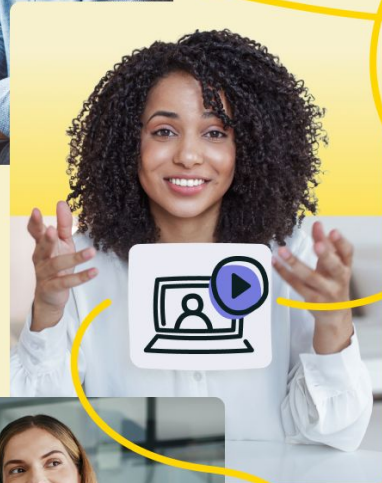


Larkin

ADA & PWFA at Work: Clarity for Complex Cases

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Presenters



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Larkin is recognized by SHRM to offer Professional Development Credits (PDCs) for SHRM-CP or SHRM-SCP recertification activities. This program has been approved for 1.0 recertification credit by the HR Certification Institute.

Discussion Points



PWFA

- Anticipated changes
- Review basics
- What we've learned
- Examples



ADA

- Data
- Why providing reasonable accommodation at work is a good idea
- Examples

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Anticipated Changes to PWFA

- EEOC now has a quorum
- Remove specific conditions from coverage, such as:
 - Menstruation
 - Infertility
 - Abortion
 - Menopause
- EEOC Acting Chair Andrea Lucas has stated,
“Menstruation, infertility, menopause, and the like are not caused or exacerbated by a particular pregnancy or childbirth – but rather the functioning, or ill-functioning, of the female workers’ underlying reproductive system.”





What About Menopause?

- Not specifically named in the PWFA regulation
- May or may not qualify for reasonable accommodation under PWFA
- Rhode Island - 1st state to address menopause
 - Effective June 24, 2025
 - Applies to job applicants & employees who are experiencing menopause and menopause-related medical conditions
 - No new possible accommodations on top of PWFA
 - Specifically mentions hot flashes; “the need to manage the effects of vasomotor symptoms”
 - Posting / notification requirement (located under Workplace Discrimination)
<https://dlt.ri.gov/employers/required-workplace-posters>

PWFA & ADA Comparison



Similarities

- At-work accommodations or leave as an accommodation for the individual's own medical condition
- Employer is obligated to engage in interactive discussion process
- Employer is obligated to provide reasonable accommodation, i.e., a change in the work environment or how things are usually done, absent undue hardship (significant difficulty or expense)
- No eligibility requirements - applies to applicants and all employees
- There is no set amount of time that is considered "reasonable"
- Same medical confidentiality rules apply



Differences

- Accommodation of last resort
 - Job reassignment (ADA)
 - Leave of absence (PWFA)
- Disability impairment (ADA)
- Limitation (PWFA)
- Do not remove essential job function (ADA)
- Remove essential job function (PWFA)
- No interim accommodation (ADA)
- Best practice to provide an interim accommodation (PWFA)
- Job protection to return to their original position (ADA)
- Job protection without specific job reinstatement clause (PWFA)

Pregnant Workers Fairness Act (PWFA)

Final Rule published April 19, 2024. Effective June 18, 2024

DOES NOT HAVE TO BE PREGNANT TO QUALIFY FOR REASONABLE ACCOMMODATION UNDER PWFA



Who is considered “Qualified”?

1. Like the ADA, an individual who, with or without reasonable accommodation, can perform the essential functions of the position
2. Must be able to perform all essential functions except that the inability to perform an essential function is temporary, and could be performed in the near future



What are some example limitations “Related to Pregnancy”?

- High blood pressure
- Anxiety
- Carpal tunnel syndrome
- Infertility treatment
- Lactation including breastfeeding & pumping
- Postpartum depression
- “Among other conditions”



What duration does the PWFA cover?

Pregnant

Approximately 40 weeks for each new accommodation request

Not Pregnant

Assess case by case. Examples in final regulation indicate 6 months or more could be reasonable

Pregnant Workers Fairness Act (PWFA)



Documentation Not Required

Seeking documentation is only permitted if reasonable under the circumstances

5 Times Seeking Documentation is NOT Reasonable Under the Circumstances

- The limitation (pregnancy) and the accommodation are obvious
- Lactation requests while in the office (with self-confirmation)
- The limitation and accommodations are already “known”
- Employer’s own policies or practices already support the request
- Predictable assessments



Predictable Assessments

- Carry water and drink, as needed, in the employee’s work area
- Take additional restroom breaks
- Change position when their work requires standing, to sit and when work requires sitting, to stand
- Take breaks, as needed, to eat and drink

Lactation Requests & Medical Documentation



Separate from Predictable Assessment List

Must be “reasonable under the circumstances” to request supporting documentation



Self Confirmation

A simple verbal or written statement in which employee confirms the limitation and adjustment or change that is needed at work due to the limitation



No Documentation

When the request is related to a time and/or place to pump at work

When the request is related to any other modification related to pumping at work



Yes Documentation

Lactating employee requests full-time remote work to nurse their infant

WFH Lactation Requests

A Senior Product Manager had a baby and returned to work. Shortly after returning, she requested to work from home because her baby would not take a bottle and she could only nurse her infant. She submitted a medical note stating: *“mother and infant would benefit from a work from home schedule.”*

“It is my medical opinion that my patient should be able to work remotely at this time due to the need to care for her daughter who is exclusively breast fed at this time. This recommendation will remain in place until her child is 12 months at which time alternative milk options would be more permissible.”

WFH Lactation Requests

The PWFA covers an employee's own condition/limitation. It would not cover an infant's condition or their inability to take a bottle.

KEY TAKEAWAY

Confirm with the healthcare provider if the employee may have their own limitation that requires a reasonable accommodation under PWFA

Engage in the interactive discussion process

- Is there a medical limitation of the mother that your advised accommodation to work from home is intended to support?
- Is there a medical limitation of the infant child that your advised accommodation to work from home is intended to support?

Lifting/Carrying/Gripping Restrictions

“Please consider allowing patient to work from home [for 3 months] as her symptoms are exacerbated with picking up/carrying objects and with gripping objects e.g., steering wheel for long period of time”

- Gripping steering wheel during commute
- Lifting and carrying laptop and breast pump to and from office, and to and from Mother’s Room



Bed Rest

An Analyst employee was placed on strict activity modifications requiring flexible breaks as needed. She was then hospitalized a few weeks later and placed on bed rest by her healthcare provider due to her high risk pregnancy. She holds a remote position, works independently, and expressed her desire to continue working from the hospital. Her manager confirmed that she is able to complete her work from her laptop. Her employer previously provided accommodations allowing her to take extra breaks as needed.



Employee can continue working while on bed rest because they both agreed to the accommodation.



PWFA – Prohibited Employment Practices

- Failure to make reasonable accommodation
- Require a qualified employee to accept an accommodation other than one arrived at through the interactive discussion process
- Deny an employment opportunity to a qualified applicant or employee because of a reasonable accommodation
- Require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided
- Take an adverse action in terms, conditions, or privileges of employment against a qualified employee on account of the employee requesting or using a reasonable accommodation under the PWFA

PWFA Takeaways

How might you support
employees in the workplace
under the PWFA?



Train supervisors about the PWFA and how to respond to a request



There are no “magic words” to request an accommodation and begin the interactive process



Consider that employees may need different accommodations while their pregnancy progresses – and after childbirth



The PWFA (non-exhaustive) list of possible, reasonable accommodations in addition to Predictable Assessments:

- Frequent breaks
- Sitting/Standing
- Schedule changes
- Telework
- Temporary removal of one or more essential job functions
- Making existing facilities accessible or modifying work equipment
- Acquiring or modifying equipment, uniforms, or devices
- LOA, if requested

Data



Costs of Accommodation

Job Accommodation Network
January 1, 2019 – December 31, 2023

- 56% reported no cost to implement
- 37% reported a one-time cost
 - Median \$300
- 7% reported ongoing costs to the employer
 - Median annual cost \$1,925

Benefits of Accommodation

Job Accommodation Network
January 1, 2019 – December 31, 2023

- Average length of employment 5 years and 9 months
- 66% requesting accommodation had a college associate degree or higher
- Most frequently mentioned direct benefits
 - Increased employee retention (85%)
 - Increased employee productivity (53%)
 - Increased employee attendance (48%)
- Most frequently mentioned indirect benefits
 - Improved interactions with co-workers (35%)
 - Increased overall company safety (29%)
 - Increased overall company morale (29%)

Society for Human Resource Management (SHRM)



Cost to replace employee:
50% to 200% of their annual salary

SHRM, "The Myth of Replaceability: Preparing for the Loss of Key Employees," By Regina Dyerly, January 21, 2025



A study by Executive Networks found that three quarters of chief human resource officers now say talent retention and attraction are their top priorities

SHRM Toolkit, "Improving Employee Retention and Reducing Turnover," September 11, 2024

Key reasons a focus on reducing turnover makes sense:

- Turnover is costly
- Unwanted turnover affects the performance of an organization
- As the availability of skilled employees continues to decrease, it may become increasingly difficult to retain sought after employees

DMEC 2023 Employer Leave Management Survey

“Since March 2020, nearly half of respondents, particularly those with 1,000+ employees and almost all industries, have seen the volume of mental health related leave requests increase. As the need for mental health resources continues to rise, more employers are linking mental health programs and benefits to the leave process. In 2023, there was a particular increase among employers with <100 employees (36% in 2023 versus 20% in 2021).”



DMEC 2025 Conference

Mental Health by Generation

Born 1997 - 2012	Born 1981 - 1996	Born 1965 - 1980	Born 1946 - 1964
Gen Z	Millennials	Generation X	Baby Boomers
• Prevalence: 91% • Contribution factors: social media, academic pressure, global issues like climate change • Preferred resources: digital, including online therapy, mental health apps, social media platforms for support • Willingness to seek help: high; they view it as a critical aspect of overall wellbeing	• Prevalence: 22% • Contributing factors: economic challenges (student debt, job market instability), social isolation • Preferred resources: utilize both traditional and online resources, telehealth, and mental health apps • Willingness to seek help: some stigma to seeking help, barriers to cost and access to care	• Prevalence: 20% • Contributing factors: balancing work and family, caring for aging parents, financial pressures • Preferred resources: traditional therapy and counseling. May use online resources. • Willingness to seek help: moderate stigma to seeking help	• Prevalence: 15% • Contributing factors: aging, health issues, loss of a loved one • Preferred resources: traditional forms of therapy and support of family and friends • Willingness to seek help: high stigma to seeking help

RTW Likelihood Drops Over Time

Duration of Leave	Likelihood of RTW
20 days	70%
6 months	50%
12 months	5%

Meanwhile,

80-90%

of injured employees would rather RTW
than remain on disability

Prudential and The American College of Occupational and
Environmental Medicine

What about leave of absence when medical provider says they can work?

Where two or more forms of accommodation are possible, employer can choose among effective accommodations

- LOA is not considered equally effective to a reasonable accommodation that keeps the employee working
- LOA is appropriate in situations when the individual cannot perform their job without accommodation and it will take time to implement the accommodation or there are safety concerns

<https://askjan.org/articles/Leave-as-an-Ineffective-Accommodation.cfm>
<https://www.eeoc.gov/foia/eeoc-informal-discussion-letter-50>

Find a Way to Say “Yes.”

Employers with strong stay-at-work / RTW programs report:



20-50%
shorter disability durations



25-60%
cost reductions

IBM reported saving \$21.8M in one year through early accommodation and reintegration strategies.

(DMEC and Integrated Benefits Institute)

Examples



Shortened LOA

A Care Specialist was on an intermittent leave of absence from 2023 - 2024 for acute back pain. They weren't recovering and the healthcare provider advised a 3 month continuous leave due to restrictions of no standing, lifting, bending, twisting, and turning for a long period of time.

The employer stated that the role does not require standing, bending, or twisting for long periods of time and that the employee may switch positions as needed while working at home.

The employer offered a lie flat laptop stand as an alternative so the employee could continue working.

A clarification letter was sent to the healthcare provider to confirm if a lie flat laptop would meet the employee's restrictions and allow them to work. The healthcare provider confirmed the alternative would be adequate plus intermittent leave for flare ups.

Lie Flat Laptop



Outcome

The employer granted a temporary continuous leave while the interactive discussion process occurred. Then, they granted a lie flat laptop stand and intermittent leave so employee could return to work.

KEY TAKEAWAYS

- Shortened a request for 3 months of continuous leave to 1 month
- Significantly less impact on coworkers
- Inexpensive solution

Extended LOA Due to Mental Health

An Analyst was hired in 2022. The department had 4 people including this employee. In 2025 the employee was approved for the full 12 weeks of medical leave, which exhausted FMLA and CFRA. They requested an extension, and it was realized during the interactive discussion process that the employee was experiencing severe anxiety, panic attacks and depression. The request was for an additional 13 weeks of leave.

In the end, the additional 13 weeks of leave was approved but not before the employer closely evaluated the impact of the leave on the coworkers, the fact that before the leave began the employee was only doing 40% of his work, and how this lower workload before going on leave would make asking if the employee could return to work on a reduced schedule or intermittent leave ineffective.

Employee returned to work full duty at the end of the leave extension.

KEY TAKEAWAY

Employer relied on the health care provider's statement that they were "very certain" the patient would be able to return to work and perform the essential functions of their job following the leave extension.

Medical Documentation – Second Opinions



Medical documentation - employers may make disability related inquiries and require medical examinations only if they are **job related and consistent with business necessity** (if currently employed)

Reasonable belief based on objective evidence that either:

1. An EE's ability to perform essential functions of their job will be impaired by a medical condition, *or*
2. An employee will pose a direct threat to themselves or others due to a medical condition

Second opinions - only if no or insufficient documentation has been received

Obvious Disability

An engineer who uses bluetooth hearing aids requested a new laptop that supports connection with their hearing aids. The employee had worked around the issue by using over the ear headphones on top of the hearing aids for calls and meetings. This workaround no longer worked when their hearing aids shut off due to bluetooth interference with the headphones and caused communication issues in their customer facing role. Newer models of laptops support direct connection of bluetooth hearing aids, which would solve the issue.



Outcome

Human Resources looped in IT so the employee could communicate directly with them to confirm the current laptop was incompatible with the hearing aids. IT confirmed it and employee received a new, compatible laptop.

KEY TAKEAWAY

Ensure the process moves smoothly by communicating and following up with other departments as needed, until a solution is implemented.

Extra Breaks

Employee had a long term need for extra breaks, which were approved long term. The request was for up to 45 minutes per day, up to 10 minutes per break. The extra breaks were unpaid, and employee asked if there was a way to be paid. Employer offered for her to extend her workday to make up for time missed due to the breaks. Employee decided to not work longer and accepted the time as unpaid.

KEY TAKEAWAY

The ADA does not require paid breaks beyond what similarly situated employees receive. It is acceptable to extend the employee's work hours to make up the time taken for extra breaks.

Long Term Request for Quiet Time

Request

Extend approved accommodations during recovery from a concussion, long term

- Avoid high traffic, high stimulation areas
- Limit time in open-office seating arrangement

Approved

First, a 30 day trial period was approved

- Work where she wants including in privacy rooms or other desks when not needed at reception
- Expectation set that 20-30% of her time was needed a reception

Once confirmed effective for employee and employer, approved long term

Key Takeaways

- Set expectations
- Be open to trial
- Approve long term, for the duration the employee holds the current position with a caveat that should the approved accommodation(s) become ineffective or unreasonable for either party then the interactive discussion process will occur to identify alternatives

At-Work Mental Health

There were three separate leaves of absence between 2018 and 2023 for mental health reasons.

In 2023 employee submitted a permanent restriction of not taking inbound calls for her entire shift, 5 days a week and not using the telephone as a means of communication. Employer was able to approve not being on phones because there were other communication modes she could do like emails and chats. Part of the role required regular shift changes.

In 2024 when she was prescribed new medication, she requested an accommodation to have a set shift to deal with the effects of the medication. The employer was able to offer an alternative shift to what she requested with two consecutive days off during the week, which the employee accepted. This was a temporary shift assignment because the standard practice is to have employees in this role regularly change their shift to cover business needs.

At-Work Mental Health

However, in early 2025 it turned out that the need for a set schedule was medically advised as a long term accommodation as a coping mechanism.

That's difficult for this employer because employees bid for their shifts based on seniority. Their system allows some flexibility with work time but not necessarily the days off. With clarification from the health care provider, they were able to change the shift temporarily and then the employee was able to keep that shift by winning it in the shift bid. She will reach out again for assistance with accommodations if and when her accommodation needs change.

KEY TAKEAWAY

Employee needs for accommodation can be ongoing and can change. Use the interactive process to identify and approve reasonable and effective accommodations as needs change to retain the employee.

RTW with Long Term Accommodations

Initially requested:

- No business travel (work from home only)
- Regular breaks throughout the day
- Avoidance of back-to-back meetings
- Dedicated time during the workday to review transcriptions and plan product strategy
- One no-meeting day per week
- No meetings on Friday afternoons
- Time off for medical visits

RTW with Long Term Accommodations

Functional limitations:

- Sustained focus and cognitive processing during extended periods of meetings and multi-tasking
- Processing and recalling information in real time during meetings without support tools
- Rapid transitions between meetings/tasks increases fatigue and decreases performance quality
- Limited ability to maintain concentration in high-stimulus or noisy environments
- Cognitive overload due to interruptions, excessive stimuli, or lack of predictability

Clarification responses:

- Full time remote work
- Meeting-free full day once per week, plus one additional meeting-free half day per week
- Reduced number of meetings per day
- Transcription tool access (live meeting transcription)
- Protected work blocks of 15-30 minutes between meetings
- Low-interruption schedule with flexibility for pacing
- Quiet, low-distraction work environment

RTW with Long Term Accommodations



KEY TAKEAWAYS

- It is acceptable to engage in the interactive process in advance of a person's scheduled RTW date if the limitations and need for accommodation is known
- Communicate directly with the employee
- If unsure if a requested accommodation will be reasonable and effective, grant it on a trial basis and evaluate how it actually works
- Document, Document, Document

Final Thoughts



Accommodation requests for invisible disabilities related to mental health needs are increasing



Accommodations will NOT be something that is already customarily done



Maybe the answer is yes, maybe it's no. You have to go through and document the interactive process to at least discuss the request and possible alternatives



Defenses that don't work against an accommodation claim:

- "That's not our policy."
- "If we do it for one, we have to do it for all."
- "We don't want to set a precedent."
- "We are worried about the impact on morale."

Resource: Suggestion for Employer

Subject Fostering a Respectful and Inclusive Workplace

I want to take a moment to thank each of you for contributing to a positive, respectful, and inclusive work environment. We're all unique individuals with different strengths, work styles, responsibilities, and life experiences — and that diversity makes our team stronger.

You may notice that colleagues have different schedules, work locations, or break routines. These differences may reflect individual roles, approved accommodations, or personal needs — including those related to health, disability, caregiving, or other important factors. Respecting these differences helps ensure everyone has the opportunity to do their best work.

We also come from a wide range of cultural, political, and religious backgrounds. While we may not always share the same views, it's important that we approach our differences with kindness, professionalism, and a commitment to supporting one another.

If you ever have questions or concerns, I encourage you to bring them directly to your manager or HR. Open, respectful dialogue is key to maintaining a workplace where everyone feels valued and heard.

Thank you for all that you do. Your contributions make this a great place to work.

Warm regards,

Resources

- <https://thelarkincompany.com/ada-untangled-your-guide-to-confident-compliance/>
- https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2021/07/Request-For-Reasonable-Accommodation-Package_ENG.pdf
- <https://www.eeoc.gov/eeoc-resources-mental-health-conditions-enforcement-guidance>
- <https://askjan.org/>
- EEOC Final Rule and Interpretive Guidance: Implementation of the PWFA
- <https://dlt.ri.gov/employers/required-workplace-posters>
- <https://askjan.org/publications/consultants-corner/Recertifying-the-Ongoing-Need-for-Accommodation.cfm>
- <https://askjan.org/articles/Leave-as-an-Ineffective-Accommodation.cfm>
- <https://www.eeoc.gov/foia/eeoc-informal-discussion-letter-50>
- <https://www.eeoc.gov/laws/guidance/enforcement-guidance-disability-related-inquiries-and-medical-examinations-employees>

Questions?

→ Current clients

Reach out to your Client Success Manager.
If you aren't sure who to reach out to, email us
at client_success@thelarkincompany.com

→ Prospects

Reach out to sales@thelarkincompany.com



Thank you

