



PREGNANT WORKERS FAIRNESS ACT POLICY AND PROCEDURES

DHR-STW-Policy #: DHR-STW-216.1

Authority: 42 U.S.C. § 21G Pregnant Workers Fairness Act; 29 U.S.C. §218d PUMP for Nursing Mothers Act; 19 Del. C. §§ 710, 711, 716; State of Delaware Respectful Workplace and Anti-Discrimination Policy; Executive Order #30

Effective Date: July 6, 2023

Revision Date: June 27, 2023

Supersedes: Pregnant Workers Fairness Act Policy and Procedures - August 2022

Signature:

Application: Executive Branch Agencies

1. Policy Purpose Statement

This policy sets forth the State of Delaware's (State) policy regarding workplace protections afforded to employees and applicants for employment who have a pregnancy-related condition, including but not limited to, pregnancy, childbirth, and lactation.

2. Scope

This policy applies to eligible employees and applicants of Executive Branch agencies, and for this policy, employees include all appointed, executive, merit, full-time, part-time, casual/seasonal, apprentices, temporary staff, volunteers, paid and unpaid interns, joint employees, officers, and officials. The State will work with its contractors and their employers to address issues related to this policy.

The terms of this policy supersede any statewide or related Executive Branch agency policy and procedure on this subject.

3. Definitions and Acronyms

The following definitions are for the purposes of this policy:

- **Pregnancy** – Includes pregnancy, childbirth, or a related condition, including but not limited to, lactation, and lactation-related conditions such as mastitis, infertility, gestational diabetes, pregnancy-induced hypertension, hyperemesis, preeclampsia, depression, miscarriage, lactation, and recovery from childbirth, and miscarriage.

- **Qualified Employee/Applicant** – An employee or applicant who, with or without reasonable accommodation, can perform the essential functions of the employment position, except that an employee or applicant shall be considered qualified if: a) any inability to perform an essential function is for a temporary period; b) the essential function could be performed in the near future; and c) the inability to perform the essential function can be reasonably accommodated.
- **Reasonable Accommodation** – “Reasonable accommodation” has the meaning given this term in the federal Pregnant Workers Fairness Act, 42 U.S.C. § 21G. Accommodations available under this subchapter may include but are not limited to: making existing facilities readily accessible to and usable by individuals with disabilities; job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities. For this policy, an employee may be excused from performing their essential functions for a temporary inability if it would not be an undue hardship.¹
- **Undue Hardship** – means an action requiring significant difficulty or expense when considered in light of factors such as: the nature and cost of the accommodation; the overall financial resources of the employer; the overall size of the business of the employer with respect to the number of employees, and the number, type, and location of its facilities; and the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the employer.

4. Policy

a. It shall be an unlawful employment practice for an agency to:

- 1) Fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because of such individual’s race, marital status, genetic information, color, age, religion, sex (including pregnancy), sexual orientation, gender identity, or national origin;
- 2) Fail or refuse to treat a qualified employee or job applicant that the employer knows, or should know, is affected by pregnancy, the same as the employer treats or would treat any other employee or applicant not so affected but similar in the ability or inability to work, without regard to the source of any condition affecting the other employee’s or applicant’s ability or inability to work;

¹ The federal Pregnant Workers Fairness Act definitions for Reasonable Accommodation and Undue Hardships are the same as those in the ADAAA.

- 3) Fail or refuse to make reasonable accommodations to the known limitations related to the pregnancy of a qualified applicant for employment or employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such employer;
 - 4) Deny employment opportunities to a qualified job applicant or employee, if such denial is based on the need of the employer to make reasonable accommodations to the known limitations related to the pregnancy of an employee or applicant for employment;
 - 5) Require a qualified applicant for employment or a qualified employee to accept an accommodation that such applicant or employee chooses not to accept;
 - 6) Require a qualified employee to take leave under any leave law or employer policy if another reasonable accommodation can be provided to the known limitations related to the pregnancy of the employee;
 - 7) Take adverse action against an employee in the terms, conditions, or privileges of employment for requesting or using a reasonable accommodation to the known limitations related to the pregnancy of the employee;
 - 8) Limit, segregate or classify employees in any way which would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the employee's employment status because of such employee's sex, including pregnancy.
- b. Agencies are required to provide reasonable accommodations for the known limitations related to the pregnancy of employees or applicants, including temporarily excusing an employee from performing the essential functions of their position, as long as the accommodation does not constitute an undue hardship for the employer.
 - c. Agencies are required to provide reasonable accommodations related to the pregnancy of employees and applicants in the same manner as an agency provides to those employees and applicants with other qualified injuries or qualified disabilities.
 - d. Agencies must designate a space or location, other than a bathroom, for nursing employees to express milk that is shielded from view and free from intrusion from co-workers and the public. A space may be temporarily created or converted into a space for expressing milk or made available when needed by the nursing employee, provided the space is shielded from view, and free from any intrusion from co-workers and the public. If the space is not dedicated solely to the nursing employee's use, it must be available when needed by the nursing employee.
 - e. Agencies shall provide reasonable break time for an employee each time such employee has the need to express breast milk at work for up to one (1) year after the birth of a child.

- 1) Agencies may agree to a certain schedule based on the nursing employee's need to express milk, but the agency cannot require an employee to adhere to a fixed schedule that does not meet the employee's need for break time each time the employee needs to express milk. Any agreed upon schedule may need to be adjusted over time if the nursing employee's milk expressing needs change.
 - 2) Breaks for expressing breast milk shall not be considered FMLA Leave.
 - 3) Agencies are not required to compensate for additional or longer breaks; however, employees taking longer or more frequent breaks for a pregnancy-related condition (including expressing milk) must be compensated consistent with the agency's existing policy regarding compensation for break periods.
 - 4) A nursing employee must be completely relieved from duty, or the time spent pumping must be counted as hours worked.
- f. Medical documentation may be requested to determine the employee's restrictions or limitations for purposes of providing reasonable accommodation.
- g. Agencies shall provide notice of the right to be free from discrimination in relation to pregnancy, childbirth, and related conditions, including the right to reasonable accommodation to known limitations related to pregnancy, childbirth, and related conditions in writing to new employees at the commencement of employment; and **in writing to any employee who notifies the employer of their pregnancy within 10 days of such notification.**

5. Procedures

- a. If an employee or an applicant for employment needs an accommodation related to a pregnancy-related condition, including the need for breaks or facility to express milk, the employee is to submit a request, preferably in writing, to their immediate supervisor; the applicant to the Hiring Manager; who then consults with human resources (HR) staff to provide a response.
- b. The supervisor and HR representative shall meet with the employee in an interactive process to determine a reasonable accommodation related to a pregnancy-related condition.
- c. Accommodations may include but are not limited to, providing periodic rest, light-duty assignments, temporary transfer to an alternative position, modified work schedule or job responsibilities, providing more frequent or longer breaks, and other examples noted in Section 3 (Definitions and Acronyms) above. If break time is past the allotted time, the agency may allow but not require the employee to make up time at the end or the beginning of the day.
- d. Agencies will provide information on their worksite lactation space or location/facility upon being notified of this type of request.

e. Agencies are encouraged to supply lactation space or location/facility with:

- Comfortable Chair
- Table for pump/equipment
- Electrical outlet
- Lock
- Mirror
- Lamp
- Disinfecting wipes to clean space after use
- Trash can with a lid
- Small refrigerator, if possible (or access to a nearby refrigerator)
- Sink, if possible (or access to nearby sink)
- An “OCCUPIED – DO NOT ENTER” sign for the door

6. Exclusions or Exceptions

This policy only applies to pregnant, postpartum, and nursing employees.

7. Dissemination And Training

- a. This policy shall be distributed to newly hired employees at the commencement of employment, and employees must acknowledge within 30 days.
- b. Agencies are to distribute this policy to employees within 10 days of notification of pregnancy.
- c. The State will post this policy and the DDOL Labor Law Poster on its premises where notices to employees and applicants for employment are customarily posted.
- d. The State will post the EEOC Know Your Rights: Workplace Discrimination is Illegal and the DOL Employee Rights Under the Fair Labor Standards Act Posters where notices to employees and applications for employment are customarily posted.

8. Data Reporting

None.

9. Associated Policy/Regulations/Information

- [19 Del. C. §§ 710 and 711](#)
- [19 Del. C. § 722\(6\)](#)
- [Pregnant Workers Fairness Act, 42 U.S.C. § 21G](#)
- [PUMP for Nursing Mothers Act, 29 U.S.C. § 218d](#)
- [Americans with Disabilities Act Policy & Procedure](#)
- [Executive Order #30](#)

- [Respectful Workplace Anti-Discrimination Policy](#)

10. Appendices and Forms Associated with this Policy

- [Delaware Department of Labor Law Poster](#)
- [Delaware Department of Labor Law Poster \(Spanish\)](#)
- [Know Your Rights: Workplace Discrimination is Illegal](#)
- [Know Your Rights: Workplace Discrimination is Illegal \(Spanish\)](#)
- [Employee Rights Under the Fair Labor Standards Act](#)
- [Pregnant Workers Fairness Act Poster](#)
- [Pregnant Workers Fairness Act Tips for Asking for a Reasonable Accommodation Infographic](#)

11. Policy Owner

- Division Name: Division of Talent Management
- Policy Administrator: Director of Talent Management
- Website: [DHR – Division of Talent Management](#)

This policy is not intended to create any individual right or cause of action not already existing and recognized under State or Federal law. If there is a conflict with, i.e., the law or regulation and this policy, the law and/or regulation govern.