

What to Expect When Your Employees Are Expecting:

A Look at the EEOC's Latest Guidance and the Evolving Legal Landscape Concerning the PWFA

January 28, 2025

Littler Compliance **HR**



Today's Webinar Host



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Compliance **HR**



PolicySmart™

Create and maintain an up-to-date and legally compliant employee handbook



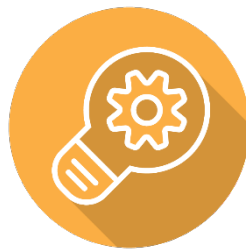
Navigator Independent Contractor

Remove risk in determining Independent Contractor status



Navigator Overtime

Determine if an employee is exempt or non-exempt



The Reference Center

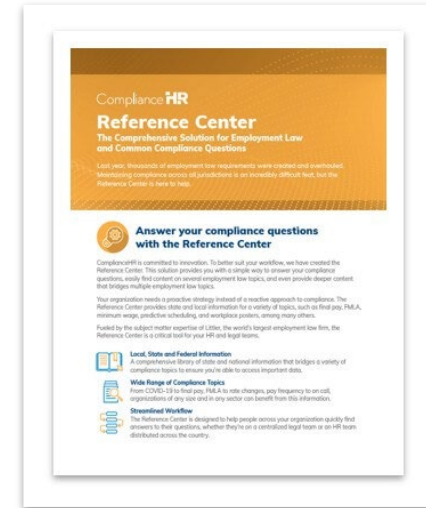
A Comprehensive Solution for Employment Law and Common HR Compliance Questions



The Document Center

Efficiently generate state and federal compliant documents throughout the employee lifecycle

Our Most Popular Solutions



PolicySmart provides you with:

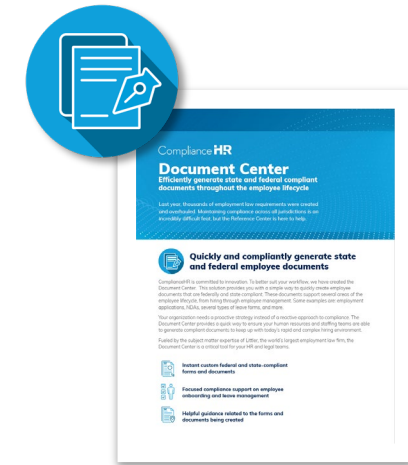
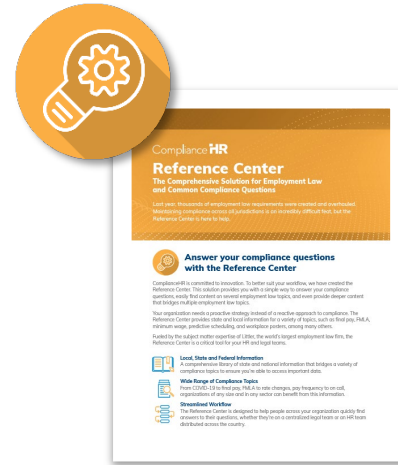
- Federal and state-compliant templates
- Innovative compliance timeline
- Handbook policy checklists
- Automated twice monthly legal update emails

The ComplianceHR Reference Center provides you with:

- Local, state and federal information
- Streamlined workflows
- Wide range of compliance topics
 - o Leave, final pay, FMLA, minimum wage, and more

When coupled, these two solutions provide you with comprehensive compliance program support

HR Leave Essentials



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The Document Center supports:

- Instant custom federal and state-compliant forms and documents
- Focused compliance support on employee onboarding and leave management
- Helpful guidance related to documents created

Sign Up for a Demo

Three ways to sign up for a demo:

1. Reply “Yes” to the on-screen poll
2. Visit our website: [Compliancehr.com](https://compliancehr.com)
3. Email our team at demo@compliancehr.com

Benefits of a custom demo:

- Discuss your organization’s requirements/challenges
- Review Navigator Suite Solutions
- Share compliance methodologies

ComplianceHR Demo & Free Trial:

<https://compliancehr.com/webinar-demo/>

Resources

[Compliance HR - Demo & Free Trial](#)
[State-by-State CLE Guide](#)
[BeaconLive - How to Access Certificates](#)

More Information About ComplianceHR's Leave Support

Pregnancy Accommodations Under the Federal Pregnant Workers Fairness Act

In addition to the accommodations provided under California law, [Company Name] complies with the federal Pregnant Workers Fairness Act ("PWFA") by providing reasonable accommodations for known physical or mental limitations related to the pregnancy, childbirth or related medical conditions of a qualified applicant or employee, unless the accommodation would impose an undue hardship on the operation of the Company's business. "Known physical or mental limitations" are those that the applicant, employee or their representative has communicated to the Company.

Employees or applicants who wish to inform the Company of such a limitation and/or request a reasonable accommodation under this policy should contact their Human Resources representative [or insert name/contact details for appropriate company representative or department], preferably specifying in writing, what barriers or limitations prompted the request. Human Resources will evaluate information provided regarding any reported or apparent barriers or limitations and will then communicate with the applicant or employee and engage in an interactive process to determine the nature of the limitation and what, if any, reasonable accommodation(s) may be appropriate. If, through this interactive process, the Company and the individual arrive at a reasonable accommodation to the Company's business operations...

The Company will accommodate...

The Company provides reasonable accommodations for known physical or mental limitations related to the PWFA or take any action to oppose, discriminate, or retaliate against an individual who has requested or used a reasonable accommodation, or who has filed a complaint or participated in a proceeding regarding an alleged violation of this policy, unless the individual believes that not providing the accommodation would result in retaliation should...

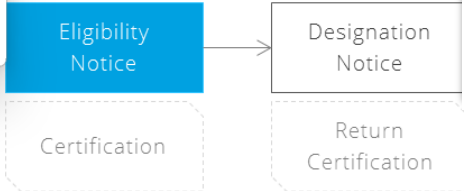
Navigator Leave

Welcome to Navigator Leave

This application generates and provides guidance regarding the forms that are used in the management process. Each form is compliant with the federal Family and Medical Leave Act and state laws that mirror the FMLA.

Select the type of form you're interested in creating.

- Notice of Eligibility
- Request for Leave**
- Notice of Eligibility
- Employee Health Certification
- Family Health Certification
- Military Caregiver Leave
- Military Emergency
- Designation Notice
- Return to Work Certification



PAID SICK LEAVE REPORT

REPORT OVERVIEW

This report provides an overview of the current and future laws within states, counties, and cities that generally require non-governmental contractor private employers to allow employees to accrue and use paid sick leave (PSL) and/or paid time off (PTO).

Certain exceptions and industry-specific minimum wage standards apply.

[More Information](#)

Arizona

- > Coverage
- > Permitted Uses
- > Accrual and Cash Out
- > Posting and Recordkeeping
- > Miscellaneous

California

- > Coverage
- > Permitted Uses
- > Accrual and Cash Out
- > Posting and Recordkeeping
- > Miscellaneous

Navigator Leave

General Requirements

The entire federal Family and Medical Leave Act applies in states that do not have their own family and medical leave statutes. Parts of the federal FMLA will apply in states that have family and medical leave statutes that are less stringent than the federal FMLA or are silent on particular subjects.

Requirements for California

The requirements for employees in California are listed below. You can view the requirements by clicking on the category names.

> Coverage and Eligibility

[Employer Coverage](#) [Employee Eligibility](#)

Employer Coverage

Federal

Family and Medical Leave Act (FMLA)

Employers who employ 50 or more employees in 20 or more workweeks in the current or last calendar year. [Jointly employed](#) employees must be counted by both employers in determining employer coverage and employee eligibility, regardless of whether the employee is on one or both of the employers' payrolls.

State

California Family Rights Act (CFRA)

The CFRA covers all employers with 5 or more employees, including successors-in-interest and joint employers. The employees do not all need to work in California.

Pregnancy Disability Leave

Employers of five or more employees must grant leave to eligible female employees disabled by pregnancy, childbirth or related medical conditions.

Bereavement Leave

Employers with five or more employees are covered under the law.

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Our Focus

- Pregnant Workers Fairness Act
- Interplay with Other Leave and Accommodations Laws
- The Legal Landscape
- Business Needs and Risk Mitigation




What's the PWFA, Anyway?

What Does the PWFA Do?

Requires employers to make reasonable accommodations for qualified employees and applicants affected by pregnancy, childbirth, or related medical conditions.



Requires an interactive process between employers and qualified employees and applicants to determine appropriate reasonable accommodations.



Intends to prevent employees from being forced out on unpaid leave or out of their jobs.

Who's Covered?

Qualified Employee:

- An employee or job applicant who can perform the essential functions of the employment position, **except** that an employee or applicant shall be considered qualified if—
 - Any inability to perform an essential function is for a temporary period;
 - The essential function could be performed in the near future; *and*
 - The inability to perform the essential function can be reasonably accommodated.

Covered Employer:

- Applies to employers with 15 or more employees.

Known Limitation:

- Physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or the employee's representative has communicated to the employer, whether or not the condition meets the definition of disability under the ADA.

Is it PWFA? Is it Not?

- Mary is experiencing fertility issues and needs time off for fertility appointments and treatment
- Susan has been experiencing fatigue and “hot flashes” because she is entering menopause
- Laurie welcomed a baby and after 12 workweeks of leave, she wants to return to work but finds her baby will not take a bottle. She asks to work from home
- Jane suffers mild cramps and fatigue every month with her cycle. She asks to not have to lift more than 10 lbs. when she is menstruating and for 2 days before she begins menstruating

Defining “Pregnancy, Childbirth and Related Conditions”

Current Pregnancy

Past Pregnancy

Potential
Pregnancy

Lactation including
breastfeeding or
pumping

Contraception

Menstruation

Infertility and
Fertility Treatment

Endometriosis

Miscarriage

Stillbirth

Abortion

No Level of Severity Required

- Remember that the PWFA is meant to reach conditions that
 - Are modest, minor or episodic
 - Do not rise to the level required to be a disability under the ADA



“Temporary” Elimination of Essential Function(s)?

- PWFA does not disqualify those who temporarily cannot perform one or more essential job functions, if (i) they expect to be able to perform them in the near future and (ii) the temporary inability can be reasonably accommodated

“Temporary” Elimination of Essential Function(s)?

- Final Rule:
 - “temporary” = not permanent, could last longer than “in the near future”
 - “in the near future” = generally 40 weeks with respect to a current pregnancy, and case by case with respect to childbirth and other conditions; not indefinite
 - Postpartum LOA does not count in the calculation of how long the function must be waived; employer must renew the analysis when the employee returns to work

Are You On Notice of the Need for an Accommodation Under PWFA?

- Julie is absent without notice. Two hours into her shift, her significant other calls Julie's supervisor to say Julie fainted and the doctors have stated she is experiencing fatigue.
- Mary is 7 months pregnant and twice this week her supervisor found Mary sleeping at her desk. This is unusual behavior for Mary.
- Carmen comes into HR and hands in a doctor's note saying she is pregnant with an expected due date of March 20, 2025 and will need leave to bond with her baby.

Notice of Need for Accommodation

- Can be conveyed verbally or in writing – to a broad range of employer representatives
- Should be a “simple process”
- Identify limitation and need for accommodation – no magic words required
- Union representative can provide notice on employee’s behalf, along with family member, friend, HCP or other representative

What's Reasonable Documentation?

The minimum sufficient to:

- Confirm the physical/mental condition underlying the employee's limitation
- Confirm that it is related to, affected by, or arises out of pregnancy, childbirth, or related condition(s)
- Describe how the requested change or adjustment is needed due to the limitation

What is Not Reasonable Documentation?

Employers **may not** seek supporting documentation when:

- The limitation and need for a reasonable accommodation is obvious;
- The employer already has sufficient information to support a known limitation related to pregnancy;
- The request is for one of the four “predictable assessment” accommodations;
- The request is for a lactation accommodation **at work**; or
- Employees who do not have known limitations under the PWFA receive the requested modification under existing employer policy or practice without submitting documentation.

“Predictable Assessments”

- Allowing an employee to carry or keep water and drink, as needed, in or nearby the employee’s work area;
- Allowing an employee to take additional restroom breaks, as needed;
- Allowing an employee whose work requires standing to sit, and vice versa, as needed;
- Allowing an employee to take breaks, as needed, to eat and drink.

Undue Hardship

- Reasonable accommodation is not required where it would impose an undue hardship on the employer's business operations.
- Undue hardship means the accommodation would fundamentally alter the nature or operation of the business or is unduly costly, extensive, substantial, or disruptive.



Undue Hardship Factors

- The **nature and net cost** of the accommodation.
- The overall **financial resources** of the employer.
- The **number of employees** employed by the employer.
- The **number, type, and location** of the employer's facilities.
- The employer's **operations**, including:
 - composition, structure, and functions of the workforce; and
 - geographic separateness and administrative or fiscal relationship of the facility where the accommodation will be provided.



Interaction with Other Laws

PWFA Does Not Exist in a Vacuum

- FMLA

If an employee covered by PWFA is eligible for FMLA and the employee needs leave (continuous or intermitted) FMLA still applies.

MYTH: I am pregnant and need time off because of symptoms but want to reserve my 12 weeks of FMLA for bonding leave. Employer has to give me time off and not count it toward FMLA.

What if the employee utilized the entire leave entitlement under FMLA before the baby was born?

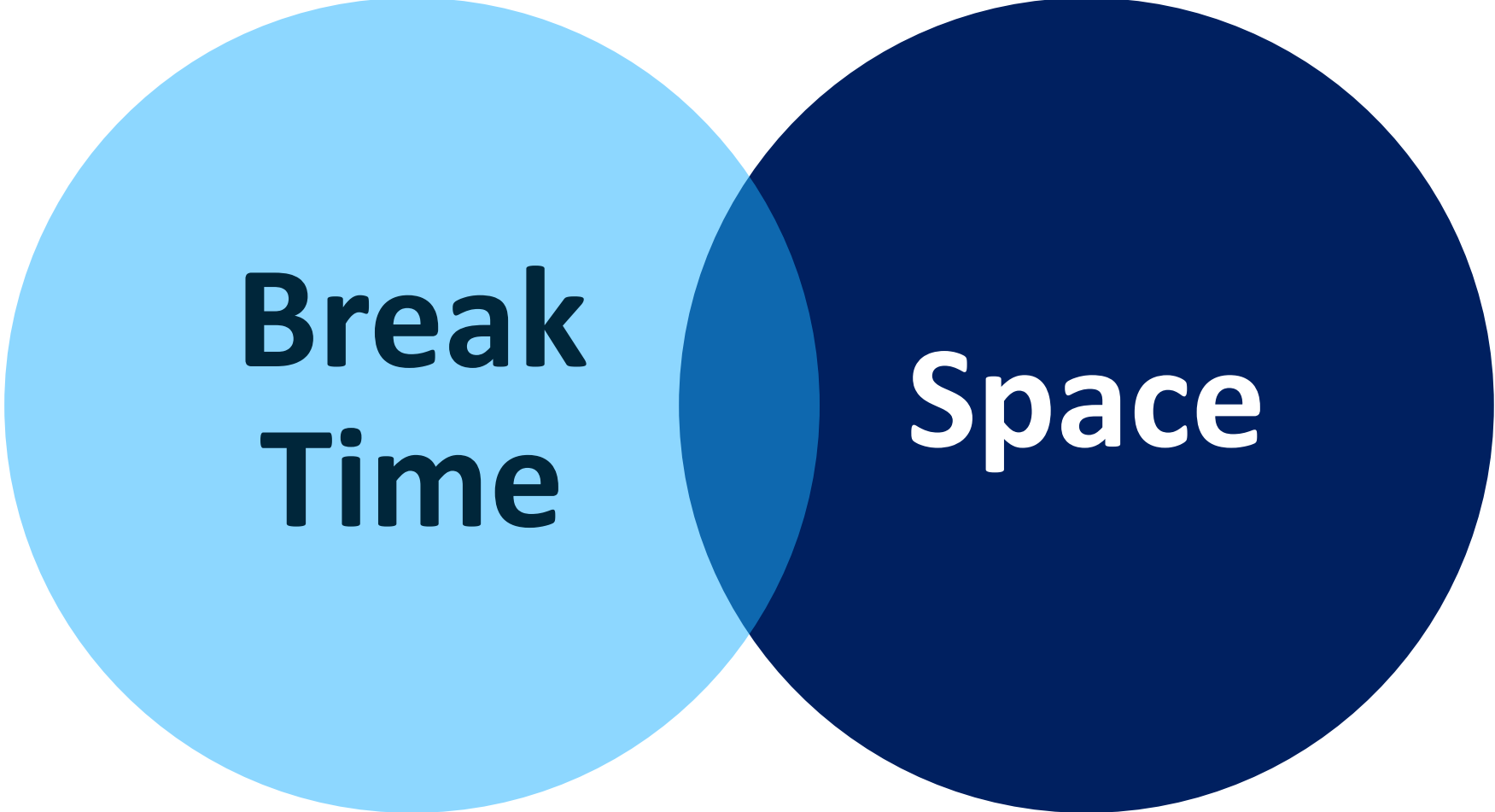
What About the ADA?

- There is a lot of overlap but PWFA and ADA are not the same.



What about the PUMP Act?

Two key components:



**Break
Time**

Space



Legal Landscape

EEOC-Initiated Lawsuits

- EEOC has started filing lawsuits alleging violations of the PWFA. The law will continue to develop and 3-5 years from now we will have more cases from which to draw examples and learning opportunities.



What the EEOC is Focusing On

Failure on the Employer to Respond to a Request for Accommodations. *See, e.g., EEOC v. Kurt Bluemel, Inc.*, No. 1:24-cv-02816-JKB (D. Md. Sept. 30, 2024).

Forcing Employee to Take Leave Without First Exploring Other Accommodations. *See, e.g., EEOC v. Wabash Nat'l Corp.*, No. 5:24-cv-00148-BJB (W.D. Ky. Oct. 10, 2024). *See also EEOC v. Urologic Specialists of Oklahoma, Inc.*, Case 4:24-cv-0452 (N.D. Okla. Sept. 25, 2024)

Terminating Employee When There Was a Date Certain by which Employee Court Return. *See, e.g., EEOC v. Castle Hills Master Association Inc.*, No. 4:24-cv-00871 (W.D. Tex. Sept. 30, 2024)

Terminating Employee for Pregnancy Symptoms Even Though Doctor Said OK to Work. *See, e.g., EEOC v. Gracious, LLC*, No. 24-cv-00219 (E.D. La. Feb. 16, 2024).

Refusing to Hire Because Candidate is Pregnant. *See, e.g., EEOC v. Dallas Barber and Stylist College Incorp.*, No. 3:24-cv-02296-S (N.D. Tex.)

Not Accommodating Pumping Breaks Upon Return to Work. *See, e.g., EEOC v. Urologic Specialists of Oklahoma, Inc.*, Case 4:24-cv-0452 (N.D. Okla. Sept. 25, 2024)



Business Considerations

Risk Tolerance



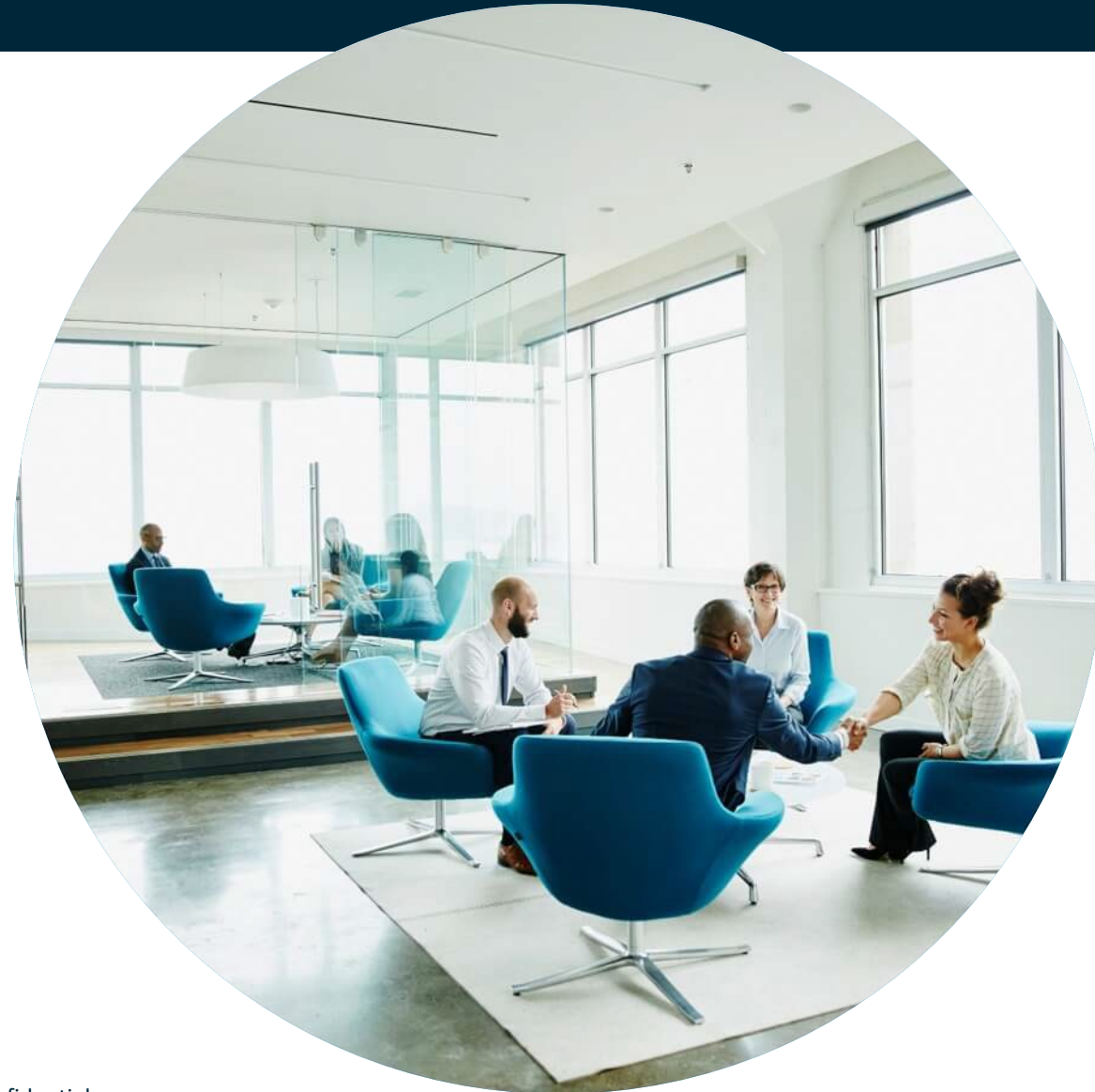
- What is the organization's risk tolerance?
 - How important is it for the company to stand its ground despite consequences?
- Is your decision fully informed?
Have you consulted with in house and/or outside counsel to make sure you have a full picture of what comes next?

Risk Mitigation

- Regardless of risk tolerance, you should have risk mitigation measures in place.
 - Do you have the right policies in place?
 - Have you made any changes to account for the PWFA?
 - Have the appropriate employees (managers and HR) been trained on those policies?
 - Have you fully exhausted the interactive process by considering all alternatives?
 - Have you prepared the appropriate documentation?
 - Will you be able to explain/support your decision?

Business Needs

- Law is just one aspect of the equation. Your business' needs need to be accounted for and will inform your risk tolerance. You may even want to proceed with an imperfect solution because the impact to the business outweighs the legal risks.



Employer of Choice

- Do you want to only do what the law requires, or do you want to go above and beyond?
- How are your policies and culture helping you attract talent and how will individual decisions impact the way you are viewed internally and externally?



Homework

- Review and analyze your policies for compliance
- Review and analyze your accommodations forms
- Provider refresher training or implement trainings if you have never trained HR on these topics
- Do not forget about the importance of management training
- Stop and consult before separating a pregnant employee or one who has recently returned from leave

Sign Up for a Demo

Three ways to sign up for a demo:

1. Reply “Yes” to the on-screen poll
2. Visit our website: [Compliancehr.com](https://compliancehr.com)
3. Email our team at demo@compliancehr.com

Benefits of a custom demo:

- Discuss your organization’s requirements/challenges
- Review Navigator Suite Solutions
- Share compliance methodologies

ComplianceHR Demo & Free Trial:

<https://compliancehr.com/webinar-demo/>

Resources

[Compliance HR - Demo & Free Trial](#)

[State-by-State CLE Guide](#)

[BeaconLive - How to Access Certificates](#)

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Questions?

This information provided by Littler is not a substitute for experienced legal counsel and does not provide legal advice or attempt to address the numerous factual issues that inevitably arise in any employment-related dispute. Although this information attempts to cover some major recent developments, it is not all-inclusive, and the current status of any decision or principle of law should be verified by counsel.

Fueled by ingenuity.
Inspired by you.®



Thank You



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