

STATE OF MAINE
POLICY ON WORKPLACE ACCOMMODATIONS FOR PREGNANCY, CHILDBIRTH,
AND RELATED MEDICAL CONDITIONS

I. Policy Statement

It is the policy of the State of Maine to provide reasonable accommodations in a timely manner for any qualified individual with known limitations due to pregnancy, childbirth, or related medical condition who is an employee or applicant for employment in accordance with provisions of the Maine Human Rights Act, the Pregnant Workers Fairness Act, and the PUMP for Nursing Mothers Act. All state agencies will adhere to all applicable state and federal laws, regulations and guidelines with respect to providing reasonable accommodations to afford equal employment opportunity to any qualified individual with a known limitation due to pregnancy, childbirth, or related medical condition.

II. Definitions

- A. “Known Limitation” means a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or their representative has communicated to the employer.
- B. “Reasonable Accommodation” means a change in policy or practice that does not cause an undue hardship.
- C. “Qualified Employee” means a qualified individual (employee or job applicant) who, with or without a reasonable accommodation, can perform the essential functions of the position. An individual may still be qualified if they are currently unable to perform an essential function and:
 - 1. Any inability to perform an essential function is for a temporary period;
 - 2. They are currently pregnant, or they are not currently pregnant but could perform the essential functions in the near future; and
 - 3. The inability to perform the essential function can be reasonably accommodated.
- D. “Undue Hardship” means an accommodation that would be unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business.

III. Reasonable Accommodations

The State of Maine will provide a qualified employee with a reasonable accommodation for their known limitations caused by a pregnancy related condition, unless the accommodation would cause an undue hardship.

A. Entitlement

Only an individual who is currently pregnant, previously pregnant, or may become pregnant is entitled to reasonable accommodation(s). For example, an employee whose spouse is pregnant is not entitled to an accommodation because the pregnancy is causing the employee stress. The employee may be entitled to leave or other accommodations under the Americans with Disabilities Act (ADA) or Family and Medical Leave Act (FMLA), and their corresponding State of Maine Policies.

However, a qualified employee may have their spouse or other representative communicate with the Department about the qualified employee's known limitations and need for accommodation.

B. Interactive process

Human Resources should engage with the employee in an interactive dialogue about their known limitations and potential accommodations. In no event may an employee be required to accept an accommodation other than one that has been arrived at through the interactive process.

C. Priority of Accommodations

Accommodations that permit the employee to perform the essential functions of their position must be considered before accommodations that require the suspension of essential job functions. Placing an employee on leave is the accommodation of last resort after considering accommodations that require the suspension of essential job functions. However, an employee may elect to go on leave as an accommodation, which should be granted unless that causes an undue hardship on the Department.

D. Interim, Partial, and Trial Accommodations

Once an employee makes their limitations known, HR should consider granting an interim accommodation. Interim accommodations are temporary in nature and provide accommodations while the request is being reviewed. For example,

if an accommodation request requires supporting medical information, an interim accommodation could be provided while waiting for that information.

Partial accommodations are accommodations that are granted in part by HR. If an accommodation would create an undue hardship after a certain point, the accommodation should be granted until the point of undue hardship. For example, if an employee's accommodation is to suspend an essential function for 2 months, and an undue hardship would exist after 1 month, the employee should be given a partial accommodation of the suspension for 1 month. Further accommodations should be reviewed following that 1-month period.

Lastly, if an employee is uncertain or declines an accommodation because they do not believe it will be effective, a short trial period of the accommodation can be attempted to determine if the accommodation would be effective for the employee.

E. Effect of Employee Refusal

An employee is not required to accept a reasonable accommodation. However, if an employee rejects a reasonable accommodation that is necessary to enable the employee to perform an essential function or if the employee rejects the temporary suspension of an essential function, and as a result of that rejection, cannot perform an essential function of the position, the employee is no longer considered a "qualified employee."

F. Predictive Assessment

The following types of accommodations are classified as "Predictive Assessments" by the EEOC and are considered to be reasonable in almost all cases:

1. Additional breaks to eat/drink and use the restroom;
2. Having and drinking water;
3. The ability to sit/stand as needed; and
4. Accommodations to comply with the PUMP Act. (Section V)

IV. Procedures

- A. Requests for accommodation may be directed to the supervisor/manager of the employee or the agency EEO Coordinator. This does not preclude a supervisor/manager from initiating the reasonable accommodation procedure in appropriate circumstances. All requests for accommodation must be documented and processed as expeditiously as possible and, in all cases,

forwarded to the Department's EEO Coordinator. **No request shall be approved or denied prior to review by the EEO Coordinator or the State EEO Coordinator and a determination that the decision is consistent with both state and federal law and state policy.**

- B. The Department's EEO Coordinator will meet with the requestor and engage in an interactive process with them to attempt to accommodate their known limitations. The EEO Coordinator will also work with the supervisor/manager to determine whether the request is reasonable within the framework of existing laws and regulations.
- C. The EEO Coordinator may determine that it is necessary to request a statement from the applicant/employee's healthcare provider verifying the limitations/restrictions and necessity for the requested accommodations. The request for medical documentation must be limited to:
 - 1. Confirming the physical or mental condition;
 - 2. Confirming that it is related to, affected by, or arises out of pregnancy, childbirth, or related medical conditions; and
 - 3. Describing the change or adjustment that is needed for that reason.

Requests for medical information cannot be made if the need for accommodation is obvious, when the Department already has sufficient information, or when the accommodation is for a Predictive Assessment (Section III(F)). Neither the employee nor their healthcare provider will be asked to complete a form. A medical note drafted by the healthcare provider will be sufficient. **No requests for medical information will be made without approval from the Department's EEO Coordinator or the State EEO Coordinator.**

- D. If the request is approved, the accommodation will be provided as promptly as possible.

V. **PUMP for Nursing Parents**

Employees have the right to take reasonable break time to express breast milk for their nursing child. Employees may use their two fifteen-minute paid breaks for the purposes of expressing breast milk. Any breaks beyond those two fifteen-minute breaks will be unpaid, unless the employee is not completely relieved of duty. For three years after the child's birth, covered employees may take reasonable break time "each time such employee has need to express the milk." An employer may not deny an employee a needed break to pump. The employer must provide a clean place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.

The frequency and duration of breaks needed to express milk will likely vary depending on factors related to the nursing employee and the child. Factors such as the location of the space and the steps reasonably necessary to express breast milk, such as pump setup, can also affect the duration of time an employee will need to express milk.

Employees who telework are eligible to take pump breaks on the same basis as other employees.

VI. Requesting Further Review

If an accommodation is denied, the employee may request that the decision be reviewed by the State EEO Coordinator in the Bureau of Human Resources.

VII. Confidentiality

All information obtained by the State of Maine concerning medical conditions or history of employees, including genetic information, is maintained in separate medical files and treated as confidential records that are disclosed only as permitted by law. HR representatives and supervisors who have knowledge of an employee's medical information are prohibited from sharing such information unless others need to be informed.

VIII. Non-Retaliation

Retaliation for requesting or being granted an accommodation is prohibited under this policy and the State of Maine's Policy Against Harassment. If an employee believes that they have been subjected to retaliation based on a pregnancy accommodation(s) or a pregnancy accommodation request, they should inform the Department EEO Coordinator or State EEO Coordinator.

IX. Effective Date

The effective date for this Policy is July 1, 2024.