

## Pregnancy Accommodation Model Policy

### Introduction

Pregnancy accommodation is governed by the Pregnancy Discrimination Act, the Americans with Disabilities Act, the Family and Medical Leave Act, and numerous state and local laws. The model policy presented below is designed to harmonize the requirements of the various federal laws and, to the extent possible, comply with state and local laws. It reflects the philosophy that employers benefit from the retention of competent, trained, and experienced employees and from a discrimination-free environment.

**EMPLOYERS SHOULD SEEK THE ADVICE OF THEIR LOCAL EMPLOYMENT LAWYER** before adopting and implementing this policy. **This policy is not legal advice**, and may not be construed as legal advice. It may not adequately or accurately reflect the laws that govern a particular employer’s legal obligations to accommodate pregnant employees. Implementation tips are presented below after the policy.

Policy Provision	Explanation
<p><b>Accommodation</b></p> <p>If you need a temporary change to how, when, or where you work due to pregnancy or related conditions, you may request an accommodation under this policy. [Employer] will approve such a request so long as the accommodation requested is reasonable and will not create an undue hardship for the company. [Employer] will determine on a case-by-case basis whether a requested accommodation is reasonable or would create an undue hardship after considering the nature of the accommodation, the business needs of the company and its customers, the needs of the company’s other employees, the company’s operations, and the company’s resources.</p>	<p>This section sets forth the employer’s undertaking to provide accommodations to pregnant employees. Note that the obligation to accommodate is not limited to employees who have impairments that would qualify as disabilities under the Americans with Disabilities Act (ADA). This broader undertaking reflects that employers may have accommodation obligations under the Pregnancy Discrimination Act (PDA) and/or state and local laws, which may not limit accommodation to those employees who have disabilities.</p> <p>Note: Some state and local laws do not contain an “undue hardship” provision. Employers should consult their local employment lawyers on this point.</p> <p>Note also that although accommodation under the PDA is not limited by an undue hardship exception, if an employer accommodates other employees who are similar to a pregnant employee in their ability or inability to work, the employer must also accommodate the pregnant employee unless the employer can show that it has a strong legitimate reason for not doing so that outweighs the harm of non-accommodation to the pregnant employee. (Cost and convenience are insufficient reasons.) This concept is intended to be included in the “undue hardship” term used in this model policy.</p>

<p><b>How to Request an Accommodation</b></p> <p>You may make a request for an accommodation orally or in writing to your supervisor or the Human Resources department (HR). Applicants may request an accommodation from their point of contact in the hiring department. A request for an accommodation should include an explanation of why you require an accommodation, which may include any physical limitations or risks you face in your job, or a description of the difficulties you are having with one or more aspects of your job. Your request may also include a description of the accommodation you are requesting. A request should also include the date when accommodation will become necessary and the expected duration of your need for accommodation. If the end date for your accommodation changes in the future, notify your supervisor and/or HR.</p>	<p>Most relevant statutes apply to applicants as well as employees.</p> <p>The obligations and protections of some state and local statutes are triggered by a written request from a health care provider, but that requirement has been omitted by this model policy to reflect that accommodation obligations can arise under other statutes without such a request. Employers can decide to provide accommodations voluntarily, even if statutory obligations are not triggered. If an employer believes it needs input from an employee’s doctor in order to approve an accommodation, it may request documentation as set forth below in the provision relating to the interactive process.</p>
<p>Note that employees and applicants who have a temporary disability caused or contributed to by pregnancy are not required to advise [Employer] of their pregnancies if they do not wish to, and may initiate a request for an accommodation due to disability in the same manner as non-pregnant employees and applicants do. (For more information, please refer to [Employer’s] policy about Disability Accommodation.)</p>	<p>Some employees may not wish to disclose their pregnancies until they need to, and this model policy honors that wish.</p> <p>Employer should insert a cross-reference to its disability accommodation policy.</p>
<p>Once you have requested an accommodation, you and your supervisor, and perhaps an HR staff member, will discuss your particular needs and the ways in which your needs can be met reasonably and effectively. This discussion is intended to be an open and thorough exchange of ideas. If the accommodation you request is not reasonable or would not be effective, your supervisor and/or HR may ask you to suggest other accommodations or may suggest other accommodations themselves. Please keep in mind that although you may be entitled to an accommodation, you may not be entitled to a particular accommodation or even your</p>	<p>This section describes the interactive process that is required by the ADA and various state laws. Employers are encouraged to be as interactive as possible, engaging with pregnant employees in a back-and-forth dialogue to develop and refine ideas for possible accommodations. Several employers have lost disability discrimination cases because they failed to engage sufficiently in this interactive process.</p> <p>Note that if a pregnant employee requests leave as an accommodation, she may be entitled to it even if the employer does not wish to provide it. This entitlement stems from the FMLA, which requires covered employers to give eligible employees leave if the employees meet the criteria for leave, and from some state and local laws that require employers to provide leave.</p> <p>Note also that some states require employers to provide transfers,</p>

<p>preferred accommodation. (However, [Employer] will not require you to take leave if you do not wish to do so and are able to continue performing the essential functions of your job with or without a reasonable accommodation.)</p>	<p>if certain circumstances exist. Employers should consult their local employment lawyers on this point.</p>
<p><b>Approval Process</b></p> <p>If the accommodation you request is minor (such as allowing water or snacks at the work site, providing a chair to sit on, or changing break times), you and your supervisor may agree to implement the accommodation for the period of time that it is needed without seeking assistance from HR.</p>	<p>This provision encourages supervisors to grant minor accommodation requests on the spot, without a formal process, which reflects both common practice and practical expediency. Employers may wish to instruct supervisors to notify the Human Resources department (HR) when such minor accommodations are granted so HR can keep track of accommodations made. (See implementation notes at the end of the model policy.)</p>
<p>You or your supervisor should contact HR for assistance if you and your supervisor are unable to identify or agree upon an accommodation, if the accommodation you request is not minor, if the accommodation you request is listed in the next section, or if you are dissatisfied with your supervisor's response to your request. HR may help to determine whether an effective and reasonable accommodation exists, and may request medical documentation from your health care provider to assist in the interactive process of determining an appropriate accommodation. HR may also engage additional assistance from others, such as consultants and counselors.</p>	<p>This section describes a more formal interactive process, with HR involved. It reserves to HR the right to request medical documentation to support the need for an accommodation; given that the intent of the ADA was to provide broad coverage and move the focus away from whether an employee has a disability to whether the employer can provide accommodations to make it possible for the employee to work, employers should view their ability to request medical documentation as an aid to fashioning an appropriate accommodation and not as a tool to screen out requests.</p> <p>Note that at least one local jurisdiction requires employers to provide pregnancy accommodations without regard to medical documentation. Employers should consult their local employment lawyers on this point.</p>
<p>Ordinarily, your supervisor and/or HR will make a determination regarding your request for an accommodation within three business days. Delays may be caused by waits for medical or other documentation, or necessary information from third parties. You will be kept informed of the status of your request.</p>	<p>Speed is important when approving accommodation requests, given that employees may not be able to work until an accommodation is approved and unreasonable delays in approval could result in a lawsuit. Employers are encouraged to respond to accommodation requests as quickly as possible, preferably the same day that the request is received.</p>
<p>Approved accommodations will be implemented as quickly as possible. If your request is denied, you will be given an explanation of the denial. You will also be told if an alternative accommodation has been approved. If you disagree with the</p>	<p>Speed is also important in the implementation of approved accommodations, to allow employees to work and to avoid legal liability.</p> <p>Employers will rarely deny an accommodation request. If the employee's requested accommodation is unacceptable to her</p>

<p>determination, you may file a complaint with [Employer’s] alternative dispute resolution office.</p>	<p>employer, she and the employer will engage in additional rounds of the interactive process described above until a satisfactory accommodation is identified. If that is not possible, the employer can reduce its legal exposure by suggesting an alternative accommodation that will be effective and that it is willing to provide.</p> <p>If the employer does not have an alternative dispute resolution office, it should substitute in this section the name of whatever internal dispute resolution or grievance process it provides. Giving employees an intra-company mechanism for resolving disputes about the accommodation or the accommodation process may also reduce an employer’s exposure to lawsuits.</p>
<p><b>Specific Types of Accommodations</b></p> <p>Each request for an accommodation will be considered on a case-by-case basis. Some common accommodations are discussed below. This is not intended to be a complete list of all possible accommodations. You and your supervisor are encouraged to think creatively and focus on your individual needs and the needs of your department in determining an appropriate, effective, and reasonable accommodation that does not create an undue hardship for the company.</p>	<p>Individualized determinations are essential to the ADA’s accommodation requirements.</p> <p>After the Supreme Court’s decision in <i>Young v. UPS</i> (2015), the PDA requires pregnant and nonpregnant employees who are similarly able to work to be treated similarly. Although there may be some limited circumstances in which there can be a permissible difference in treatment, accommodating pregnant employees in the same manner as nonpregnant employees reduces an employer’s legal risks.</p> <p>Some additional common accommodations that may be applicable to an employer’s specific workplace requirements are listed below. Employers may wish to include them in their policies.</p> <ul style="list-style-type: none"> <li>• Temporarily modified work duties</li> <li>• More frequent or longer breaks</li> <li>• Ability to periodically eat or drink water</li> <li>• Periodic rest</li> <li>• Time off for medical appointments</li> <li>• Assistance with lifting or other manual labor</li> </ul>
<p><b>Schedule change.</b> Schedule changes could include changing the time you arrive at and depart from the work site, the days when you work, when you take your breaks or the number of breaks you take, or when you perform certain duties. Requests for a schedule change will be determined in accordance with the company’s flexible work policy, taking into consideration the schedule you request, whether your duties can be performed on that schedule, and the business needs of your department. If</p>	<p>Some employers may need to edit this section to conform to the practices of their companies.</p> <p>Reference is made to the employer’s flexible work policy, rather than attempting to set out in this section the complete terms governing flexible work, to ensure that pregnant and nonpregnant employees are treated the same. Note, however, that there may be times when pregnant employees will need to be treated more advantageously than other employees, such as being allowed to work hours that others might not be allowed to work, in order to meet the employer’s accommodation obligations.</p>

<p>your request is approved, the flexible work policy will govern the terms and conditions of your employment while you work a changed schedule. Once your need for accommodation has ended, you will be returned to your original schedule in accordance with the provisions below regarding how to end an accommodation.</p>	
<p><b>Reduced hours.</b> Requests for reduced hours will be determined in accordance with the company’s flexible work policy, taking into consideration the reduction and schedule you request, the work you will perform, and the business needs of your department. If your request is approved, the flexible work policy will govern your compensation, benefits, and other terms and conditions of employment while you are working reduced hours. Once your need for accommodation has ended, you will be returned to your original schedule in accordance with the provisions below regarding how to end an accommodation.</p>	<p>Some employers may need to edit this section to conform to the practices of their companies.</p> <p>Reference is made to the employer’s flexible work policy, rather than attempting to set out in this section the complete terms governing flexible work, to ensure that pregnant and nonpregnant employees are treated the same. Note, however, that there may be times when pregnant employees will need to be treated more advantageously than other employees, such as being allowed to fewer hours than others might be allowed to work or being allowed to combine reduced hours with teleworking, in order to meet the employer’s accommodation obligations.</p>
<p><b>Transfer.</b> You may request a transfer to an open position within the company that is easier or less hazardous for you to perform. Please note that transfers are possible only when a position is open, and only if you have the necessary skills, credentials, and experience to perform the duties of the position. Once your need for accommodation has ended, you will be returned to your original position or an equivalent position in accordance with the provisions below regarding how to end an accommodation.</p>	<p>This section does not discuss approval of an employee’s request because in at least one jurisdiction, an employer is required to transfer a pregnant employee at her request, if a position is open. In others jurisdictions, an employer is required to transfer a pregnant employee at her request if the employer has a policy of transferring nonpregnant employees.</p> <p>Employers should consult with their local employment lawyers regarding this provision. Some jurisdictions may permit employers to return employees to substantially equivalent positions, and not their same positions, if it would cause an undue hardship for the employer to hold open the original position until the employee can return to it.</p>
<p><b>Light duty.</b> You may request a light duty assignment that is easier or less hazardous for you to perform. Light</p>	<p>Some employers may need to edit this section to conform to the practices of their companies. Employers in unionized workplaces should ensure that the light duty provisions of this section are the</p>

<p>duty may include remaining in your current position and being excused from performing your more strenuous or hazardous duties, or being temporarily re-assigned to another position that has less strenuous or hazardous duties. Please note that reassignment is possible only when a light duty position is open, and only if you have the necessary skills, credentials, and experience to perform the duties of the position. Once your need for accommodation has ended, you will be returned to your original position or duties in accordance with the provisions below regarding how to end an accommodation.</p>	<p>same as those of the relevant collective bargaining agreement, and should reference the agreement in this section.</p> <p>Note that although the ADA requires employers to remove marginal duties that an employee cannot do because of a disability, it does not require employers to remove essential functions of an employee’s job but employers are free to do so. For example, the easiest way to provide an accommodation to a pregnant employee who has a lifting restriction may be to temporarily re-assign to another employee her duties that require lifting, if that is possible.</p>
<p><b>Work from home.</b> Certain jobs must be performed at the work site, and others may be performed at a remote location. Requests to work from home will be determined in accordance with the company’s telework policy. Requests to work from home will require an individualized assessment of which of your duties can be performed from a remote location, how those duties will be performed, the technology and tools you have or may need, how you will be supervised, and whether you will need to be present in the office on occasion. If approved, the accommodation will be governed by the telework policy. Once your need for accommodation has ended, you will be returned to your original on-site position or an equivalent position in accordance with the provisions below regarding how to end an accommodation.</p>	<p>Some employers may need to edit this section to conform to the practices of their companies.</p> <p>Reference is made to the employer’s telework policy, rather than attempting to set out in this section the complete terms governing telework, to ensure that pregnant and nonpregnant employees are treated the same. Note, however, that there may be times when pregnant employees will need to be treated more advantageously than other employees, such as having some job duties temporarily reassigned so they can work from home when others’ duties might not be reassigned, in order to meet the employer’s accommodation obligations.</p>
<p><b>Leave.</b> You may request a leave of absence as a reasonable accommodation. Note that you are not required to take leave if you do not wish to do so and you are able to</p>	<p>This section does not discuss approval of an employee’s request because several statutes require employers to grant leave to pregnant employees if they request it.</p> <p>Note that pregnant employees may not be forced out on leave as</p>

<p>continue performing the essential functions of your job with or without a reasonable accommodation. Pregnancy-related leave will be governed by the company's policies for sick leave, family and medical leave, parental leave, disability leave, short-term disability leave, and personal leave of absence. Once your need for leave has ended, you will be returned to your original position or an equivalent position in accordance with the policy or policies that governed your leave.</p>	<p>long as they are able to perform the essential functions of their job with or without a reasonable accommodation. This means that unless the pregnant employee has requested leave, leave is an accommodation of last resort to be used only if no other accommodations are possible. Several state and local laws prohibit employers from requiring pregnant employees to take leave when they do not wish to unless there are no other accommodations that would permit the employees to work.</p> <p>Different types of leave may be appropriate in different circumstances, and each type may have its own requirements with respect to pay, benefits, and job restoration. Note that some state laws require employees to be returned to their original positions, and the ADA requires restoration to the original position unless it would create an undue hardship for the employer.</p> <p>Regardless of the type of leave used, pregnant employees should be allowed to use accrued paid leave in place of unpaid leave.</p>
<p><b>Modification of Accommodation</b></p> <p>If your accommodation needs to be changed or extended during your pregnancy, you should notify your supervisor (if you have received a minor accommodation) or HR (all other accommodations) to discuss modification of your current accommodation or to begin the process of requesting a new accommodation.</p>	<p>Accommodation under the ADA and various state and local laws is an ongoing process. This section reminds employees, their supervisors, and HR that modification of accommodations is necessary and likely.</p>
<p><b>How to End an Accommodation</b></p> <p>For accommodations other than leave: Once you no longer need an accommodation, notify your supervisor if your accommodation is minor. If HR was involved in setting up or administering your accommodation, notify HR once the accommodation is no longer necessary. You will be returned to the same position, employment conditions, and/or the duties you had prior to the implementation of your accommodation, unless it created an undue hardship on the company to hold open your original position, in which case you will be given a substantially equivalent position.</p>	<p>This section notifies employees to expect that they will be returned to their original positions, with their original duties and terms and conditions, once their need for accommodation ends. This is to prevent confusion about whether they can continue to receive accommodations once their need for accommodation ends.</p> <p>Employers should consult with their local employment lawyers regarding this provision, because some state accommodation laws may require that pregnant employees be reinstated to their original positions where accommodations other than leave were provided.</p>
<p>For leave accommodations: If you have been on leave, notify HR of the date you expect to</p>	<p>Employers should be aware of the different post-leave job restoration rights provided by different statutes. For example, if a</p>

<p>return to work and notify HR again one week before your planned return date to confirm your intentions. You will be returned to your original position or its equivalent in accordance with the terms of the policy or policies that governed your leave. Note that [Employer] may not be able to hold open your original position if you have taken a personal leave of absence or, under certain circumstances, if you fail to return upon expiration of a family and medical leave.</p>	<p>pregnant employee has taken leave pursuant to the FMLA, she is entitled to be returned to her same position or a substantially equivalent position. Employees who take leave as a reasonable accommodation under the ADA must be returned to their original positions unless it would create an undue hardship for the employer. Under some state statutes, however, employees who take family leave or pregnancy accommodation leave must be returned to their original positions.</p>
<p><b>Questions or Concerns</b></p> <p>If you have any questions or concerns about your pregnancy or pregnancy accommodation, or if you believe you have been discriminated or retaliated against, report the matter immediately to the HR department. You may also file a complaint with the company's Alternative Dispute Resolution office.</p>	<p>Instructing employees to use the company's internal complaint or grievance procedure can reduce exposure to lawsuits by quickly resolving disputes. If the employer does not have an alternative dispute resolution office, it should substitute in this section the name of whatever internal dispute resolution or grievance process the employer provides.</p>

### Implementation tips

Employers may want to provide supervisors with a written explanation, perhaps in a supervisors' handbook, that includes:

- the company's policy or philosophy regarding the granting of requests for accommodation,
- information about how to recognize a request,
- a more detailed description of the interactive process or explanation that it mirrors the ADA interactive process,
- instructions to make a prompt decision regarding a request, and
- directions to notify HR of any requests made and their disposition.

Training for supervisors and HR about pregnancy accommodation is strongly recommended.

Suggestions for accommodations can be obtained from the Job Accommodation Network, <https://askjan.org/>.

Having current job descriptions for all employees is a recommended practice that will make it easier to respond to accommodation requests.

HR departments may find it beneficial to set up a system for responding to and memorializing accommodation requests.