

## **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. Employers, or their counsel, can find explanations for the provisions of the policy in the accompanying Explanatory Notes document. Implementation tips are presented below after the policy.

## **Pregnancy Accommodation**

### **Accommodation**

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.

### **How to Request an Accommodation**

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.

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.)

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 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.)

### **Approval Process**

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.

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.

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.

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 determination, you may file a complaint with [Employer's] alternative dispute resolution office.

## Specific Types of Accommodations

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.

**Schedule change.** 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 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.

**Reduced hours.** 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.

**Transfer.** 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.

**Light duty.** You may request a light duty assignment that is easier or less hazardous for you to perform. Light 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.

**Work from home.** 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.

**Leave.** 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 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.

### **Modification of Accommodation**

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.

### **How to End an Accommodation**

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.

For leave accommodations: If you have been on leave, notify HR of the date you expect to 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.

### **Questions or Concerns**

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.

### **Implementation tips**

Employers should edit the model policy to reflect their existing policies and practices, and the laws of the cities and state(s) where they operate.

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 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.