
Health-Related Rights and Resources



Office of Employee Advocacy





Who we are and how we help:

Employee Advocacy provides House employees with quality legal counsel, advice and representation in matters covered by the Congressional Accountability Act of 1995 to promote a productive Congressional workplace by upholding employee rights, minimizing distractions from personnel issues, and creating an environment free of harassment and discrimination.

Workplace Rights Laws Under The CAA

Of these 15 laws, several address matters related to mental health and related workplace accommodations.

- **Americans with Disabilities Act of 1990 (ADA)**
- Age Discrimination in Employment Act of 1967 (ADEA)
- **Family and Medical Leave Act of 1993 (FMLA)**
 - **Federal Employee Paid Leave Act of 2019**
- Employee Polygraph Protection Act of 1988 (EPPA)
- Occupational Safety and Health Act of 1970 (OSHA)
- **Rehabilitation Act of 1973**
- Worker Adjustment and Retraining Notification Act of 1989 (WARN Act)
- Genetic Information Nondiscrimination Act of 2008 (GINA)
- Federal Service Labor-Management Relations Statute
- Fair Labor Standards Act of 1938 (FLSA)
- Fair Chance to Compete for Jobs Act of 2019
- Title VII of the Civil Rights Act of 1964
 - **Pregnancy Discrimination Act of 1978**
- U.S. Code Chapter 43, Title 38/Uniformed Services Employment & Reemployment Rights Act
- Veterans Employment Opportunities Act of 1998 (VEOA)
- **Pregnant Workers Fairness Act of 2023**

Employee Advocacy Assists in Many Ways

Employee Advocacy attorneys are dedicated to identifying the optimal resolution of matters, which can take many forms.

- ❖ Consultation (information)
- ❖ Advice
- ❖ Ghost-writing
- ❖ Guidance for difficult discussions
- ❖ Informal negotiations
- ❖ Preparing claims for trial or administrative proceeding
- ❖ Litigating the claim before the Office of Congressional Workplace Rights
- ❖ Filing ethics complaints

We offer our services at no charge, and they are confidential and privileged.

Whether to proceed – and how – is completely up to you.

An employee is not required to take any particular action, or any action at all, if they come to Employee Advocacy.

- Employee Advocacy attorneys can provide advice and guidance. An employee can then decide whether they want to move forward toward seeking a resolution with their employer or not.
- Employee Advocacy is an optional resource, and every stage of working with us is voluntary.

The Family and Medical Leave Act (FMLA)

The FMLA entitles eligible employees to unpaid, job-protected leave for specified family and medical reasons.



Under the FMLA, Who is an Eligible Employee?

- **Employed by Congress for 12 months total, AND**
- **Worked for Congress 1,250 hours in the past 12 months.**



What does the FMLA provide to an Eligible Employee?

- **Up to 12 workweeks of leave each leave year for family and medical reasons**
- **Up to 26 workweeks of leave each leave year to care for a covered military member with a serious injury or illness**
- **Job Protection: employees cannot lose seniority, be demoted, be fired, or lose job-related health insurance.**



The FMLA also provides....



CONTINUATION
OF HEALTH
BENEFITS
UNDER THE
SAME
CONDITIONS AS
IF THE
EMPLOYEE DID
NOT USE FMLA
LEAVE



THE ABILITY TO
RETURN TO
WORK AT THE
SAME OR
VIRTUALLY
IDENTICAL JOB
AT THE END OF
THE LEAVE
PERIOD



PROTECTION
FROM
INTERFERENCE
OF THE
EMPLOYEE'S
LEAVE



PROTECTION
FROM
RETALIATION
FOR TAKING
LEAVE



THE OPTIONS
TO TAKE
CONTINUOUS,
PROLONGED
LEAVE;
INTERMITTENT
LEAVE (WITH
EMPLOYER'S
AGREEMENT);
OR A
COMBINATION
OF THE TWO.

Qualifying reasons:

General FMLA Provisions

- **The employee's own serious health condition (can be a physical or mental health condition)**
- **To care for a covered family member with a serious health condition**

Federal Employee Paid Leave Act

- **The birth of a child or placement of a child for adoption or foster care, and to bond with a newborn or newly-placed child**



Leave for a Personal or Family Health Condition

An employer may ask for **documentation** from a health care provider to support an employee's request for FMLA leave.

- There are FMLA medical certification forms to support a leave request for an employee's own serious health condition.
- There are also FMLA medical certification forms to support leave to care for a family member with a serious health condition.

Parental Leave Under FEPLA

Employees can take up to 12 weeks of paid leave during the year after a child's birth or placement.

FEPLA leave is available to all parents, without regard to gender or marital status.

The House employee simply must have **day-to-day parental responsibilities to care for or financially support the child.**



FMLA Leave for Family Health Conditions

A family member's mental or physical health condition -- such as depression, Alzheimer's, stroke, or severe diabetic neuropathy -- can take an enormous mental, emotional, and/or physical toll on the employee.

FMLA leave can serve to provide time for the employee to care for a loved one with a health condition **and** for themselves at the same time (it's not either/or).

Will I Be Paid While on FMLA Leave?

FMLA leave is generally unpaid.

EXCEPT when:

- **Employer elects to pay all or part of the FMLA leave**
- **Employee elects or is required to use accrued leave concurrently with FMLA leave**
- **Employee is receiving paid parental leave under the Federal Employee Paid Leave Act (FEPLA)**

Other FEPLA Differences

In addition to FEPLA parental leave always being paid, it differs from other FMLA leave by:

- **Having no tenure requirement**
- **Having no hours worked requirement**



CAO
CHIEF ADMINISTRATIVE OFFICER

The Americans with Disabilities Act (ADA):

1) Prohibits discrimination against employees with disabilities

2) Qualified employees with disabilities may receive “reasonable accommodations” to help them perform the essential functions of their jobs.



Who is a “qualified employee” under the ADA?

An employee who meets the legitimate skill, experience, education, or other requirements of the employment position that they hold, and who can perform the essential functions of the position with or without a reasonable accommodation.



Essential Functions under the ADA



An essential function of an employment position means the fundamental job duties of the employment position.

Incidental job duties or preferred modes of performance (e.g., “in person” or “while standing”), without more, are not essential functions.

Disabilities Under the ADA

What is a disability under the ADA?

- ❖ A physical or mental impairment that substantially limits one or more major life activities (*e.g.*, walking, sitting, seeing, hearing, breathing, concentrating, regulating bodily systems, regulating emotions, etc.).
- ❖ **Not all disabilities are readily apparent.**
 - Disabilities may include anxiety disorders, migraines, and digestive syndromes, mental health conditions, etc.

Even if an employee does not think of themselves as someone with a disability, many health conditions are “qualifying” conditions under the ADA.

- **For the purposes of the ADA, “disability” is defined broadly, and many conditions, including short-term and long-term health conditions, can qualify as a disability.**
- **“Disability” also includes mental health conditions. This includes conditions that don’t constitute “mental illness,” like ADHD, dyslexia, and neurodevelopmental conditions.**

What is a reasonable accommodation?

A reasonable accommodation is a change or adjustment to the work environment or how the job is customarily done that permits an employee with a disability who is qualified for the job to perform the essential functions of the job.

But what is “reasonable”?

- ❖ **“Reasonable” generally means “feasible” or “plausible,” or an accommodation that it is possible for the employer to provide without undue hardship.**



Examples of accommodations may include...

- **Modifications to workspace**
- **An adjusted work schedule**
- **Telework**
- **Leave**
- **Breaks according to individual need**
- **A service or comfort animal**
- **A deviation from standard office policy**
- **Modifications to managerial style**
- **Special equipment (e.g., environmental sound machines, increased natural light or full spectrum lighting, etc.)**



Reasonable Accommodations and the Interactive Process

You can **request an accommodation** by asking for a workplace adjustment **verbally or in writing**.

The employer will then engage in the “**interactive process**” and may ask for supporting healthcare documentation.

Employer can **accept** the request, **suggest** a different accommodation, or **deny** the request (e.g., because of “undue hardship”).

An **undue hardship** creates significant difficulty or expense for the employer. An employer may suggest a different accommodation or deny a request because of undue hardship.

The employee will not always receive the specific accommodation requested.

- “Reasonable” = feasible or plausible, and effective for the purpose
- An employer can propose alternative, feasible accommodations.
 - ❖ The employee can accept.
 - ❖ Or, the employee can respond again, because back-and-forth is appropriate and acceptable as part of the interactive process.
- “Reasonable” also = possible to provide without “undue hardship” to the employer.

Reasonable Accommodations in Practice

Is an employee locked into the reasonable accommodation they initially requested?

- No. The severity or limitations of a health condition can change.
- When an employee's condition changes, an employee can re-open the interactive process to find more workable accommodation solutions.



Intersection of the FMLA and the ADA

The ADA and FMLA can be complementary tools for employees seeking protected leave for health conditions.

- An employee may take leave under the FMLA and then, upon that employee's return from FMLA leave, obtain a reasonable accommodation under the ADA.
- FMLA leave can be all or part of a reasonable accommodation solution under the ADA.

Leave may be denied under the FMLA but may still be appropriate under the ADA as a reasonable accommodation, as “serious health condition” under the FMLA is defined more narrowly than the definition of “disability” under the ADA.

Health-related accommodations in the absence of a “disability”



The Pregnant Workers Fairness Act

Applies During and After Pregnancy



The PWFA gives qualified employees the right to ***reasonable accommodations*** for ***known limitations*** related to pregnancy, childbirth, or related medical conditions (unless it would impose an undue hardship on the operation of the employer's business).

PWFA Key Definitions

- “**Qualified employee**” is an employee or applicant who: (a) can perform the essential functions of the job with or without accommodation, **or** (b) who is *temporarily unable to perform an essential function* but will be able to in the near future, and the inability can be reasonably accommodated.
- “**Known limitation**” is a mental or physical condition related to pregnancy, childbirth, or related medical conditions that the employee has communicated to the employer.
- “**Reasonable accommodation**” is an alteration to the hiring process, the way the job is done, policies or practices, or the work environment that allows a person with a disability who is qualified for the job to perform the essential functions of the job.
- “**Undue hardship**” is a change which creates significant difficulty or expense for the employer.

Common Health Conditions and the PWFA

- Known limitations related to pregnancy include lifting limitations, depression, anxiety, fatigue, and mobility limitations.
- Limitations include post-pregnancy conditions, such as lactation problems and post-partum depression.

These known limitations may require employers to provide reasonable accommodations to its pregnant employees.

PWFA Protections Beyond the Americans with Disabilities Act

To be protected by the ADA, you must have a “disability” -- a physical or mental impairment that substantially limits one or more major life activities -- or be perceived as having a disability.

The PWFA does not require you to have a disability.

“Known limitation” is not the same as a “disability.”

Protections Beyond the ADA (continued)

Under the ADA, an employee is not excused from performing an "essential function" of their position as an accommodation.

In contrast, the PWFA allows pregnant workers to be temporarily excused from an essential function if:

- (a) the inability to perform an essential function is temporary,
- (b) the essential function could be performed in the near future, and
- (c) the inability to perform the essential function cannot be reasonably accommodated.



Some Parallels with the ADA

Similar to the ADA, an employer and employee will typically engage in an **interactive process to select a reasonable accommodation**, unless the appropriate accommodation can be provided without further conversation.

- It is the same interactive process detailed previously in this presentation.
- Some of the same accommodations discussed previously for persons with mental health conditions may apply to pregnant employees with known limitations related to pregnancy or childbirth.

PWFA Protections Related to Leave



If an employee is pregnant or has childbirth-related complications, and **can perform their job with reasonable accommodations**, under the PWFA the employee **cannot be required to use leave**.

The PWFA also prohibits:

- Requiring an employee to accept an accommodation without a discussion between the worker and the employer
- Denying a job or other employment opportunities to a qualified employee or applicant based on the person's need for an accommodation
- Interfering with any individual's rights under the PWFA
- Retaliating against an individual for reporting or opposing unlawful discrimination under the PWFA or participating in a PWFA proceeding (such as an investigation)

Post-Pregnancy Leave

- Post-pregnancy health conditions are another basis to take post-pregnancy leave. This is apart from FMLA leave to bond with the child under the Federal Employee Paid Leave Act provisions of the FMLA.
- Leave under the standard provisions of the Family and Medical Leave Act is available to address post-pregnancy serious health conditions.

Protection Against Discrimination and Retaliation

- **Employers are prohibited from discriminating against an employee because of their qualifying disability under the ADA or their pregnancy.**
- **Further, the CAA makes it illegal to retaliate against an employee because**
 - (1) they've sought and/or been granted health-related leave under the FMLA or the PWFA; or**
 - (2) they've sought and/or been granted accommodations for a disability or related to pregnancy.**

Other Health-Related Resources



Office of Employee Assistance

CAO | U.S. HOUSE OF REPRESENTATIVES



House Center for Well-Being

CHIEF ADMINISTRATIVE OFFICER



Office of Employee Assistance

The Office of Employee Assistance (OEA) offers **a variety of confidential support services** and resources to address the needs of individual employees and their family members, including supporting individuals through stressful and traumatic events.

OEA has a staff of licensed counseling professionals that provide comprehensive assessment, short-term supportive counseling, referral, and follow-up services for any personal or professional issue that generates distress or difficulties.

OEA is located in Room 140 of the Ford House Office Building and can be reached at 202-225-2400.

House Center for Well-Being

The House Center for Well-Being is a **comprehensive health and well-being platform** that provides a suite of lifestyle, behavioral change, early-intervention, and prevention programs.

The Center offers strategic solutions across the entire well-being spectrum, including:

- Fitness classes and nutrition support
- Educational workshops and seminars
- Mindfulness and meditation practices
- Stress management, resiliency, and sleep support

The Center is located in Room B222 of the Longworth HOB and can be reached at 202-225-0800.

Human Resources Offices

The Officer Offices of the House have designated Human Resources personnel who can facilitate health-related leave and accommodations.

These Offices include the Office of the Chief Administrative Officer (CAO), Office of the Sergeant at Arms (SAA), and Office of the Clerk (Clerk).

HR can identify the leave and accommodation forms that these employers require employees to complete, and they can assist the employer and employee on completion of the forms and achieving a decision on the health-related leave request or accommodation. HR can also investigate discrimination or retaliation concerns.

⁴¹
Employee Advocacy can assist during the HR process.



- Office of Employee Advocacy -

There are multiple avenues to obtain services regarding the laws discussed today.

- **Telephone:** 202-225-8800
- **Facsimile:** 202-225-8802
- **E-Mail:** Employee.Advocacy@mail.house.gov
- **Mail or Hand Delivery:** H2-377, Ford House Office Building
- **In-Person Consultation:** H2-377, Ford House Office Building
 - **By appointment to promote confidentiality**

Conclusion

The Office of Employee Advocacy is pleased to serve the House to achieve the best resolution of matters to promote a productive work environment for all House employees and House offices.