, including injections

Accessibility

- Allowing elevator or escalator usage to access workspace
- Closer parking, including use of an accessible parking spot, such as a spot reserved for a person with a disability, on the employer's property

Scheduling

- Exemption from mandatory overtime

- Modifications to attendance policies/procedures
- Reducing hours, modifying start times, changing shifts, or providing a predictable schedule
- Temporary excusal from overnight shifts
- Time off or scheduling flexibility for health care appointments, including, but not limited to, prenatal or postpartum visits, visits with a lactation specialist, medical visits after childbirth, fertility treatments, and treatment for prenatal/postpartum anxiety and/or depression and other postpartum health conditions²⁶

Remote Work & Leave

- Extension of leave²⁷
- Remote work
- Teleconferencing or the use of virtual meetings rather than requiring travel to attend in person
- Time off to recover from childbirth, pregnancy complications, or perinatal/postpartum anxiety and/or depression

Job Duties & Expectations

- Light duty²⁸
- Modifications to job duties, expectations, production standards, or quotas
- Timing extensions for projects or tasks

Other

- Access to a refrigerator or cooler to store insulin or fertility-related or other medications
- Access to safe running water to drink and to wash hands
- Modifications to eating and drinking policies

C. Reasonable Accommodations for Lactation or Related Conditions

The LAD also requires a covered employer to provide reasonable accommodations to an employee who is lactating or an employee with related medical conditions, unless the employer can demonstrate that providing the accommodation would be an undue hardship on the employer's business operations.²⁹ The LAD explicitly states that employers are required to provide to a lactating employee, *at a minimum*, the following reasonable accommodations for milk expression:

1. Reasonable break time each day to express milk; and
2. A suitable room or other location with privacy,³⁰ other than a toilet stall, in close proximity³¹ to the work area for the employee to express milk.³²

An employer may only limit the number of breaks and amount of time an employee uses to express milk if the employer can prove such an accommodation would present an undue hardship. Employees may need to express milk during time already allotted for compensated breaks or during additional breaks that are scheduled for nontraditional break times. For example, a school may be required to provide a teacher with breaks outside of the typical lunch-break period because the teacher needs to express milk more often than just during that time.

All employers should be aware that milk expression varies from person to person and depending on the child's needs. Employees may need to lactate, on average, between 8-12 times or more over a 24-hour period to develop and maintain an adequate supply of milk.³³ When a lactating employee is away from their child, the employee may choose to express milk as often as they would feed their child.³⁴ Some employees who are expressing milk may therefore need shorter, more frequent breaks to do so, while other employees may need longer, less frequent breaks. Lactation is often necessary every 2 to 3 hours throughout the day and night,³⁵ meaning employees who are lactating generally cannot schedule their milk expression sessions outside of work hours and will often need to express at least 2 to 3 times during an 8-hour work shift.³⁶ While sessions to express milk typically last 15-20 minutes, some employees may need additional time to express milk, particularly if they are using a manual pump or hand expressing milk.³⁷ Employees may also need additional time to reach and access the location for expressing milk, collect and store expressed milk, wash pumping or other milk expression accessories, and return to their workspace.

Failing to reasonably accommodate an employee's need to lactate at regular intervals can permanently impact an employee's ability to establish, maintain, or increase their milk supply and hinder their ability to successfully lactate even outside of working hours. It can also have adverse impacts on the employee's health, including, but not limited to, causing blocked milk ducts, pain, leaking, mastitis, or abscesses.³⁸

Whether a space is considered a suitable space for an employee expressing milk may depend on the nature and capabilities of the employer's facilities.³⁹ For a space to be suitable, it must be available when needed⁴⁰ and, at a minimum, have appropriate seating, an electrical outlet, and a flat surface other than the floor to hold a pump or other milk expression equipment. Toilet stalls are not considered a suitable space for an employee to express milk. The space must also be in reasonable proximity to a sink or other source of running water and to a place where the employee can store milk, such as a refrigerator or, at the very least, a cooler. The space should be clean and

have ventilation. If an employer offers a milk expression space (often called a “lactation room”) designed for simultaneous use by multiple employees, the space should still provide privacy for each employee while they are expressing milk.

How long someone chooses to lactate varies. Lactation can extend for many months or years after the birth of a child. The LAD does not limit the length of time for which an employee may request a reasonable accommodation for lactation, meaning an employer is required to reasonably accommodate an employee’s need to lactate for as many months or years as the employee has a need.

While reasonable break time and suitable space to express milk may be enough to meet many employees’ lactation-related needs, some employees may need other accommodations to support lactation because of the nature of their jobs, their unique needs, or their child’s unique needs. Employers must work with their employees to identify appropriate accommodations that meet those needs.

In addition to reasonable break time and suitable space to express milk, accommodations for employees who are lactating may include the following *non-exhaustive* list of examples:⁴¹

- Assignment to worksites where milk expression is feasible or other accommodations to make milk expression feasible
- Adjustments to quotas or production standards to reflect milk expression breaks
- Modified work duties
- Accommodations that relieve pain or discomfort or reduce health risks for lactation
- Modification of a work uniform or dress code to allow for milk expression
- Permission to express milk in a non-private space, such as a staff lounge or at the employee’s workstation, when the employee prefers that to expressing milk in a private location
- Permission to arrive late to allow for lactation immediately before work
- Time off or scheduling flexibility for health care appointments, including, but not limited to, visits with a lactation specialist
- Personal protective equipment
- Temporary transfer to avoid exposure to toxic chemicals or other hazards that can contaminate human milk
- Time off or remote work for lactation-related needs/conditions such as mastitis
- Excusal from long-distance travel to allow for lactation
- Adjusted flight schedules and layovers to allow for milk expression
- Accommodations for direct feeding, including remote work, which may be necessary when a parent is unable to pump or hand express milk and/or unable to feed their child from a bottle or cup
- Permission for a caretaker to bring the employee’s child to the workplace and/or a schedule change to permit the employee to go to the child (such as in a daycare setting) to allow for direct feeding

D. Multiple Reasonable Accommodations Related to Pregnancy, Childbirth, Lactation, or Related Conditions

Depending on the needs of the particular employee, the nature of the employee's job duties, and the employer's business, an employee who is pregnant, recently gave birth, is lactating, or has related medical conditions may be entitled to receive more than one type of reasonable accommodation at the same time. If an employee requests multiple accommodations and the accommodations do not present an undue hardship, an employer does *not* satisfy its legal obligations by granting only one or a limited selection of the requested accommodations. For example, if a pregnant employee requires both periodic rest breaks and a temporary transfer to less strenuous work, the employer does not satisfy its obligation under the statute by providing only periodic rest breaks to the employee—unless the employer can prove that a temporary transfer to less strenuous work would be an undue hardship on its business operations. Similarly, an employee may be entitled to receive reasonable accommodations for both pregnancy and lactation at the same time or for both childbirth-related needs and lactation at the same time.

Depending on the employee's particular circumstances and the nature of the job duties, the employer may be required to make different accommodations as the employee's needs change over time. For example, for a pregnancy without complications, an employer may be required to move the employee's workstation, adjust uniform requirements or dress codes, provide the employee with scheduling flexibility to attend prenatal appointments, provide time off to recover from childbirth, and facilitate easier access to the employee's workspace. An employee may also need an accommodation to attend medical appointments before, during, and after pregnancy, unless the employer can prove that providing such an accommodation would constitute an undue hardship. An employee's pregnancy, childbirth, lactation, and related conditions are inextricably linked to the need for health care appointments.

E. Medical Documentation for Reasonable Accommodations for Pregnancy, Childbirth, Lactation, or Related Conditions

The LAD sets forth two different rules governing medical documentation: one for lactation accommodations, and one for pregnancy accommodations.

With respect to accommodations related to lactation, an employer *cannot* seek documentation from the employee under the LAD.⁴² Thus, if an employer asks for documentation as a precondition to granting an accommodation for lactation, the employer violates the LAD.

Meanwhile, with respect to accommodations related to pregnancy, childbirth, or related medical conditions, employers may, but are not required to, seek reasonable medical documentation in connection with the accommodation request.⁴³ An employer's request for documentation would be unreasonable when the need for the requested accommodations is obvious and the employee confirms their need for the reasonable accommodations. Examples of accommodations for which the need is obvious include flexibility to attend health care appointments, bathroom breaks, breaks for increased water or food intake, periodic rest, and assistance with manual labor. An employer's request for documentation would also be unreasonable when an employee requests accommodations for which the employee has already provided sufficient information to the

employer to substantiate the employee's need for the accommodation, or when the requested accommodations are already available to employees pursuant to an employer's existing policies or practices.⁴⁴

Should an employer choose to seek reasonable documentation for a pregnancy-related accommodation, the documentation from a physician need only (1) describe the employee's limitation or need that necessitates accommodation, (2) confirm that the limitation or need is related to pregnancy, and (3) state that the employee needs an accommodation. An employer may not:

- Require a pregnant employee to confirm their pregnancy by providing evidence of a positive pregnancy test or any other documentation;
- Require an employee to release all or any portion of their medical records or authorize the employer to contact their doctor to discuss medical assessments;
- Require an employee to complete lengthy forms, including Americans with Disabilities Act (ADA) or federal Family and Medical Leave Act (FMLA) forms, for an LAD pregnancy-, childbirth-, postpartum-, or lactation-related accommodation;
- Provide unrealistic deadlines by which an employee must submit documentation;
- Impose undue delays in processing documentation and other paperwork related to providing a reasonable accommodation;
- Require physicians to comment on needs outside of a requested accommodation (e.g., asking a physician to comment on an employee's capacity to perform the various functions of their job);
- Ignore a physician's recommendation that supports an employee's request for a reasonable accommodation; or
- Require a physician to use a particular format for medical documentation related to a reasonable accommodation (e.g., requiring the note be typed rather than handwritten).

Employers must keep confidential all information about an employee's request for a reasonable accommodation and maintain all medical information as a confidential medical record.⁴⁵

F. Undue Hardship on an Employer's Business Operations

An employer must provide a reasonable accommodation to an employee who is pregnant, postpartum, lactating, or has a related medical condition, as outlined above, unless the employer can meet its burden of proving the reasonable accommodation would pose an undue hardship on its business operations.⁴⁶

Whether a requested accommodation would impose an undue hardship on an employer is determined based on the following factors: (1) the overall size of the employer's business, including the number of employees, number and type of facilities, and size of budget; (2) the type of the employer's operations, including the composition and structure of the employer's workforce; (3) the nature and cost associated with providing an accommodation, taking into consideration the availability of tax credits, tax deductions, and other funding sources; and (4) the extent to which the accommodation would involve waiver of an essential requirement of the job

as opposed to only a tangential or non-business necessity requirement.⁴⁷ None of these factors alone are dispositive.

Many of the accommodations listed in this guidance document will rarely impose an undue hardship on an employer. For example, allowing an employee bathroom breaks, breaks for periodic water intake, breaks for increased or more frequent food intake, reasonable breaks to express milk, periodic breaks for rest, modifications to uniforms or dress codes, minor physical modifications to a workstation, and time off to attend appointments do not generally require an employer to bear costs on the accommodation itself, and these accommodations do not generally involve a waiver of the essential requirements of a job. These accommodations therefore are unlikely to cause an undue hardship, regardless of the employer's size or type of operations.

The employer has the burden of proving the affirmative defense of “undue hardship” in this context. If an employer asserts waiver of an essential function of the job as part of an undue hardship defense, the employer must prove that the job function at issue is actually an essential function of the employee's job.⁴⁸ Even if the accommodation would modify a central requirement of a job, as opposed to only a “tangential or non-business necessity requirement,” “a temporary waiver of an essential function does not automatically rise to the level of ‘undue hardship.’”⁴⁹ Rather, an employee's temporary inability to perform an essential function of a job is merely one factor to assess among the four aforementioned factors.⁵⁰ In that respect, the employer's obligation to provide an accommodation to an employee who is pregnant or lactating may be greater than the obligation to accommodate an employee with a disability that is not related to pregnancy or lactation.⁵¹

The timespan for a temporary accommodation is context-specific, but it generally includes at least the entire period of an employee's pregnancy, which is roughly 40 weeks, and at least a year after an employee gives birth.⁵² Some temporary accommodations will be necessary prior to pregnancy. Others will be necessary after pregnancy. This includes accommodations for lactation, which must extend as long as the employee continues to lactate.

If the employer proves that the accommodation would involve a waiver of an essential job requirement, it must also “produce proof that the employee[’s] . . . continued employment with the accommodation is an undue hardship for the employer” before terminating the employee.⁵³ In some circumstances, an employer may be required to provide a reasonable accommodation that temporarily allows an employee who is pregnant or lactating to transfer into a position—for example, a less hazardous or strenuous position—that omits an essential function of their job, or, as a last resort, allow the employee to take a leave of absence.

An employer cannot prove that a requested accommodation would cause an undue hardship by demonstrating that the employer maintains a standard policy or practice of not providing accommodations in general or not providing specific accommodations. For example, an employer would be liable for failure to accommodate under the LAD if it denied a reasonable accommodation because it has a policy of not providing modified or alternative work assignments when an employee is unable to perform an essential function of their job, unless the employer could demonstrate that providing that particular accommodation would be an undue hardship.⁵⁴

Additionally, if the employer has previously agreed to the requested accommodation, then it is very likely that the accommodation is not an undue hardship.

Finally, if a requested accommodation is found to constitute an undue hardship and is denied by the employer, the employer must still work with the employee to find and determine whether there is an alternative reasonable accommodation that supports the employee's needs without constituting an undue hardship on the employer.

G. Interactive Process Required

An employer is obligated to engage in an “interactive process,” or a cooperative dialogue, with an employee seeking a reasonable accommodation to determine how to reasonably accommodate the employee's pregnancy, childbirth, or lactation needs.⁵⁵ This is true even if the employer can prove that an accommodation requested by the employee poses an undue hardship. In other words, the employer must work with the employee to determine whether there is an alternative reasonable accommodation that would meet the employee's goals and concerns without posing an undue hardship to the employer's business operations.

In the interactive process, “both employer and employee bear responsibility for communicating with one another.”⁵⁶ In many cases, the interactive process will be informal and quick, consisting simply of the employee requesting the accommodation, followed by the employer approving that request and making any necessary arrangements to provide the accommodation. It is important that an employer respond to a request for a reasonable accommodation expeditiously, given the pregnancy, postpartum, and lactation health consequences that may result from delay.

A cooperative dialogue may be initiated either when an employee approaches an employer asking for an accommodation or when an employer becomes aware of an employee's need for assistance and approaches an employee who the employer knows or should know may need an accommodation. The employee may make the request orally and need not reference any legal or medical terms. The employee also does not have to specify a medical condition listed in the LAD or in this document or use medical terms to describe a condition in order to be eligible for a reasonable accommodation.

The employer does not generally have an affirmative obligation to initiate the interactive process upon learning that an employee is pregnant, postpartum, or lactating. In some circumstances, however, once an employer becomes aware that an employee is pregnant, postpartum, or lactating,⁵⁷ the employer will know or should know based on the nature of the employee's job duties whether the employee may need an accommodation. For example, if an employer is aware an employee is pregnant because they requested a change to their work environment or demonstrated a related limitation on the ability to perform their job, the employer should know that the employee may need an accommodation if their job requires, for instance, the employee to stand for long periods or work without regular water or bathroom breaks. At that point, the employer may choose to engage in an interactive process with the employee. All employers should consider providing training to supervisors to recognize, respond to, and document requests and responses to pregnancy-, childbirth-, and lactation-related accommodations.⁵⁸

An employer must make a good-faith effort to engage in an interactive process each time an employee requests a reasonable accommodation. Factors relevant to determining if an employer has made a good-faith effort include whether an employer followed a written policy regarding how to respond to an accommodation request, acted in a timely manner, provided an interim accommodation, explored alternative accommodations if a requested accommodation posed an undue hardship, or attempted to delay or deter an employee from engaging in an interactive process. An employer who requests that an employee asking for an accommodation resign or take leave instead of engaging in the interactive process has not made a good-faith effort. Indeed, the Legislature expressly stated that it enacted the New Jersey PWFA in order to require employers to attempt to keep pregnant employees working rather than putting them on leave or terminating them.⁵⁹

An interactive process may conclude in one of two ways. It may conclude when an employer and an employee who is pregnant, postpartum, or lactating agree on accommodations that meet the employee's needs and do not pose an undue hardship on the employer. Or it may conclude when the employer determines there is no available accommodation it can grant that does not result in an undue hardship to the employer's business operations. An employer should alert an employee to the outcome of the dialogue as soon as possible. In concluding the dialogue, an employer cannot require employees to accept accommodations they do not want.

An employee's needs for accommodation may change over time. The employee can reinitiate the interactive process and request new accommodations if their needs related to pregnancy, childbirth, lactation, or related conditions change at any time. When an employee reinitiates the interactive process, the employer must re-engage in that process. The reasonableness of any requested accommodation should be individually assessed for each specific request. Over time, the employee also may find that they no longer need a previously granted accommodation. Under the LAD, covered employers are prohibited from forcing an employee to continue using an accommodation they no longer want or need, or that no longer meets their needs or limitations.

H. Employer's Obligation to Respond Promptly to Accommodation Requests

Under the LAD, an employer is required to promptly address an employee's request for an accommodation without undue delay. An employer violates the LAD if it unreasonably delays in addressing a request.⁶⁰ In fact, an unnecessary delay may be considered a constructive denial of the request and result in a violation of both the federal PWFA⁶¹ and the LAD, even if the employer eventually provides the reasonable accommodation requested.⁶² In general, an employer should need only a short amount of time to consider and decide on a request for the types of reasonable accommodations that typically will be needed by an employee who is pregnant, postpartum, or lactating. For example, an employer can generally decide immediately, or very quickly, that they will provide additional break time to a pregnant employee requesting more breaks for increased food and water intake.

To the extent that an employer needs or takes a longer period of time to consider whether to grant a request for an accommodation or to secure equipment for an accommodation, one critical factor in determining whether an employer has unreasonably delayed is whether the employer has provided an interim accommodation while the employee's request is pending. The interim

accommodation could be either the requested accommodation on an interim basis or a different accommodation. Interim accommodations are not necessary in response to requests for future accommodations that are not currently needed, such as a pregnant employee's request for a reasonable accommodation with respect to lactation they will need only once they return to work after giving birth. But where the employee has a current need for the accommodation, and where the employer needs or takes a longer period of time to address the employee's request, the employer generally must provide without delay an interim accommodation unless granting such an accommodation on a temporary basis to meet the employee's needs would pose an undue hardship to the employer's business.⁶³

Providing interim accommodations ensures that employees do not risk health complications during the interim period while the employer either considers the accommodation request or works to implement an accommodation. Such interim accommodations are particularly critical in the pregnancy or lactation context because most accommodations needed by employees who are pregnant, postpartum, or lactating are, by definition, temporary. The LAD establishes a lower threshold for granting accommodations requests than for other forms of disability because of the "sensible conceptual distinction between permanent accommodations and temporary accommodations for pregnant workers."⁶⁴ The same rationale extends to the even more temporary nature of interim accommodations. Providing an interim accommodation does not bind an employer to continue providing the accommodation that was provided on an interim basis if doing so would constitute an undue hardship.

In evaluating whether an interim accommodation would pose an undue hardship, an employer should examine the burden imposed by granting the accommodation during the short interval in which the employer is processing an accommodation request or coordinating the provision of an accommodation. In many cases, granting the reasonable accommodations specified in the LAD on a temporary basis is unlikely to pose an undue hardship or require the employer to incur substantial expenses.

For example, if a highway maintenance worker requests a reasonable accommodation to express milk at their worksite, their employer may need some time to determine how to provide the accommodation and to secure the equipment necessary. Until the employer can grant the requested accommodation, they must provide an interim accommodation, such as longer breaks to allow the employee to travel off site to express milk, unless providing an accommodation on a temporary basis would pose an undue hardship. Similarly, if an employer needs time to plan for transferring a pregnant warehouse stocker to a less strenuous position, they must provide an interim accommodation, such as relieving the employee of their responsibility of lifting the 10-pound bags they typically lift in their position, until the employer is able to grant the transfer. This is true unless providing an accommodation, even in the interim, would pose an undue hardship.

I. New Jersey Attorney General Guidelines Regarding Accommodations for Pregnant Law Enforcement Officers and Lactating Officers

In 2020, Governor Murphy signed new legislation designed to ensure that every law enforcement agency in New Jersey is "comprised of law enforcement officers who reflect the diversity of the population of the community the agency is charged with protecting."⁶⁵ Consistent with the goals

of that statute, and in light of data showing that women remain underrepresented among the ranks of law enforcement, Attorney General Platkin issued Guidelines to law enforcement agencies in August 2022 on providing reasonable accommodations to pregnant officers and officers who are lactating.⁶⁶ Those Guidelines, which are consistent with the guidance provided here, explain in greater detail how various federal and state laws concerning the treatment of pregnant employees and lactating employees apply to the law enforcement context, in particular. Law enforcement agencies should refer to those Attorney General Guidelines in determining their obligations under applicable state and federal law.

III. PROHIBITION ON PENALTIES, INCLUDING RETALIATION, FOR REQUESTING OR USING AN ACCOMMODATION

The LAD prohibits an employer from penalizing or retaliating against employees who are pregnant or lactating because they ask for or use a reasonable accommodation.⁶⁷ An employer is prohibited from penalizing an “employee in terms, conditions[,] or privileges of employment for requesting or using [an] accommodation.”⁶⁸ An employer is also prohibited from using threats or coercion to deter an employee from exercising their rights to an accommodation.⁶⁹

In *Delanoy v. Township of Ocean*, the New Jersey Supreme Court provided two examples of circumstances in which an employer may be liable for penalizing an employee. First, *Delanoy* explained that an employer may be liable for penalizing an employee when conditions of a designated accommodation are made particularly harsh.⁷⁰ Employer-imposed conditions of an accommodation that may be particularly harsh include termination, demotion, and requiring an employee who is pregnant or lactating to use all accrued leave time before they can obtain a reasonable accommodation, such as a transfer to less hazardous work.

Second, *Delanoy* expressly noted that an employer may be liable for penalizing an employee when an accommodation request causes the employer to create a hostile work environment for the employee. A hostile work environment is created when an employee is subjected to severe or pervasive harassment. A pregnant worker, for example, may have a hostile work environment claim if, because of their pregnancy, they were subject to severe or pervasive conduct that a reasonable pregnant employee would believe altered the conditions of their employment and made the working environment hostile or abusive.⁷¹

A hostile work environment may arise if, for example, the following conduct rises to the level of severe or pervasive harassment:

- An employer discloses confidential information about an employee’s request for an accommodation, and the disclosure results in harassment of the employee;
- An employee receives unwarranted criticism of their work performance because they requested or used an accommodation; or
- Supervisors or coworkers make derogatory comments and jokes about a lactating employee.

A hostile work environment against an employee due to an accommodation request may also result from comments by supervisors or coworkers in the workplace that perpetuate inaccurate

stereotypes of employees who are pregnant or lactating, such as comments suggesting a pregnant employee's use of an accommodation undermines their commitment to their work or job, complaints about an employee's time spent expressing milk or a pregnant employee's frequent trips to the restroom, comments questioning a pregnant employee's work ethic for needing rest breaks, or comments implying a pregnant employee is acting "hormonal." A hostile work environment against an employee due to an accommodation request may also arise when their employer repeatedly fails to include employees who are pregnant or lactating on projects, in meetings, or on emails in retaliation for their use of an accommodation, rather than for appropriate business-related reasons. An employer has an obligation to take reasonable steps to stop such comments or behaviors within the employment context by supervisors, coworkers, customers, clients, or other third parties if it knows or should know about the conduct.

The two examples discussed in *Delanoy* are not the only situations in which employers may be liable for penalizing an employee. For example, an employer may also be liable for penalizing an employee when it makes an employee who is receiving an accommodation ineligible for a pay increase or promotion, or mandates that they move to a different job. An employer must also ensure that its ordinary workplace policies or practices—including, but not limited to, "no fault" attendance policies or procedures, mandatory overtime policies, and productivity quotas—do not operate to penalize or threaten potential penalization of employees for using accommodations.

Accordingly, when a reasonable accommodation involves a pause in work—such as a break, a part-time or other reduced work schedule, or leave—an employee cannot be penalized or threatened with a penalty. Among other things, this means that an employee cannot be disciplined for failing to meet production quotas or for not performing work during the employee's pause in work. For example, an employer's use of an automated decision-making tool that flags atypical or unsanctioned breaks but does not consider reasonable accommodations when tracking employees' productivity may disproportionately flag for discipline, or undercount work hours of, employees who are allowed additional break time to accommodate lactation. By disproportionately harming employees who are lactating, this practice may violate the LAD.⁷²

Finally, an employer is prohibited from retaliating against an employee for requesting or using a reasonable accommodation; making a formal or informal complaint internally, with DCR, or with a court about a failure to provide a reasonable accommodation; or otherwise exercising or attempting to exercise their rights under the LAD.⁷³ Similarly, retaliation against an employee for cooperating in any investigation of a potential LAD violation, whether an internal investigation, an investigation by private counsel, or an investigation by DCR, likewise violates the law.⁷⁴ An employer can be held liable for penalizing an employee, including by engaging in retaliatory conduct, as a violation of the LAD that is separate from a failure-to-accommodate violation.

IV. EQUAL TREATMENT OF EMPLOYEES WHO ARE PREGNANT, RECENTLY GAVE BIRTH, OR ARE LACTATING

An employer is also prohibited from engaging in unequal or unfavorable treatment of an employee who is pregnant, postpartum, or lactating. An employer cannot discriminate against employees because of their status as pregnant or lactating,⁷⁵ nor may they treat such employees less favorably than "other persons not affected by pregnancy or breastfeeding but similar in their ability or

inability to work.”⁷⁶ Unequal or unfavorable treatment includes harassment or discrimination in connection with recruitment or hiring; promotion or transfer; termination or demotion; compensation; and all other terms, conditions, or privileges of employment.

For example, a school district cannot refuse to hire a new teacher simply because that teacher is pregnant or lactating. A school district likewise cannot single out pregnant employees or lactating employees for certain roles or prohibit them from holding certain roles based on their pregnancy or lactation. Thus, a school district cannot prohibit pregnant employees from engaging in extra-curricular or related part-time jobs, such as coaching or tutoring, due to their pregnancy.⁷⁷

Policies that single out employees who are pregnant or lactating, as well as policies that are rooted in stereotypes or assumptions, are prohibited. This means that an employer may not make assumptions about a pregnant person’s capabilities, how a pregnant person should behave, what a pregnant person should wear, or what is or is not healthy for a pregnant person or their fetus. Pregnant employees must be permitted to continue working as long as they feel able to do so, should not be reassigned to different duties simply because they are pregnant unless they request a reasonable accommodation, and should not be required to provide documentation from a health care provider stating they have no physical restrictions or that they can perform their job duties. An employer cannot make assumptions about a person’s dedication to their job or career or willingness to engage in job duties based on their pregnancy or lactation status. Similarly, an employer is generally not permitted to reduce the pay of employees who are pregnant or lactating because the employees have been granted an accommodation.

Application to All Employees Who Are Pregnant, Postpartum, Lactating, or Have Related Conditions

In addition to treating employees who are pregnant, postpartum, lactating, or have related conditions no less favorably than other employees who are similarly situated, an employer is required to treat all such employees equally. The rights and requirements set forth in this guidance document apply equally to employees no matter their race, national origin, disability, religion, gender identity, gender expression, sexual orientation, marital status, or other LAD-protected characteristic. Therefore, an employer is prohibited from discriminating against or harassing an employee who is pregnant or lactating because of an LAD-protected characteristic.

For example, an employer cannot refuse to engage in the interactive process with a pregnant employee because the employee is or is perceived to be Black. Nor can an employer give preferential treatment to a Christian employee who is expressing milk by allowing them to use the office refrigerator to store expressed milk but not allow a Muslim employee who is expressing milk in the same office to use the refrigerator to store their expressed milk.

The LAD and this guidance also apply to all employees regardless of their sex, gender identity, and gender expression—a group of protected characteristics collectively referred to as “gender.”⁷⁸

Pregnancy and lactation discrimination are related to gender discrimination and can be used as a proxy for gender discrimination in the workplace, which is prohibited by the LAD.⁷⁹

A transgender, nonbinary, or gender nonconforming employee who is pregnant or lactating must receive the same treatment in the workplace as a cisgender⁸⁰ woman employee who is pregnant or lactating. As noted, the term “breastfeeding” does not align with some people’s gender or how they identify their anatomy, and the LAD contains express protections against discrimination in employment based on gender identity and expression. Rather than breastfeeding, some people prefer the terms “chestfeeding,” “bodyfeeding,” or “lactating.” An employee who is chestfeeding or bodyfeeding or expressing milk for their child is entitled to receive the same accommodations as an employee who is breastfeeding.⁸¹ Finally, lactation and other designated pregnancy-related spaces must be accessible to all people who need them, regardless of gender identity. In accordance with anti-discrimination provisions of the LAD, an employer must also respect the gender identity of employees.⁸² An employer should not assume an employee’s gender based upon their pregnancy or lactation.

V. REMEDIES AND RELIEF FOR VIOLATIONS OF THE LAD

An employee who establishes that their employer failed to provide a reasonable accommodation to them for pregnancy or lactation, or otherwise violated the LAD by engaging in an unlawful employment practice, may receive some or all of the following remedies:

1. An order requiring the employer to cease and desist from the unlawful employment practice;
2. An order requiring the employer to provide a reasonable accommodation to the employee;
3. Lost wages and benefits (which may include future lost wages and interest);
4. Reinstatement or promotion as appropriate, with back pay and interest;
5. Emotional distress damages;
6. Reasonable attorneys’ fees if the employee was represented by counsel;
7. Out-of-pocket expenses associated with pursuing the complaint; and
8. Punitive damages (in cases filed in Superior Court only).

DCR may also order affirmative relief, including policy changes, training, and monitoring. For example, an employer who violates the LAD by failing to accommodate a pregnant employee may be ordered to update their pregnancy-related reasonable accommodation policy to comply with the LAD, disseminate the updated policy to all employees, and provide annual training on the policy to human resources staff and all employee supervisors. DCR may also order the employer to report the number, nature, and outcome of employee requests for accommodations based on pregnancy or lactation to DCR annually.

An employer who violates the LAD may also be liable for statutory penalties, payable to the State:

1. Up to \$10,000 for the first violation in a five-year period;
2. Up to \$25,000 for the second violation in a five-year period; and

3. Up to \$50,000 for the third violation (and any additional violations) in a seven-year period.

VI. FEDERAL LAWS AND REGULATIONS FOR PREGNANCY, CHILDBIRTH, AND LACTATION ACCOMMODATIONS IN THE WORKPLACE

In addition to the LAD, New Jersey employers must comply with federal laws, including the federal Pregnant Workers Fairness Act (federal PWFA)⁸³ and the federal Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act).⁸⁴ The federal PWFA requires covered employers⁸⁵ to provide reasonable accommodations for a worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship.⁸⁶ The PUMP Act provides break time and space requirements for expressing milk in the workplace. Federal laws and rules regarding workplace accommodations for pregnancy-related accommodations set the floor for employers' obligations and leave room for state laws, such as the LAD, to provide broader protections for employees.

Nothing contained in this guidance should be understood as limiting the scope of protection under federal law or otherwise lowering the floor of protection guaranteed by federal law. All employers should review federal laws and regulations to ensure their compliance.

VII. MORE INFORMATION

Briefs that explain employers' obligations to grant reasonable accommodations for employees who are pregnant, lactating, or have related conditions and employees' rights to reasonable accommodations are on DCR's [website](#). The LAD's prohibitions on discrimination in employment based on pregnancy and based on lactation are explained on DCR's [website](#).

To learn more about the New Jersey Family Leave Act (NJFLA), please visit <https://www.njoag.gov/wp-content/uploads/2021/09/fact-FLA.pdf> and <https://www.njoag.gov/about/divisions-and-offices/division-on-civil-rights-home/know-the-law/>. The NJFLA is enforced by the New Jersey Division on Civil Rights (DCR).

To file an LAD or NJFLA complaint with DCR, please visit the NJ Bias Investigation Access System at <https://bias.njcivilrights.gov/en-US/> [NJ DCR Portal \(njcivilrights.gov\)](#).

To learn more about New Jersey Temporary Disability (TDI) and Family Leave Insurance (FLI), please visit [Division of Temporary Disability and Family Leave Insurance | Information for Employers \(nj.gov\)](#). TDI and FLI are administered by the New Jersey Department of Labor and Workforce Development.

To learn more about the federal Family and Medical Leave Act (FMLA), please visit <https://www.dol.gov/agencies/whd/fmla>. The FMLA is enforced by the United States Department of Labor.

To learn more about the federal Pregnant Workers Fairness Act (PWFA) and Americans with Disabilities Act (ADA), please visit <https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act> and <https://www.eeoc.gov/publications/ada-your-employment->

[rights-individual-disability](#). The federal PWFA and ADA are enforced by the United States Equal Employment Opportunity Commission (EEOC). To learn more about the federal Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act), please visit <https://www.dol.gov/agencies/whd/pump-at-work>. The federal PUMP Act is enforced by the United States Department of Labor’s Wage and Hour Division.

Sundeep Iyer
Director, New Jersey Division on Civil Rights
December 2024

¹ The purpose of this guidance document is to clarify and explain DCR’s understanding of existing legal requirements in order to facilitate compliance with the LAD. This guidance document does not impose any new or additional requirements that are not included in the LAD, does not establish any rights or obligations for any person, and will not be enforced by DCR as a substitute for enforcement of the LAD. This document does not provide legal advice and should not be treated as providing legal advice. Employees and employers with questions about the LAD are encouraged to speak with a qualified attorney to address their specific questions.

² The Law Against Discrimination (LAD), N.J.S.A. § 10:5-1 et seq., as amended by the Pregnant Workers Fairness Act (New Jersey PWFA), is available on the Division on Civil Rights’ (DCR) website at [LAD-2024.pdf](#).

³ N.J.S.A. § 10:5-6. DCR also enforces the New Jersey Family Leave Act, N.J.S.A. § 34:11B-1 et seq., which addresses job-protected leave to care for a loved one, and the New Jersey Fair Chance in Housing Act, N.J.S.A. § 46:8-52 to 64, which bars housing providers from inquiring about a person’s criminal history in housing applications in most instances.

⁴ N.J.S.A. § 10:5-12.

⁵ N.J.S.A. § 10:5-12(a).

⁶ N.J.S.A. § 10:5-3.1(a). Though the Legislature specifically singled out “women” in enacting the New Jersey PWFA, the LAD’s protections extend to all employees who are pregnant or lactating, including transgender, nonbinary, and gender nonconforming employees.

⁷ N.J.S.A. § 10:5-12(a). The LAD uses the term “breastfeeding.” N.J.S.A. § 10:5-12(s). However, this term does not align with some people’s gender identity or how they identify their anatomy. As further discussed in “Terminology Under the LAD,” *infra* at 4, this guidance will use the terms “lactation” or “lactating” to mean all methods of feeding a child human milk, including breastfeeding, chestfeeding, bodyfeeding, and expressing milk to feed a child.

⁸ N.J.S.A. § 10:5-12(s). The New Jersey Supreme Court interpreted the New Jersey PWFA’s requirements in the LAD in its 2021 decision in *Delanoy v. Township of Ocean*, 245 N.J. 384 (2021), addressing for the first time the contours of the law. The Court identified three “distinct” causes of action: (1) unequal or unfavorable treatment; (2) failure to accommodate; and (3) unlawful penalization. *Delanoy*, 245 N.J. at 400. Two briefs on workplace pregnancy-related accommodations—one for [employees](#) and one for [employers](#)—and a brief on [workplace lactation-related accommodations](#) are available on DCR’s [website](#).

⁹ N.J.S.A. § 10:5-5(e). Religious associations or organizations are employers under the LAD, but their liability in the employment context is limited by a religious-tenets exception to the law. N.J.S.A. § 10:5-12(a); *Crisitello v. St. Theresa Sch.*, 255 N.J. 200 (2023) (finding that “the use of religious affiliation as a job qualification for employees engaged in the religious activities of the organization[]” and “following the tenets of its religion in establishing and utilizing criteria for employment of an employee” “will not give rise to a cause of action” under the LAD).

¹⁰ Unlike Federal Title VII, an employer does not need a certain number of employees to be covered by the LAD; just having one employee is sufficient.

¹¹ N.J.S.A. § 10:5-5(f).

¹² N.J.S.A. § 10:5-12(s).

¹³ Some conditions associated with pregnancy continue to adversely affect a birthing person’s health postpartum. Susanna Trost, et al., “Pregnancy-Related Deaths: Data from Maternal Mortality Review Committees in 36 US States, 2017-2019,” Maternal Mortality Review Information App, [23](https://www.cdc.gov/maternal-mortality/media/pdfs/pregnancy-related-deaths-data-mmrcs-2017-2019-h.pdf?CDC_AAref_Val=https://www.cdc.gov/reproductivehealth/maternal-mortality/docs/pdf/Pregnancy-Related-</p></div><div data-bbox=)

[Deaths-Data-MMRCs-2017-2019-H.pdf](#); Roni Caryn Rabin, “Complications After Delivery: What Women Need to Know,” NYTimes, (May 28, 2023), <https://www.nytimes.com/2023/05/28/health/maternal-complications-symptoms.html>; Annalies Winny, *How Can We Solve the Black Maternal Health Crisis?*, JOHN HOPKINS BLOOMBERG SCH. OF PUB. HEALTH, May 12, 2023, <https://publichealth.jhu.edu/2023/solving-the-black-maternal-health-crisis> (explaining the heightened risks of pregnancy and post-pregnancy conditions for Black mothers, including that “Black birthing people are [] more likely to experience life-threatening conditions like preeclampsia, postpartum hemorrhage, and blood clots, as well as increased incidence of other pregnancy-related complications like preterm birth and low birth weight”); see 29 C.F.R. § 1636 (noting the disproportionate health outcomes Black women face during and after pregnancy).

¹⁴ N.J.S.A. § 10:5-12(s) (“For purposes of this section, ‘pregnancy and breastfeeding’ means pregnancy, childbirth, and breast feeding [sic] or expressing milk for breastfeeding, or medical conditions related to pregnancy, childbirth, or breastfeeding, including recovery from childbirth.”).

¹⁵ N.J.S.A. § 10:5-12(a).

¹⁶ For example, an employee may develop a condition during pregnancy that becomes a chronic disability under the LAD. Under the LAD, “[d]isability’ means physical or sensory disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness including epilepsy and other seizure disorders, and which shall include, but not be limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impairment, deafness or hearing impairment, muteness or speech impairment, or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device, or any mental, psychological, or developmental disability, including autism spectrum disorders, resulting from anatomical, psychological, physiological, or neurological conditions which prevents the typical exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques. Disability shall also mean AIDS or HIV infection.” N.J.S.A. § 10:5-5(q). This guidance does not address the protections available to employees with disabilities under the LAD. A fact sheet on disability discrimination and accommodations in the workplace is available on DCR’s website at [Factsheet Disability-Employment.pdf \(njoag.gov\)](#).

¹⁷ In *Delanoy v. Township of Ocean*, the New Jersey Supreme Court held that the PWFA is specifically designed to give existing employees who become pregnant and request a reasonable accommodation based on a physician’s advice a statutory right to a reasonable accommodation. 245 N.J. 384, 406 (2021).

¹⁸ For the purposes of this guidance, the term “physician” includes both medical and behavioral health doctors, as well as other medical personnel connected to or working under a physician, including, but not limited to, physician’s assistants, nurse practitioners, and nurses. The federal PWFA regulations provide a broader list of health care providers who can provide documentation for a reasonable accommodation. In addition to the medical personnel listed above, the list includes “midwives, physical therapists, lactation consultants, doulas, occupational therapists, vocational rehabilitation specialists, therapists, industrial hygienists, licensed mental health professionals, psychologists, or psychiatrists.” 29 C.F.R. § 1636.3(l)(1)(3).

¹⁹ N.J.S.A. § 10:5-12(s).

²⁰ *Id.*

²¹ This applies to transgender men, gender nonconforming people, and nonbinary people who stop taking testosterone in order to become pregnant.

²² *Id.*

²³ See generally UC Hastings College of the Law, “Pregnancy, Childbirth, and Related Medical Conditions: Common Workplace Limitations and Reasonable Accommodations Explained.” <https://www.pregnantatwork.org/wp-content/uploads/Workable-Accommodation-Ideas.pdf> (last visited Dec. 3, 2024).

²⁴ Whether these accommodations constitute an undue hardship for an employer is context specific. Some of these accommodations may be more or less feasible based on the nature of the job. Employers and employees must work together to find appropriate accommodations that meet an employee’s pregnancy- or postpartum-related needs.

²⁵ This may include smells that could trigger nausea or other issues with the pregnant person such as food if seated near a kitchen, soaps used in the bathroom, or coworkers.

²⁶ An employer is not required by the LAD to provide paid time off to an employee for such health care appointments if the employer does not provide paid time off to any of its employees for medical visits or if the employee has used all the paid time off afforded to them.

²⁷ An employer is not required by the LAD to extend paid leave if the employer does not provide extended paid leave for medical conditions other than pregnancy-, childbirth-, or lactation-related conditions.

²⁸ “Assignment to light duty or placement in a light duty program has been recognized by the [EEOC] as a potential reasonable accommodation, even if the employer’s light duty positions are normally reserved for those injured on-the-job and the person seeking a light duty position as an accommodation does not have an on-the-job injury.” 29 C.F.R. APPENDIX A TO PART 1636; *Raspa v. Office of Sheriff of Cnty. of Gloucester*, 191 N.J. 323, 445 (2007) (“[L]ight duty positions [a]re not intended to be a permanent post, but a temporary way station or bridge between an inability to work due to injury and a return to full employment status. . . . [C]onsistent with the LAD, an employer may reasonably limit light duty assignments to those employees whose disabilities are both temporary and not inconsistent with the duties of the light duty assignment. . . .”).

²⁹ N.J.S.A. § 10:5-12(s). Under the federal Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act), unlike the LAD, employers with fifty or more employees do not have an undue hardship defense available and must provide break time and space no matter what. PUMP Act, Pub. L. No. 117- 328, 136 Stat. 4459 (2022).

³⁰ Private generally means having a door that locks from the inside, if possible, or other means of preventing outsider access, and being free from cameras or other forms of video workplace surveillance. Milk expression room windows must have shades or curtains. Cubicle or privacy curtains are disfavored because they provide the employee with diminished privacy, but employers may consider this alternative as a last resort or if requested by an employee.

³¹ The issue of “proximity” arises, for example, for workers in large buildings or on education or corporate campuses where the milk expression space might be located in another building. An employer should locate the milk expression space in the same building where the employee works to ideally keep the break time needed to a minimum. If the milk expression space requires a substantial transit time, it may not meet the “close proximity” requirement.

³² N.J.S.A. § 10:5-12(s).

³³ La Leche League International Org, “Breastfeeding Info: Frequency of Feeding,” <https://www.llli.org/breastfeeding-info/frequency-feeding-frequently-asked-questions-faqs/> (last visited Dec. 3, 2024) [hereinafter Frequency of Feeding].

³⁴ La Leche League International Org, “Breastfeeding Info: Pumping Milk,” <https://www.llli.org/breastfeeding-info/pumping-milk/> (last visited Dec. 3, 2024) [hereinafter Pumping Milk].

³⁵ *Id.*

³⁶ United States Department of Health & Human Services Office on Women’s Health, “Time for Breaks,” <https://www.womenshealth.gov/supporting-nursing-moms-work/break-time-and-private-space/time-breaks> (last visited Dec. 3, 2024) [hereinafter Time for Breaks].

³⁷ *Id.* Some employees may need additional time to express milk even when using an electrical pump. Pumping is generally less efficient at removing milk from the body compared with direct feeding, and some employees may need more time to express enough milk to feed their babies and maintain their milk supplies. *Id.*

³⁸ See Academy of Breastfeeding Medicine, “Clinical Protocol #36: The Mastitis Spectrum, Revised 2022,” <https://www.bfmed.org/assets/ABM%20Protocol%20%2336.pdf?mibextid=Zxz2cZ> (last visited Dec. 3, 2024) [hereinafter The Mastitis Spectrum]; La Leche League International Org, “Breastfeeding Info: Mastitis and Sore Breasts,” <https://www.llli.org/breastfeeding-info/mastitis/> (last visited Dec. 3, 2024) [hereinafter Mastitis].

³⁹ For example, the United States Department of Labor has defined a “functional” space as one that “must contain a place for the nursing employee to sit, and a flat surface, other than the floor, on which to place the pump. Employees must be able to safely store milk while at work, such as in an insulated food container, personal cooler, or refrigerator.” United States Department of Labor, *Field Assistance Bulletin No. 2023-02*, 4 (2023), <https://www.dol.gov/sites/dolgov/files/WHD/fab/2023-2.pdf>. Likewise, the United States Equal Employment Opportunity Commission (EEOC) stated in the federal PWFA that accommodations regarding a suitable space for milk expression include “ensuring that the area for lactation is in reasonable proximity to the employee’s usual work area; that it is a place other than a bathroom; that it is shielded from view and free from intrusion; that it is regularly cleaned; that it has electricity, appropriate seating, and a surface sufficient to place a breast pump; and that it is in reasonable proximity to a sink, running water, and a refrigerator for storing milk.” 29 C.F.R. § 1636.3.

⁴⁰ The room or space need not be dedicated to milk expression, but it must be available when needed and other employees should not need to access the room during milk expression sessions.

⁴¹ Whether these accommodations constitute an undue hardship for an employer is context specific. Some of these accommodations may be more or less feasible based on the nature of the job. Employers and employees must work together to find appropriate accommodations that meet an employee’s lactation-related needs.

⁴² N.J.S.A. § 10:5-12(s).

⁴³ *Id.*

⁴⁴ The federal PWFA makes it expressly unreasonable for an employer to request medical documentation in five similar scenarios. 29 C.F.R. § 1636.3(l)(1)(i)-(v).

⁴⁵ See the Americans with Disabilities Act, 42 U.S.C. § 12112(d)(3)(B); 29 C.F.R. § 1630.14(b)(1), (c)(1), (d)(4); see also the most recent amendments to the federal PWFA regulations at 29 C.F.R. APPENDIX A TO PART 1636.

⁴⁶ N.J.S.A. § 10:5-12(s).

⁴⁷ *Id.*

⁴⁸ Under the federal PWFA, and for the purposes of this guidance, an “essential job duty” or “essential function” of a job includes “the fundamental job duties of the employment position the employee with a known limitation under the PWFA holds or desires” and “does not include the marginal functions of the position.” 29 C.F.R. § 1636.3(g).

⁴⁹ *Delanoy*, 245 N.J. at 407.

⁵⁰ *Id.* at 408.

⁵¹ N.J.S.A. § 10:5-12(s).

⁵² This timeframe is generally referenced in the federal PWFA regulations. 29 C.F.R. APPENDIX A TO PART 1636 (“[E]specially in the first year after giving birth, employees may experience serious health issues related to their pregnancy that may prevent them from performing the essential functions of their positions. Accommodating these situations and allowing employees to stay employed are among the key purposes of the PWFA.”)

⁵³ *Delanoy*, 245 N.J. at 408-09.

⁵⁴ *Tracy L. Leinbach v. Exceptional Medical Transport*, DCR DOCKET NO. ED06WB-67965, FPC, Nov. 9, 2020, [ExceptionalMedicalTransportFPC.pdf](#) (explaining that an employer’s standard policy of not providing modified or alternative work when an employee is unable to perform an essential function of their job “conflicts with the plain language of N.J.S.A. § 10:5-12(s), which requires reasonable accommodations for pregnant people, including ‘temporary transfers to less strenuous or hazardous work,’ unless the employer can demonstrate that providing the accommodation would be an undue hardship on its business”).

⁵⁵ This interactive process also applies to disability accommodations under the LAD and ADA. See *Tynan v. Vicinage 13 of the Superior Court*, 351 N.J. Super. 385, 400 (App. Div. 2002) (citing 26 C.F.R. § 1630(O)(3)). The interactive process regarding pregnancy-, childbirth-, postpartum-, and lactation-related reasonable accommodations under the LAD will nearly always be shorter and require less documentation than the interactive process for ADA requests because these requests under the LAD do not involve establishment of a disability and typically do not require discussion of essential job functions.

⁵⁶ *Coronado v. Bergen Logistics*, DCR DOCKET NO. EJ08GB-65389, FPC, April 27, 2020, available at https://www.njoag.gov/wp-content/uploads/2022/09/FPC_Kleiny-Coronado-v-Bergen-Logistics_REDACTED_04-27-20.pdf; *Jones v. Aluminum Shapes*, 339 N.J. Super 412, 422 (App. Div. 2001).

⁵⁷ There are several ways in which an employer may learn about an employee’s pregnancy, even if the employee does not directly tell the employer about it. For example, the employee may tell their supervisor, “I’m having a hard time getting to work on time because of the morning sickness.” This would be enough to put an employer on notice that the employee is having pregnancy-related symptoms.

⁵⁸ See 29 C.F.R. § 1636.

⁵⁹ N.J.S.A. § 10:5-3.1.

⁶⁰ See, *Richter v. Oakland Bd. Of Educ.*, 246 N.J. 507, 531 (2021) (holding that “an employer’s inaction, silence, or inadequate response to a reasonable accommodation request is an omission that can give rise to a cause of action”); see also, *Payton v. N.J. Tpk. Auth.*, 148 N.J. 524, 538 (1997) (holding that, in the context of harassment claims, “a remedial scheme that reaches the correct result through a process that is unduly prolonged . . . is an ineffective remedial scheme”).

⁶¹ The federal PWFA lists six factors to consider in determining whether there has been an unnecessary delay. 29 C.F.R. § 1636.4(a)(1).

⁶² See 42 U.S.C. § 2000gg-1(1).

⁶³ Courts across the country have recognized that employers may be required to provide interim accommodations. *Selenke v. Med. Imaging of Colorado*, 248 F.3d 1249, 1262 (10th Cir. 2001) (quoting *Hartsfield v. Miami-Dade Cty.*, 90 F. Supp. 2d 1363, 1371-73 (S.D. Fla. 2000)) (“[W]here an accommodation is delayed an employer does not violate the ADA, as long as the employee receives some other accommodation or at least does not suffer adverse employment action”). See also *Davis v. Wilkie*, No. 3:18-2385-MGL-PJG, 2020 U.S. Dist. LEXIS 238301, at *12 (D.S.C. Oct. 7, 2020) (“In deciding whether a delay was unreasonable, courts consider the totality of the circumstances, including factors such as . . . whether the employer provided interim or alternative accommodations”); *Christensen v. Triumph*

Aerostructures-Tulsa, LLC, No. 18-CV-511-JFH-JFJ, 2024 U.S. Dist. LEXIS 109541, at *20 (N.D. Okla. June 21, 2024) (denying summary judgment on an ADA claim because a reasonable jury could find that the employer did not act in good faith by failing to provide interim accommodations, such as a modified work schedule, to minimize an employee’s stairclimbing); *Hartsfield v. Miami-Dade Cty.*, 90 F. Supp. 2d 1363, 1373 (S.D. Fla. 2000) (finding no violation of the ADA where an employer provided devices to allow an employee to perform her work until the employer obtained the employee’s requested equipment); *Jurgess v. Lowe’s Home Ctrs., Inc.*, No. 05-71241, 2006 U.S. Dist. LEXIS 76942, at *26 (E.D. Mich. Oct. 10, 2006) (denying summary judgment because a reasonable jury could find that an employee would feel compelled to resign her position where an employer never offered a temporary accommodation, and it appeared the employer had the ability to provide interim relief while the employee’s accommodation was being processed).

⁶⁴ *Delanoy v. Twp. of Ocean*, 462 N.J. Super. 78, 103 (App. Div. 2020), *aff’d in part, mod. in part*, 245 N.J. 384 (2021).

⁶⁵ N.J.S.A. 52:17B-4.10.

⁶⁶ New Jersey Attorney General Guidelines, Protocols Regarding Pregnant Officers, Aug. 25, 2022, available at <https://www.nj.gov/oag/dcj/agguide/AG-Guidelines-protocols-for-pregnant-officers.pdf>.

⁶⁷ N.J.S.A. § 10:5-12(s); *Delanoy*, 462 N.J. Super. at 104-05 (recognizing retaliatory behavior as also implicitly prohibited as a penalty); *see Delanoy*, 245 N.J. at 395.

⁶⁸ N.J.S.A. § 10:5-12(s).

⁶⁹ The New Jersey Supreme Court has recognized that this cause of action “is plainly identified in subsection (s) as an independent cause of action” and “[t]he Legislature meant it to have its own teeth in promoting the public policy in favor of having employers welcome the continuing presence of pregnant and breastfeeding employees in their workplaces.” *Delanoy*, 245 N.J. at 384, 411.

⁷⁰ *Id.* Employer-imposed conditions of an accommodation that are particularly harsh demonstrate “grudging” compliance with the will of the Legislature. *Id.*

⁷¹ *See Shepherd v. Hunterdon Dev. Ctr.*, 174 N.J. 1, 24 (2002). Pregnant workers are protected from a hostile work environment based on their pregnancy. *See* Discrimination Based on Sexual Orientation Fact Sheet, https://www.njoag.gov/wp-content/uploads/2021/04/fact_LGBTQI_General.pdf; Discrimination and Harassment in School Fact Sheet, fact_YB.pdf (njoag.gov); Gender Discrimination Fact Sheet, Fact-Sheet_Gender-Discrimination.pdf (njoag.gov); Intersex Discrimination in Employment Fact Sheet, fact_ID.pdf (njoag.gov); LGBTQ+ Staff Rights in Schools Fact Sheet, fact_LGBTQ-School-Staff.pdf (njoag.gov); Sexual Harassment in Employment Fact Sheet, fact_SH_Employment.pdf (njoag.gov); The New Jersey Law Against Discrimination Fact Sheet, fact_LAD.pdf (njoag.gov).

⁷² The United States Department of Labor provides a similar example in its resource on artificial intelligence (AI) and automated systems in the workplace under the Fair Labor Standards Act (FLSA). *See* Field Assistance Bulletin No. 2024-01, 10 (2024), http://www.dol.gov/sites/dolgov/files/WHD/fab/fab2024_1.pdf (providing “productivity scoring and monitoring systems that penalize a worker for failing to meet productivity standards or quotas due to the worker having taken pump breaks would violate the [Fair Labor Standards Act]”).

⁷³ N.J.S.A. § 10:5-12(d) and (s).

⁷⁴ N.J.S.A. § 10:5-12(d).

⁷⁵ N.J.S.A. § 10:5-12(a).

⁷⁶ N.J.S.A. § 10:5-12(s).

⁷⁷ New Jersey Office of the Attorney General, “Attorney General Platkin and Division on Civil Rights Announce Enforcement Actions Against Cinnaminson Township Board of Education: Division Announces Findings of Probable Cause in Three Cases Involving Alleged Gender and Pregnancy Discrimination,” <https://www.njoag.gov/attorney-general-platkin-and-division-on-civil-rights-announce-enforcement-actions-against-cinnaminson-township-board-of-education/> (March 27, 2024).

⁷⁸ “Gender identity” refers to a person’s innate, deeply felt identification as a man, woman, both, or neither, which may or may not correspond in expected ways to the person’s assigned gender at birth. Gender identity includes transgender status and identifying as gender nonconforming, including gender nonbinary. “Gender expression” refers to a person’s gender-related appearance and behavior, whether or not stereotypically associated with the person’s gender assigned at birth. It is the manner in which a person represents or expresses their gender to others, such as through their name, pronouns, title, clothing, hairstyle, voice, speech patterns, mannerisms, and social interactions.

⁷⁹ *See* New Jersey Office of the Attorney General, “AG Platkin, Division on Civil Rights File Complaint in Superior Court Against Virtua Health for Alleged Discrimination Against Pregnant Patients,” <https://www.njoag.gov/ag->

[platkin-division-on-civil-rights-file-complaint-in-superior-court-against-virtua-health-for-alleged-discrimination-against-pregnant-patients/](#) (Sept. 26, 2024) (filing complaint for pregnancy and sex discrimination on the basis of mandatory drug testing of pregnant patients without obtaining their informed consent); *Castellano v. Linden Bd. of Educ.*, 79 N.J. 407 (1979) (holding that two school board pregnancy-related policies—first, mandating maternity leave for tenured teachers, and second, disallowing the use of accumulated sick leave during maternity leave when such leave could be used for any other absence related to physical disability—were both a form of sex-based discrimination under the LAD and were therefore unlawful); *see also* United States Equal Employment Opportunity Commission, *Sex Discrimination* (2004), <https://www.eeoc.gov/laws/guidance/sex-discrimination>; American Civil Liberties Union, “Know Your Rights | Sex Discrimination,” <https://www.aclu.org/know-your-rights/sex-discrimination> (last visited June 10, 2024).

⁸⁰ “Cisgender” is a gender identity term used to describe a person whose gender assigned at birth (sometimes referred to as sex assigned at birth) matches their gender identity. For instance, if a person was assigned female at birth, and self-identifies as a woman or girl, that person is cisgender. All people, including cisgender people, express their gender in individual ways that may or may not reflect societal expectations.

⁸¹ This applies to individuals who are experiencing lactation or other pregnancy-related medical conditions made possible via medical intervention—such as individuals who did not give birth to a child but are nonetheless able to lactate and would therefore be entitled to the same accommodations as any other lactating employee. For example, a transgender woman employee using medical intervention to lactate for the child their partner birthed would be entitled to the same accommodations as any other employee who is lactating. *See* Ceylan Yeginsu, “Transgender Woman Breast-Feeds Baby After Hospital Induces Lactation,” *New York Times* (Feb. 2018), <https://www.nytimes.com/2018/02/15/health/transgender-woman-breast-feed.html?smid=nytcore-ios-share&referringSource=articleShare>.

⁸² N.J.S.A. § 10:5-12(a).

⁸³ 42 U.S.C. § 2000gg. The U.S. Equal Employment Opportunity Commission adopted regulations for the federal PWFA on April 19, 2024, to be effective June 18, 2024. 29 C.F.R. § 1636.

⁸⁴ 29 U.S.C. § 218d; PUMP Act, Pub. L. No. 117- 328, 136 Stat. 4459 (2022); United States Department of Labor, *Field Assistance Bulletin No. 2023-02* (2023).

⁸⁵ Under the federal PWFA, “covered employers” means private and public sector employers with at least 15 employees, Congress, Federal agencies, employment agencies, and labor organizations. 29 C.F.R. § 1636.2(b)(1).

⁸⁶ 42 U.S.C. § 2000gg; *see* 29 C.F.R. § 1636.