

# Scheduling Recommendations During Pregnancy, the Postpartum Period, and Parental Leave

## **Background:**

Emergency physicians work in hospital settings that provide patient care at all hours of the day, which necessitates shift work and overnight hours. Literature has shown that working nights can lead to pregnancy complications. These include miscarriage, preterm labor, hypertensive disorders of pregnancy, intrauterine growth restriction, and pre-eclampsia.<sup>1-7</sup> In addition, the post-partum period is crucial for establishing an infant-parent relationship, breastfeeding and mental health. Returning to work emerges as a top reported reason for breastfeeding cessation.<sup>8</sup> Despite high rates of breastfeeding initiation, physicians often have early cessation of breastfeeding which may be due to barriers like protected time and dedicated pumping space.<sup>9-11</sup> Resident physicians are more likely than attending physicians to stop breastfeeding early.<sup>14</sup> Despite recognizing these risks, no national standards exist for flexible scheduling for pregnant or postpartum physicians.

## **What does the law say?**

### [The Family and Medical Leave Act of 1993 \(FMLA\)](#)

What is FMLA?

- Law that entitles eligible employees to take unpaid job-protected leave for specified family and medical reasons with continuation of group health insurance coverage

What does FMLA cover?

- Under the regulations, a mother can use 12 weeks of FMLA leave for the birth of a child, prenatal care, and incapacity related to pregnancy. A secondary caregiver can use FMLA leave for the birth of a child and to care for their spouse who is incapacitated.
- In order to be eligible for leave under FMLA, an employee must
  1. Work for a covered employer
  2. Work 1,250 hours during the 12 months prior to the start of leave
  3. Work at a location where 50 or more employees work
  4. Have worked for the employer for 12 months (not required to be consecutive)

### [The Americans with Disability Act \(ADA\)](#)

What is the ADA?

- Law that protects employees from discrimination based on disability

- Note that pregnancy is not considered a disability by ADA, but some pregnancy-related conditions may be covered under the law

### [The Pregnancy Discrimination Act of 1978 \(PDA\)](#)

What is PDA?

- An amendment to [Title VII of the Civil Rights Act of 1964](#) to prohibit sex discrimination on the basis of pregnancy
- Under this law, employees are protected from discrimination based on pregnancy, childbirth or related medical conditions

### [Pregnant Workers Fairness Act \(PWFA\)](#)

What is the PWFA?

- New law passed on June 27, 2023 that requires covered employers (private and public sector employers with at least 15 employees) to provide “reasonable accommodations” to a worker’s known limitations related to pregnancy, childbirth or related medical conditions, unless the accommodation will cause the employer an “undue hardship”.

What are some examples of “reasonable accommodations”?

- The House Committee on Education and Labor Report on the PWFA provides several examples of possible reasonable accommodations including the ability to sit or drink water; receive closer parking; have flexible hours; receive appropriately sized uniforms and safety apparel; receive additional break time to use the bathroom, eat, and rest; take leave or time off to recover from childbirth; and be excused from strenuous activities and/or activities that involve exposure to compounds not safe for pregnancy. Employers are required to provide reasonable accommodations unless they would cause an “undue hardship” on the employer’s operations. An “undue hardship” is significant difficulty or expense for the employer.

### [PUMP Act](#)

What is the PUMP Act?

- The PUMP for Nursing Mothers Act (“PUMP Act”) was signed into law December 29, 2022.
- Under the Fair Labor Standards Act (FLSA), most nursing employees have the right to reasonable break time and a place, other than a bathroom, that is shielded from view to express breast milk while at work. This right is available for up to one year after the child’s birth.

### [Recommendations regarding scheduling and lactation](#)

We believe that thoughtful scheduling should benefit all members of the department and recognize that these recommendations may present some scheduling challenges. Schedulers should consider an institution's human resource guidelines and corresponding school of medicine guidelines for students when developing a schedule both fair to the group and in support of pregnant physicians and new parents. A survey of EM program directors found that most were in favor of making schedule adjustments to accommodate pregnant resident physicians.<sup>16</sup> Sites may consider creative scheduling, distributing shifts amongst existing physicians, or help from per diem physicians.

<p>Recommendations for pregnant physician in regards to clinical scheduling <sup>12, 13</sup></p>	<ul style="list-style-type: none"> <li>- Pregnant physicians should not be scheduled for nights or 24 hour shifts during the first 13 weeks of pregnancy (first trimester) or from weeks 27 and beyond (third trimester) unless they would prefer this schedule.</li>   <li>- In the event of staffing shortages, pregnant physicians in the third trimester should have the option to remain exempt from working over contracted hours.</li>   <li>- Scheduling for pregnant physicians in the third trimester should prioritize easily cancellable/coverable shifts to minimize departmental disruption in the event of medical necessity or early delivery.</li> </ul>
<p>Recommendations for breastfeeding physician in regards to scheduling <sup>10</sup></p>	<ul style="list-style-type: none"> <li>- Creative scheduling should be allowed/encouraged to allow for adequate time for pumping during shifts for 1 year after birth.</li>   <li>- Physicians should be provided with a dedicated space to pump on shift. Features of this space should include: <ul style="list-style-type: none"> <li>o Located in the Emergency Department <ul style="list-style-type: none"> <li>o Door lock and signage to indicate occupied room</li> <li>o Available sink, refrigerator, comfortable chair, power outlets, telephone, computer with internet access and access to electronic medical record</li> </ul> </li> </ul> </li> </ul>
<p>Recommendations for physician parent returning to the workforce <sup>10, 13</sup></p>	<ul style="list-style-type: none"> <li>- Physicians who assume the role of primary caregivers should be considered for preferential scheduling until the child is 6 months of age to account for frequent feedings, nighttime awakenings and the infant/parent bonding.</li>   <li>- Physicians who assume the role of primary caregiver should be given the option for temporary part-time status if requested.</li>   <li>- Physicians who assume the role of secondary caregivers should be considered for preferential scheduling after the birth of the child.</li> </ul>

<p>Recommendations regarding fertility treatments and miscarriage/bereavement</p>	<ul style="list-style-type: none"> <li>- Women undergoing fertility treatment should be supported with modified scheduling as recommended by their fertility specialist.</li>   <li>- Bereavement leave should be offered to physicians who experience pregnancy loss.</li> </ul>
<p>Recommendations for EM residents and students <sup>10,14,15</sup></p>	<ul style="list-style-type: none"> <li>-Consider offering an opt-in policy for residents and students, similar to attending physicians.</li>   <li>- Consider preferential scheduling for new resident parents (including non-birthing parents)</li>   <li>-Consider block switches to avoid 24+ call shifts in first and third trimesters of pregnancy.</li> </ul>

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