



Written by [Michael Tennant](#) on November 30, 2022

Pregnant Workers Fairness Act: Employers Could Be Forced to Give Employees Time Off for Abortions

Some pro-life advocates are sounding the alarm over a potential lame-duck Senate vote on legislation ([HR 1065](#)) that prohibits employment discrimination against pregnant women and could also force employers — regardless of their religious views — to grant employees time off to obtain abortions.

The Pregnant Workers Fairness Act (PWFA) passed the House of Representatives in May 2021. A companion bill was introduced in the Senate in April 2021 and again in June 2022.

The bill makes it “unlawful” for an employer to “not make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee.”

Of course, as [The New American](#) explained in opposing a previous version of the PWFA (then HR 2694), “nowhere in the Constitution is the federal government authorized to regulate private employers.” In addition, laws prohibiting discrimination by private employers violate property rights and lead to endless, costly litigation.

Worse yet, the PWFA has a “dark underbelly” that could do even greater damage, observed [CatholicVote](#). “The bill is stand-alone legislation that deliberately fails to incorporate Civil Rights Act (CRA) religious-organization protections. In fact, it includes no provisions for religious organizations. This is important, because in the current legal system and culture at large ‘pregnancy, childbirth, or related medical conditions’ includes both contraception and abortion.” (Tellingly, both the [American Civil Liberties Union](#) and [NARAL Pro-Choice America](#) support the PWFA.)

Furthermore,

The bill’s language is intentionally vague and offers no specific examples of what would qualify as “pregnancy-related” work situations. It delegates that responsibility to the Equal Employment Opportunity Commission (EEOC), an administrative body responsible for enforcing federal anti-discrimination laws in the workplace.

The EEOC does not typically act in a way that aligns with pro-life or Catholic views. In general, the EEOC has interpreted “pregnancy-related” discrimination issues to include protecting workers’ “right” to abortion.

“If an employee working for a religious organization requests time off to have an abortion procedure, [the PWFA] could require the organization to comply with this request as a reasonable accommodation



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of known limitations related to pregnancy, childbirth, or related medical conditions,” [contended House Education and Labor Committee Republicans](#). “This accommodation could be required to include paid leave if the employee is eligible for paid medical leave as part of the employer’s workplace policies. These kinds of accommodations, however, could be contrary to the organization’s religious beliefs, placing the organization in a position of either violating federal law or violating its faith.”

Democrats argued that the Religious Freedom Restoration Act (RFRA) would protect explicitly religious entities from being forced to accommodate employees’ abortion-related requests. But, as the Republicans pointed out, “RFRA does not render the inclusion of a religious-organization protection in [the PWFA] unnecessary.” Whereas the CRA prohibits the government from interfering in religious organizations’ employment decisions (for the most part), the RFRA allows Uncle Sam to “substantially burden” the free exercise of religion if he claims to be doing so “in furtherance of a compelling governmental interest.”

Disputes over the meaning of the PWFA’s language will inevitably end up in the courts, where the odds overwhelmingly favor the feds. According to the Republicans, J. Matthew Sharp of the Alliance Defending Freedom told the committee in 2019 “that courts rule in favor of the federal government and against those attempting to be free of a substantial burden on their religion in over 80 percent of RFRA cases.”

Committee Republicans tried to amend the PWFA to include the CRA’s religious-organization protections. Democrats unanimously rejected the amendment, causing Republicans to do likewise with the entire bill. Since Democrats held the majority, the bill passed the committee and eventually the full House.

Surprisingly, “the bill has received widespread support from national pro-life organizations,” reported CatholicVote. This prompted CatholicVote’s director of government affairs, Tom McClusky, to warn, “Under the bill, these pro-life groups can be sued if they don’t provide their employees special leave to get abortions.”

Whether the Senate will rush the PWFA through in the next month remains to be seen.

“No respectable member of Congress should vote for any substantial piece of legislation — especially legislation that ignores religious concerns — in a lame duck session,” said McClusky.

Unfortunately, judging from their fidelity to the Constitution, very few members of Congress qualify as “respectable.”



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