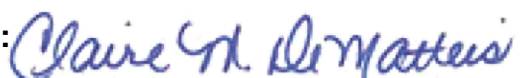




**PREGNANT WORKERS FAIRNESS ACT POLICY AND PROCEDURES**

<b>DHR-Policy #: To be assigned.</b>	<b>Authority: FLSA of 1938, § 7(r); 19 Del. C. §§ 710, 711, 716; State of Delaware Respectful Workplace and Anti-Discrimination Policy; Executive Order #30</b>
<b>Effective Date: August 17, 2022</b>	<b>Supersedes: Pregnant Workers Fairness Act Guidelines - November 2014</b>
<b>Application: Executive Branch Agencies</b>	<b>Signature:</b> 

**1. Policy Purpose Statement**

This policy sets forth the State of Delaware’s (State) policy regarding workplace protections afforded to pregnant employees for employment who have a pregnancy-related condition, including but not limited to, 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 within one year of childbirth. 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.
- **Reasonable Accommodation** – “Reasonable accommodation” has the meaning given this term in 19 Del. C. § 722(6), except that all references to disability shall instead be references to known limitations of a person related to pregnancy, childbirth, or a related condition. Accommodations available under this subchapter may include, but are not limited to, acquisition of equipment for sitting, more frequent or longer breaks, periodic rest, assistance with manual labor, job restructuring, light duty assignments, modified work schedules, temporary transfers to less strenuous or hazardous work, time off to recover from childbirth, or break time and appropriate facilities for expressing breast milk.

- **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 an 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;
- 3) Fail or refuse to make reasonable accommodations to the known limitations related to the pregnancy of an 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 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 an applicant for employment or employee affected by pregnancy to accept an accommodation that such applicant or employee chooses not to accept, if such applicant or employee does not have a known limitation related to pregnancy or if such accommodation is unnecessary for the applicant or employee to perform the essential duties of their job;
- 6) Require an 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 comparable reasonable accommodations for the known limitations of pregnant employees to perform 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 for pregnant employees in the same manner as an agency provides to those employees 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 to express breast milk for up to one (1) year after the birth of a child.
    - 1) Breaks for expressing breast milk shall not be considered FMLA leave.
    - 2) 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.
  - f. Agencies shall not take adverse action against an employee in the terms, conditions, or privileges of employment for requesting or for using a reasonable accommodation to the known limitations related to the pregnancy of the employee.
  - g. Medical documentation may be requested to determine the employee's restrictions or limitations for purposes of providing a reasonable accommodation.
  - h. 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 facilities to express milk, the

employee is to submit a request 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 providing periodic rest, light-duty assignments, temporary transfer to an alternative position, modified work schedule or job responsibilities, and providing more frequent or longer breaks. If break time is past the allotted time, the agency may allow 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 that is not an employee's office 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
  - Sink, if possible

## **6. Exclusions or Exceptions**

This policy only applies to pregnant employees and nursing employees within one year of childbirth.

## **7. Dissemination and Training**

- a. This policy is to be distributed to new employees at the commencement of employment.
- 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 effective Nov. 17, 2021 on its premises where notices to employees and applicants for employment are customarily posted.

## **8. Data Reporting**

N/A

**9. Associated Policy/Regulations/Information**

- [19 Del. C. §§ 710 and 711](#)
- [19 Del. C. § 722\(6\)](#)
- [Americans with Disabilities Act Policy & Procedure](#)
- [Executive Order #30](#)
- [Respectful Workplace Anti-Discrimination Policy](#)

**10. Forms Associated with This Policy**

N/A

**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.*