

Protecting Workers from Occupational Reproductive Hazards



A Guide for Employers and Staffing Agencies



UNIVERSITY *of* WASHINGTON

PURPOSE OF THIS GUIDE

This guide is designed to provide employers, including both staffing agencies and host employers, information, and guidelines to assess harmful workplace exposures that can affect the reproductive health of employees. The goal is to help you protect the reproductive health of your employees while at work, including employees who: are pregnant or breastfeeding, have partners who are pregnant or breastfeeding, and may be planning to have children in the future.

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WHY SHOULD EMPLOYERS PAY ATTENTION TO REPRODUCTIVE HAZARDS IN THE WORKPLACE?

Healthy Employees

The consequences of exposure to reproductive hazards in the workplace can be devastating to employees, but they are completely preventable. The overall health of your employees and their families is paramount to fostering and maintaining a strong workforce, and this is easily accomplished with the implementation of a health and safety program that addresses all hazards in the workplace, including reproductive health hazards.

Costs of Reproductive Effects

According to a 2014 report by the March of Dimes, the average cost of the birth and care of a premature baby (\$55,393) is more than 10 times the cost of medical care for a healthy, full-term baby (\$5,085) from birth through the first year. Although there are many known risk factors for preterm birth, including demographics and

tobacco use as well as workplace hazards, the cause in any individual case is typically not known. Minimizing worker exposure to reproductive health hazards can help to reduce the risk of preterm birth and, consequently, the employer's insurance costs. A comprehensive health and safety program with good communication between employers and employees is essential for ensuring a workplace with a strong safety culture and is a solid investment because it will reduce the costs of all injuries and illnesses, employee absenteeism, and employee turnover. The same holds true for accommodation of employees with temporary disabilities such as pregnancy. Providing accommodations has been shown to increase employee commitment, productivity, and safety, and to decrease costs and absenteeism.

Regulatory Compliance

The Federal OSH Act of 1970 and the WA State WISHA Act of 1973 mandate that employers shall furnish to each of their employees "employment and a place of employment which are free from recognized hazards causing or likely to cause death or serious physical harm to his employees." In the absence of any specific standard covering a particular hazard, all employers have this legal

\$55,393	Average cost of the birth and care of a premature baby
\$5,085	Average cost of medical care for a health, full-term baby from birth through the first year

responsibility and in carrying out this duty, employers must consider the most vulnerable workers in developing their health and safety programs. Workers of any gender who are planning to conceive, are pregnant, or are breastfeeding can be particularly vulnerable to harm from reproductive hazards and must be protected. Workers who have pregnant or breastfeeding partners must also be protected from taking chemicals home on their skin, hair, and clothing that may harm a fetus, newborn, or toddler. In the case of temporary workers paid by staffing agencies and placed in client workplaces, both the staffing agency and the host employer have a legal responsibility to ensure the health and safety of the workers.

Employers must also comply with health and safety regulations that apply to specific hazards. There are currently several specific standards that cover known reproductive hazards: e.g., lead, ethylene oxide, cadmium, radiation, and 1,2-dibromo-3-chloropropane (DBCP).

In addition to safety and health legislation mandating worker protection, there are also laws that prohibit discrimination on the basis of reproductive status.

The Pregnancy Discrimination Act of 1978, which amended Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions. Pregnancy discrimination involves treating an individual—an applicant or employee—unfavorably in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits (such as leave and health insurance), and any other terms or conditions of employment.

The Americans with Disabilities Act is a federal law that requires employers to provide reasonable accommodation to workers with disabilities, including pregnant workers, as long as the accommodation does not cause undue hardship. If an employee notifies the employer or staffing agency that she is pregnant, the employer may ask if she needs accommodation. However, accommoda-

tions may not be forced by the employer. They must be requested or agreed to by the employee. Accommodations that would be reasonable under the ADA might include extra bathroom breaks, reduced lifting requirements, or increased ability to sit or take rest breaks. For more guidance on workplace accommodation, see Employer's Practical Guide to Reasonable Accommodation Under the Americans with Disabilities Act.

In the State of Washington, there is a similar law that not only prohibits discrimination, but requires accommodation for pregnant women in the workplace. It is called the Workplace Pregnancy Accommodations Law and requires certain reasonable accommodations during pregnancy and breastfeeding.

In addition, the State of Washington passed a new law effective July 25, 2021 that adds a section to WISHA focused on identifying workplace hazards for certain temporary workers, making sure temporary workers know about the potential hazards, and ensuring they receive adequate training to protect themselves.

There are five laws that determine how much pregnancy and parental leave may be available to employees in the State of Washington:

1. **Family and Medical Leave Act (FMLA):** A federal law that is enforced by U.S. Dept. of Labor whereby eligible employees who work for a covered employer can take up to 12 weeks of unpaid, job-protected leave in a 12-month period.

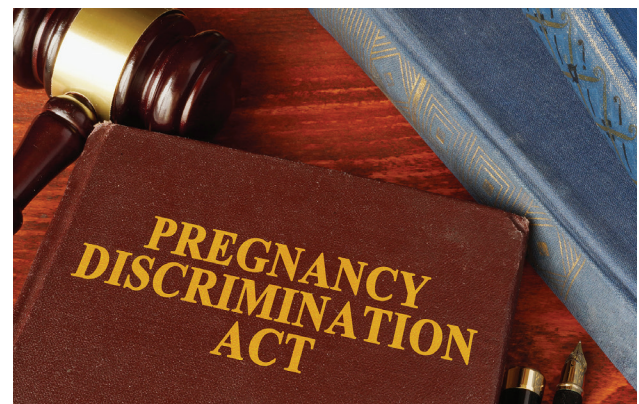


Photo: iStock.com/designer491

2. **Washington Law Against Discrimination (WLAD):** A state law enforced by Washington State Human Rights Commission. Under the WLAD, discrimination on the basis of pregnancy constitutes sex discrimination. The law protects against discrimination based on pregnancy, pregnancy-related illnesses or disabilities, or likelihood of becoming pregnant. If a pregnant employee decides to disclose their pregnancy to their employer, Washington law prohibits employers from treating them any differently than other employees.
3. **Washington Family Care Act (WFCA):** A state law enforced by Labor & Industries. The WFCA allows employees to take any paid leave offered by their employer to provide treatment or supervision for a child with a health condition.
4. **Paid Sick Leave (Initiative 1433):** A state law enforced by Labor & Industries. Employers are required to provide employees with paid sick leave. The paid sick leave law was one of several changes to worker rights mandated by Initiative 1433, approved by Washington voters in 2016, effective January 1, 2018.
5. **Paid Family Medical Leave Program (PFML)** (benefits begin Jan. 1, 2020): A state program managed by Employment Security Department that allows eligible employees to receive paid leave. Visit paidleave.wa.gov for full details.

In the State of Washington, there is a law that not only prohibits discrimination, but requires accommodation for pregnant women in the workplace. It is called the Workplace Pregnancy Accommodations Law and requires certain reasonable accommodations during pregnancy and breastfeeding.

For more information on accommodating pregnant and breastfeeding workers, see Pregnant@Work, an initiative of the Center for WorkLife Law.

Employers are prohibited from retaliating against pregnant employees who request changes in the workplace under certain conditions. For example, The Washington State Office of the Attorney General Civil Rights Division accepts complaints that an employer has failed to accommodate an employee's pregnancy. Visit the website to learn more: www.atg.wa.gov/pregnancy-and-breastfeeding-accommodations. Complaints may be filed by emailing pregnancy@atg.wa.gov or by leaving a message on the toll-free line at 833-660-4877.



Photo: Michael Sellitti



UNDERSTANDING REPRODUCTIVE HAZARDS

What Are They?

Reproductive health is, according to the World Health Organization (WHO), “a state of complete physical, mental, and social well-being and not merely the absence of disease, in all matters relating to the reproductive system and to its functions and processes.”

Reproductive health hazards are substances, environments, or activities that adversely affect reproductive health or the ability to have healthy reproductive outcomes, including effects on sexuality, fertility, pregnancy, childbirth, and breastfeeding.

Table 1 lists many reproductive health hazards that are commonly found in the workplace. This, however, is not necessarily a comprehensive list. There are several resources listed at the end of this guide that you can use to determine whether exposures in your workplace might pose a reproductive health hazard to your employees. It is also important to note that the presence of these hazards alone does not necessarily pose a risk. There would also need to be sufficient exposure to produce an effect.

Chemicals that have known reproductive hazards will also be listed on California’s Prop 65 list.

What Are the Effects?

The effects of reproductive health hazards are not limited to pregnant women. They can have an effect on all workers of reproductive age and their families at any time during the reproductive years.

Some hazards affect reproductive health prior to conception by:

- Decreasing sex drive
- Decreasing fertility
- Decreasing the number and/or quality of sperm produced
- Damaging eggs
- Accumulating in the body where they can affect a developing fetus after conception.

Examples of exposures with risk to conception include chemotherapeutic drugs, anesthetic gases, ethers in the semiconductor industry, lead, ionizing radiation, stress, shift work, diesel exhaust, pesticides, benzene, trichloroethylene (TCE), and welding fume. Some chemicals, such as lead and cadmium, accumulate in male reproductive organs and semen, and may be carried to the egg.

Other hazards impact the health of the fetus directly during pregnancy. These include physical,

Table 1. Reproductive Hazards Commonly Found in the Workplace

CHEMICALS	<p>Formamide Glycol ethers Halothane Hexachlorobenzene Hexafluoroacetone Hydrazine(s) Iodoacetic acid Karathane (fungicide) Lead compounds Mercury compounds 2-Methoxyethanol 2- Methoxy-ethyl acetate Methyl alcohol Methyl chloride Methylene chloride N-methyl-2-pyrrolidone Nitrobenzene Nitrous oxide Phenol Polychlorinated biphenyls Polybrominated biphenyls Propylene Propylene glycol monomethyl ether acetate Propylene oxide Systhane (fungicide) TOK (herbicide) Toluene Trichloroethylene Vinyl chloride Xylene</p>	INFECTIOUS AGENTS & DISEASES
<p>Acetaldehyde Acrylic acid Aflatoxins Aniline Arsenic Benzene Benzo(a)pyrene Cadmium Carbon disulfide Chromic acid Chloroform Chloroprene Di (2-ethyl hexyl) phthalate (DEHP) Dibromo-chloropropane (DBCP) Dibutyl phthalate (DBP) Dieldrin N,N-dimethylacetamide Dimethylformamide (DMF) Dimethyl sulfoxide (DMSO) Dinitro-octyl phenol Dinitro-toluene (DNT) Di-sec-octyl-phthalate Diphenylamine Dithane Estradiol 2-Ethoxyl ethanol 2-Ethoxyethylacetate Ethyl thiourea 2-ethylhexanol Formaldehyde</p>	<p>Brucellosis Chicken pox/shingles (varicella zoster virus; VZV) Coccidioidomycosis COVID-19 (SARS CoV-2) Cytomegalovirus (CMV) Ebola virus Hepatitis B, C, and E viruses Human Immunodeficiency Virus (HIV) Herpes Simplex II Influenza/pneumonia Leptospirosis Listeria Malaria Measles Fifth disease (Parvovirus B19) Rubella (German measles) Toxoplasmosis Zika Virus</p>	PHYSICAL AGENTS
OTHER WORKPLACE FACTORS	METALS	<p>Lead Mercury Cadmium Cobalt</p>
<p>Shift work and long hours High physical demand, such as heavy lifting Stress</p>		

biological, and chemical hazards as well as work factors that lead to stress or sleep issues. Toxic substances in the body of a pregnant worker may harm the developing child, even if the exposure is much lower than regulatory limits for workers. Exposed workers may also bring toxicants home on clothing, work shoes, skin, or hair, leading to exposure of a pregnant partner or children. These hazards may also have varying effects during different stages of fetal development, so the degree of hazard may be dependent on the time during pregnancy in which the exposure occurs. Effects include:

- Increased workplace injury and illness in the mother due to factors related to physiologic changes during pregnancy
- Miscarriage
- Preterm delivery and/or low-weight births
- Birth defects
- Problems with the child's development.

Examples: Because women have more elastic ligaments during pregnancy, pregnant women are more prone to musculoskeletal injury. Changes in the immune system and lung capacity may make pregnant women more susceptible to chemical exposures and workplace illnesses. Heavy lifting, long periods of standing, and excessive heat may lead to miscarriage or preterm birth. Because sound can

carry through a mother's body, exposure to very loud noise (>115dbA) can damage the developing ears of a fetus, causing noise-induced hearing loss before the infant is born. Biological and infectious agent exposures with adverse pregnancy outcomes, such as cytomegalovirus, hepatitis B, HIV, rubella, toxoplasmosis, COVID-19, etc. can occur in health care, animal care, child care, and janitorial settings.

Other hazards can continue to harm the child during breastfeeding as some toxic substances can make their way from an exposed mother's bloodstream into her breast milk. Because the infant is so small, this can be a significant exposure, even if the mother's exposure may be lower than regulatory exposure limits.

Examples of chemicals that can cross into breast milk include: metals, such as lead and mercury; organic solvents and volatile organic chemicals (dioxane, perchloroethylene [PERC]); contaminants in fire and tobacco smoke; and radioisotopes, such as Iodine-131.

Changes in the immune system and lung capacity may make pregnant women more susceptible to chemical exposures and workplace illnesses.

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DEVELOPING A PROGRAM FOR IDENTIFYING AND CONTROLLING REPRODUCTIVE HAZARDS

Developing Policies

Although there are only a few health and safety regulations with specific requirements for employers to follow regarding reproductive hazards, it is important for employer health and safety programs to include policies that demonstrate a commitment to the prevention of adverse reproductive or developmental health effects. In the case of temporary employees, both the staffing agency and the client/host employer are required by federal and state laws to provide a workplace free from hazards, including reproductive hazards. Policies acknowledging this responsibility and commitment should be included in their contracts. In addition, reproductive health programs must consider all potential adverse effects on both parents and offspring and reproductive health policies must avoid gender discrimination.

Here is an example of a policy statement that would be appropriate:

Reproductive hazards can impact workers by affecting their fertility and the health of the egg and sperm, as well as by direct exposures to pregnant workers and take-home exposures in which a hazardous product is carried home (for example, on a worker's clothes or shoes), where it exposes

pregnant partners or children. [Company Name] is committed to providing a work environment that is safe for all workers and their families. Information on hazards in the workplace, including reproductive hazards, are available to all workers at all times through [safety plan name/location, or safety officer]. In addition, an employee may wish to declare a pregnancy (their own, or that of a partner) or intent to conceive so that [Company Name] can provide an additional review to address possible reproductive hazards in the workplace and provide information about safe work practices. Declaration of pregnancy or intent to conceive is voluntary and all information relating to pregnancy or conception is strictly confidential and will not be shared without the employee's permission. No employee, either permanent or temporary, will be subjected to discrimination or retaliation as a result of a declaration of pregnancy or intent to conceive, or for raising a health and safety concern.

Performing a Hazard Evaluation

Once you have a clear policy statement, the first step in developing a program is to identify the reproductive hazards in the workplace. Many employees wonder if toxic substances at work, at home, or in their communities affect their ability

to have healthy children. They are concerned that chemical exposures might cause reproductive health problems such as infertility, miscarriage, birth defects, mental deficiencies, or cancer in their children. This concern is understandable, since the ability to bear healthy children is often one of the most cherished aspects of life.

Many chemical exposures pose no hazard to reproduction. Some chemicals don't harm the fetus or the reproductive system. In other cases, exposure to chemicals is too brief or too small to create a risk. However, frequent use of certain chemicals without the proper protections may be cause for concern. It is important, then, that all workers find out about the chemicals they use to ensure they and their coworkers are handling them safely.

All employers should have an overall health and safety program for their facility in order to manage workplace exposures in compliance with health and safety regulations, and in Washington (WAC 296-800-140) and some other states, this is a requirement. Best practices for developing such a program include completing a job hazard analysis for each job within the facility using a form like the one in Appendix A. These job hazard analyses can then be used to identify possible reproductive hazards in each job.

If you do not have job hazard analyses for all of your workers, you may want to develop some specifically for reproductive hazards. In the case of temporary workers, the client/host employer should identify the reproductive health hazards to which employees could be exposed and provide this information to the staffing agency, so that it can be included in the contract.

- Review existing workplace health and safety programs.
- Identify all potential reproductive hazards at the worksite: chemical, physical, biological, or other hazards associated with work organization and environment using the checklist at the end of this guide.
- Review chemical inventory for reproductive

hazards (including cleaning supplies, pesticides, and pharmaceuticals as well as any process chemicals).

- * Review safety data sheets (SDS) for all products. All SDSs should be in compliance with the 2016 Globally Harmonized System of Classification and Labelling of Chemicals (GHS), including pictograms and hazard statements specific to the type of hazard posed by the product.
- * Chemicals that pose a long-term health hazard, including reproductive health hazards, are indicated by the pictogram below:



- * If you see this pictogram on an SDS, the next step is to go to section 2, the Hazard Identification section, of the SDS, which lists the specific health hazard(s) that triggered the requirement for this pictogram. The hazard statements for reproductive hazards include: "May damage fertility or the unborn child," "Suspected of damaging fertility or the unborn child," and "May cause harm to breastfed children." The pictogram and hazard statements must also be on the product label.
- * Consider safer substitutes if the chemical product is a reproductive hazard, or if the signal word for the product is DANGER, as this signal word means this product can cause serious harm. Safer substitutes are often available.
- * Refer to Table 1 in this document for potential workplace exposures with reproductive health risks.
- * You may want to use the ChemHAT database to identify chemicals that are reproductive hazards and to identify

possible safer alternatives. When you open up ChemHAT at chemhat.org, you can search by CAS# or material name to see the hazards associated with a particular chemical. For example, if you search for ethylene oxide, you can see that it is associated with several reproductive hazards:



Birth Defects—can cause harm to the developing child, including birth defects, low birth weight, and biological or behavioral problems that appear as the child grows.



Gene Damage—can cause or increase the rate of mutations, which are changes in genetic material in cells.



Reproductive Harm—can disrupt the male or female reproductive systems, changing sexual development, behavior or functions, decreasing fertility, or resulting in loss of the fetus during pregnancy.



Endocrine Disruption—can interfere with hormone communication between cells, which controls metabolism, development, growth, reproduction, and behavior (the endocrine system).

ChemHAT includes hazard information about chemicals that may cause harm through breast milk. It also provides information about possible safer alternatives.

Once you have identified the reproductive health hazards in your facility, you will need to evaluate which jobs have exposure and how much.

All employers should have an overall health and safety program for their facility in order to manage workplace exposures in compliance with health and safety regulations.

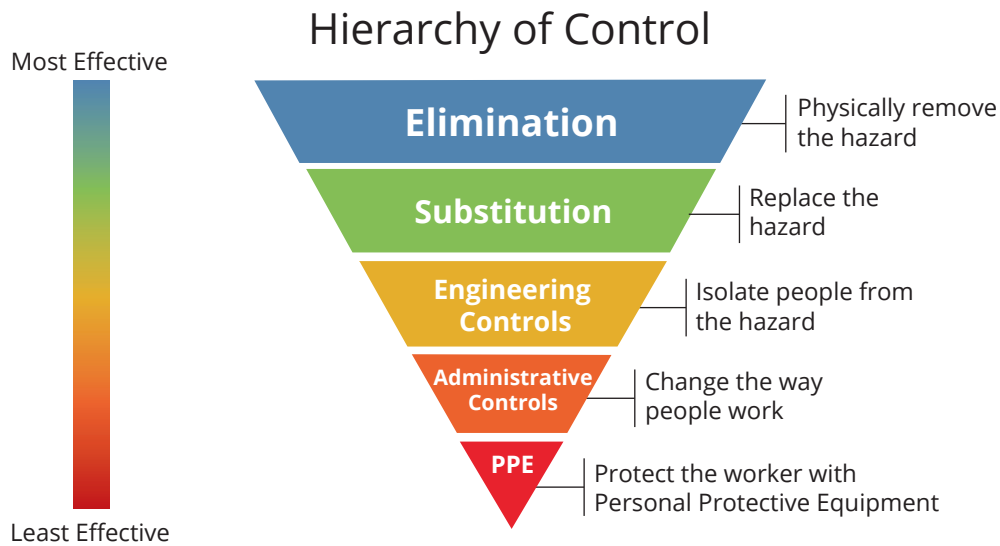
If you do not have a comprehensive health and safety program that includes evaluation of the hazards in each job, you may choose to consult with a safety professional or an industrial hygienist. Industrial hygienists are professionals trained in the recognition, evaluation, and control of workplace hazards. Go to www.aiha.org/consultants-directory to find an industrial hygiene consultant through the American Industrial Hygiene Association. Or, you can get free, confidential consultation from the Washington State Department of Labor and Industries at: lni.wa.gov/safety-health/preventing-injuries-illnesses/request-consultation/.

Controlling Hazards in the Workplace

Once you have identified all of the reproductive hazards in the workplace, you will want to make sure that the hazards are controlled adequately to protect employees from reproductive harm.

The Hierarchy of Controls is a system widely used in industry to minimize or eliminate exposure to hazards by prioritizing the most effective types of controls. Follow the hierarchy by asking these questions:

1. Can the hazard be eliminated from the workplace?
2. Can the hazard be substituted with something that is less hazardous?
3. Can the worker be isolated from the hazard using engineering controls such as containment of the hazard, ventilation, noise barriers?
4. Can administrative controls such as work scheduling, rotation, or assignment of duties somehow be changed to reduce exposures and protect vulnerable workers, (without discriminating against any classes of workers)?
5. If none of the above controls can adequately protect workers from reproductive hazards, what type of personal protective equipment (PPE) can be used? Just remember this is the least effective means of control: PPE does not mitigate the hazard—the exposure potential is



still there, and exposure control now depends on the adequacy of the PPE supplied by the employer and the proper use of the PPE by the employee.

Additional considerations for controlling hazards have to do with the routes of exposure, especially for chemical and biological hazards. Is it an airborne hazard that can be controlled with ventilation? Can the hazard be absorbed through the skin? Taken home on clothing? Is the hazard transported to the break room or office areas, where workers could be exposed through ingestion of contaminated food or drink? Consider all exposure routes when determining the various means of control.

Worker Training and Communication

All employees have a right to know about the hazards in their workplace and how to protect themselves. In the case of chemical exposures, employers are required by federal OSHA or state regulations to have a hazard communication program that includes providing workers with information about the chemicals in the workplace and with training on how to use chemicals safely. In the case of temporary employees, the staffing

agencies and client employers have a joint responsibility for hazard communication. Staffing agencies should be providing general information, and clients/host employers should provide site-specific and hazard-specific training.

Open communication between workers, their representatives (e.g., unions, labor liaisons, and health care providers), employers, and temporary staffing agencies about reproductive hazards is key. In order to adequately protect workers, it may be helpful to know when they are pregnant or trying to conceive, but there are many reasons an employee may not want to disclose this information to their employer. They may fear for their job or be concerned about discrimination in the workplace. They may just not want to discuss their private life with their employer. It is very important, therefore, for the employer to have a clear policy demonstrating a commitment to non-discriminatory management of reproductive hazards and confidentiality of disclosures. Workers should be encouraged to communicate openly and the employer must be able to respond appropriately to questions or requests for accommodation.

EXAMPLE 1

Pregnant Warehouse Worker with Work Restrictions

Scenario

ABC Staffing has 100 temporary workers working in a warehouse at General Storage and Shipping. General Storage and Shipping provides day-to-day supervision of the temporary workers but ABC Staffing has an On-Site Staffing Manager present at the warehouse.

One of the temporary workers who lifts heavy boxes as part of her job is pregnant. Her physician has recommended lifting restrictions based on an analysis of the frequency/duration pattern of her job according to NIOSH guidelines. Her physician has also requested that she be allowed to take frequent breaks to use the bathroom. The temporary worker provided the doctor's note to the ABC On-Site Staffing Manager.

After agreement by the employee, the On-Site Staffing Manager at ABC Staffing contacted General Storage and Shipping immediately to inform them of her restriction. Due to the requirement of regular heavy lifting in her normal assignment that did not meet the restriction, ABC Staffing placed the temporary worker in a different assignment with General Storage and Shipping—at the same pay—that did meet the restriction.

Recommended Practices

ABC Staffing did the right thing by informing General Storage and Shipping of the work restriction with the employee's



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permission and by providing reasonable accommodation for the employee's disability as is required for any disability under the Americans with Disabilities Act and State Law. Restructuring her job and allowing for extra bathroom breaks would not cause undue hardship and would be considered reasonable accommodation during pregnancy. Fortunately, there were alternative positions that met the lifting restriction at this workplace due to a large number of people working there. If this situation had arisen with a smaller employer, the employee's position may not have been guaranteed. ABC Staffing should then try to find a new assignment with a different client who could meet her restrictions.

If the worker had been a permanent employee with General Storage and Shipping rather than a temporary employee, General Storage and Shipping would be required to make reasonable accommodation, if possible. In the event that a permanent employee's restrictions cannot be met without undue hardship on the part of the employer, she may choose to take a leave for temporary disability.

EXAMPLE 2

Pregnant Nurse Exposed to Infectious Patients

Scenario

Able Staffing has 10 temporary workers working at XYZ Hospital in a nursing capacity. XYZ Hospital provides day-to-day supervision of the temporary workers.

A pregnant nurse, who is employed by Able Staffing, works in an infectious disease clinic at XYZ Hospital. She has disclosed her pregnancy to Able Staffing, expressed a desire to continue to work until her due date, and has not asked for any special accommodation. Able Staffing expressed concern about the nurse's workplace exposures and talked to her about the possibility that heavy lifting and exposure to infectious diseases could affect her pregnancy or harm her child. Able Staffing encouraged her to discuss the risks with her doctor and asked if she would like to transfer to another area of the hospital. The nurse told Able Staffing that she understood the risks, but that she preferred to remain in her current position.

Because of concerns about her exposures, Able Staffing placed the nurse in another open position in the hospital's primary care clinic for the remainder of her pregnancy and placed a 55-year-old nurse in the infectious disease clinic.

Recommended Practices

Able Staffing was right to discuss potential exposures in the workplace with the nurse and to offer accommodation for any



Photo: iStock.com/digitalskillet

restrictions that her doctor might place on her work. However, it is discriminatory to bar fertile or pregnant women from hazardous jobs, and any accommodation for disability must be requested by the employee. As a temporary worker, the nurse may be transferred to another work assignment based on the needs of the host employer, but she must not be transferred against her will simply because she is pregnant.

Rather than transferring the employee, Able Staffing should have discussed the reproductive hazards associated with the job with the host employer, XYZ Hospital, prior to placing any employees at the work site. XYZ Hospital should have a health and safety program with controls in place to minimize exposure to infectious pathogens and training for all permanent and temporary workers about the hazards of the job. If there is an effective program in place that does control exposures, the pregnant employee can be reassured that there is likely no exposure to pathogens that might harm her baby. Able Staffing and XYZ Hospital should also evaluate her patient handling tasks to determine whether any steps can be taken to minimize risk to the employee from heavy lifting during her pregnancy.

EXAMPLE 3

ADA Accommodation Request for Heat Sensitivity Linked to Infertility

Scenario

A worker notifies a staffing agency that he would like an accommodation for infertility exacerbated by exposure to extreme heat at a construction company. His physician has recommended maintaining his core body temperature in the normal range, between 97.7 and 99.5 degrees Fahrenheit, and avoiding exercise outdoors when the ambient temperature exceeds 80 degrees Fahrenheit.

How should the staffing agency respond?

Universal Staffing has 25 temporary workers working at Quality Construction, on-site at construction locations. Quality Construction provides day-to-day supervision of Universal Staffing's temporary workers. One of the temporary workers notified Universal Staffing that he would like to request an accommodation for heat sensitivity. The underlying medical condition is infertility, which qualifies as a disability under ADA (see <https://askjan.org/publications/consultants-corner/vol12iss09.cfm>).

The staffing agency asked the employee if he would allow them to discuss moving him to another job site without extreme heat exposure while he was trying to conceive. He was not comfortable sharing with the construction manager that he was having fertility



Photo: iStock.com/gilaxia

problems, but did ask to be transferred if possible. Universal Staffing was able to find another temporary position for him with a different construction company.

Recommended Practices

The employer, Universal Staffing, was able to remove this worker from exposure to a hazard that was affecting his ability to conceive because they had other positions to fill where he would not be exposed to extreme heat. This situation could have been handled better if the staffing agency, the employee, and the client/host employer had communicated openly about controlling exposures to reproductive hazards that might affect fertility prior to his being placed in the job. The host employer should have controls for heat exposure in place as part of their health and safety program, and protection of temporary workers from heat should be a part of the staffing agency contract as heat exposure can affect reproductive function in all workers of all genders.

EXAMPLE 4

Concern over Chemicals in the Workplace

Scenario

Able Staffing Company has 50 temporary workers working at M&M Manufacturing, a large paint and coatings manufacturer. M&M Manufacturing provides day-to-day supervision of the temporary workers.

A temporary worker in a position at M&M Manufacturing is in her first trimester of pregnancy and neither the staffing agency nor the host employer knows that she is pregnant. She raises concerns with her OB/Gyn about her exposure to a variety of chemicals with strong odors at work both during her pregnancy and while breastfeeding her child. She is also concerned that her co-workers at M&M Manufacturing will treat her differently once they know she is pregnant and that her chances for being hired permanently could be jeopardized. With the employee's permission, the physician asks Able Staffing for more information.

Able Staffing does not have information about the hazards of the employee's job, but they do have a clause in the contract that requires M&M Manufacturing to provide SDSs on request. Able Staffing obtained SDSs and found that several solvents known to be irritants were used in the manufacturing process. Although these solvents have powerful odors, a review of the SDSs with the help of the physician revealed that none of them



Photo: iStock.com/kali9

could enter the bloodstream through either inhalation or skin absorption. Able Staffing was able to reassure the employee that her exposure to these chemicals did not pose a risk to the developing fetus or to a breastfeeding child.

Recommended Practices

Best practice is to include information about the hazards of the job in the contract between the staffing agency and host employer, so that the physician and staffing agency would have been able to address the employee's concerns more immediately. (Complete a Job Hazard Analysis in Appendix A.)

However, the physician and Able Staffing were still able to alleviate the employee's concerns without revealing her pregnancy to the host employer. This allowed the employee to share details of her condition where and when she was comfortable doing so and while continuing to work without fear of discrimination.

Appendix A

Job Hazard Analysis

This form should be completed by the employer for each job at the facility and should be shared with employees and temporary staffing agency representatives.

Work Site:		Department:	
Activity or Process:		Building/Room:	
Attached Safety Data Sheets: Yes / No		Location of Safety Data Sheets:	
Job Title:		Supervisor:	
Prepared By:		Date:	
TASKS/STEPS	HAZARDS CONSEQUENCES	CONTROLS (SAFEGUARDS)	PHOTO
1			
2			
3			
4			

5			
REQUIRED TRAINING		REQUIRED PPE	
<i>I have read and understand the contents of the job hazard analysis and the controls required to mitigate the risks from the identified hazards.</i>			
Name		Date	

REFERENCES AND RESOURCES

HEALTH

California's Prop 65 List—all chemicals known by the State of California to cause cancer or birth defects or other reproductive harm
oehha.ca.gov/proposition-65/proposition-65-list

ChemHAT Database is a useful tool for looking up chemicals to find data on reproductive health effects: <https://chemhat.org>

Mother to Baby Fact Sheets by Category of Exposure
<https://mothertobaby.org/fact-sheets/>

NIOSH Provisional Recommended Weight Limits for Lifting at Work During Pregnancy
blogs.cdc.gov/niosh-science-blog/files/2013/05/ClinicalGuidelinesImg-NewLogoFinal.jpg

NIOSH Reproductive Health and the Workplace
www.cdc.gov/niosh/topics/repro/default.html

REGULATIONS

Job Accommodation Network's Employer's Guide to Reasonable Accommodation Under the Americans with Disabilities Act: <https://askjan.org/publications/employers/employers-guide.cfm>

OSH Act of 1970
www.osha.gov/laws-regs/oshact/toc

Pregnancy Discrimination Act of 1978: www.eeoc.gov/statutes/pregnancy-discrimination-act-1978

Washington Law Against Discrimination
apps.leg.wa.gov/rcw/default.aspx?cite=49.60.030

SUPPORT

UW Field Research and Consultation Group
<https://deohs.washington.edu/frcg>

UW DEOHS Reproductive Health Toolkit:
<https://deohs.washington.edu/pehsu/occrepro>

Washington Industrial Safety and Health Act
app.leg.wa.gov/RCW/default.aspx?cite=49.17

WA State Labor and Industries Covid Resources
<https://www.lni.wa.gov/agency/outreach/novel-coronavirus-outbreak-covid-19-resources>

Washington State Consultation Program for help with hazard evaluation and control
www.lni.wa.gov/safety-health/preventing-injuries-illnesses/request-consultation/

Washington Workplace Pregnancy Accommodation Law
app.leg.wa.gov/RCW/default.aspx?cite=43.10.005

WORKERS' RIGHTS

Pregnant Workers Accommodations Rights (English)
https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/PregAccomGuide_v12_Eng.pdf

Pregnant Workers Accommodations Rights (Spanish)
https://agportal-s3bucket.s3.amazonaws.com/uploadedfiles/Another/News/Press_Releases/PregAccomGuide_v12_Esp_2.4.21.pdf

Washington State Office of the Attorney General
Pregnancy and breastfeeding accommodations
<https://www.atg.wa.gov/pregnancy-and-breastfeeding-accommodations>

<https://deohs.washington.edu/pehsu/occrepro>