

STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION

PROCEDURE

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TITLE: PREGNANT WORKERS FAIRNESS ACT

**POLICY
REFERENCE NUMBER:** 8-5-101

**DIVISION OF
RESPONSIBILITY:** Human Resource Services

DATE OF LAST REVISION: August 8, 2024

DISCLAIMER

PURSUANT TO SECTION 41-1-110 OF THE CODE OF LAWS OF SC, AS AMENDED, THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE AN EMPLOYMENT CONTRACT BETWEEN THE EMPLOYEE AND THE SC STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION/THE SC TECHNICAL COLLEGE SYSTEM. THE STATE BOARD FOR TECHNICAL AND COMPREHENSIVE EDUCATION/THE SC TECHNICAL COLLEGE SYSTEM RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT, IN WHOLE OR IN PART. NO PROMISES OR ASSURANCES, WHETHER WRITTEN OR ORAL, WHICH ARE CONTRARY TO OR INCONSISTENT WITH THE TERMS OF THIS PARAGRAPH CREATE ANY CONTRACT OF EMPLOYMENT.

I. PURPOSE AND COMMITMENT

Consistent with the State Board for Technical and Comprehensive Education Policy 8-5-101, the South Carolina Technical College System (SCTCS) is committed to maintaining a work and educational environment that is free from all forms of discrimination, harassment, and sexual misconduct.

The Pregnant Workers Fairness Act (PWFA), which is administered and enforced by the Equal Employment Opportunity Commission (EEOC), requires the System Office/College to provide a “reasonable accommodation” to a qualified employee’s or applicant’s known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the System Office/College an “undue

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hardship.” Pregnancy itself does not meet the definition of a “disability” under the Americans with Disabilities Act (ADA), because it is usually a short-term condition, although some pregnancy-related conditions will meet the definition of a disability. Under the PWFA, pregnant and postpartum employees who were not covered under ADA or Title VII can now ask their employers to provide them with workplace accommodations under the PWFA. Conditions may begin prior to conception (including preparation for pregnancy and childbirth) and could continue into postpartum recovery (such as postpartum depression or anxiety). Accommodations provided under the PWFA may qualify for leave under the Family Medical Leave Act (FMLA) and, if so, will run concurrently.

The PWFA applies only to accommodations.

II. DEFINITIONS

When used in this PWFA document, unless the context requires other meaning,

- A. “Essential function” means the fundamental duties of the job.
- B. “Reasonable accommodations” are feasible changes in the work environment or the way things are usually done at work.
- C. The “interactive process” means the System Office/College and employee communicate, whether by talking or some other way, about the known limitation and the adjustment or change needed at work.
- D. “Temporary” means lasting for a limited time, not permanent, and may extend beyond “in the near future.”
- E. “In the near future” means an employee could perform the essential functions within a forty-week period for conditions related to a current pregnancy, based on a case-by-case determination. This does not mean that the essential function(s) of a pregnant employee must always be suspended for forty weeks, or if a pregnant employee seeks a temporary suspension of an essential function(s) for forty weeks, it must be automatically granted.
- F. A “Qualified Employee” can be an employee or applicant who is “qualified” in one of two ways.
 - 1. An employee or applicant who can perform the “essential functions” of the job with or without a reasonable accommodation is qualified.

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2. If an employee cannot perform the essential functions of the job with or without a reasonable accommodation, an employee can be qualified even if they cannot do the essential functions of their job as long as:
 - a. The inability is “temporary;”
 - b. The essential function(s) could be performed “in the near future;” and
 - c. The inability to perform the essential function(s) can be reasonably accommodated.

This means that an employee who is temporarily unable to perform one or more essential functions of their job and who, therefore, needs light duty or a change in their work assignments may be able to get such a change as reasonable accommodation.

- G. “Known Limitation” means physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related conditions to include but not limited to “current pregnancy potential pregnancy, lactation (breastfeeding and pumping), use of contraception, menstruation, infertility, and fertility treatments, endometriosis, miscarriage, stillbirth and end of pregnancy” that the employee or employee’s representative has communicated to the employer whether or not such condition meets the definition of disability specified in the ADA.
- H. “Undue Hardship” means imposing a significant difficulty or expense on the operation of business and is determined on a case-by-case basis. A determination of undue hardship should be based on several factors including but not limited to:
 1. The nature and cost of the accommodation needed;
 2. The overall financial resources of the System Office/College;
 3. The impact of the accommodation on the operation of the System Office/College.

III. MAKING A LIMITATION KNOWN

The employee, applicant, or their representative should tell the System Office/College that they have a limitation—a physical or mental condition related to, arising out of, or affected by pregnancy, childbirth, or a related medical condition—and that they need an adjustment

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or change in their working conditions due to the limitation. The request can be verbal or written to the supervisor and Human Resources.

IV. PWFA REASONABLE ACCOMMODATION

Once the System Office/College knows of the limitation, Human Resources should engage in the “interactive process” with the employee or applicant and respond promptly to accommodation requests. If the limitation is obvious, then an interim accommodation should be provided without requiring medical documentation. If additional information/documentation is needed, then an interim accommodation should be provided while awaiting the documentation. The request for accommodation does not need to be in writing. Employees do not need to use specific words to request an accommodation to begin the interactive process. The interactive process may be ongoing as needs for accommodation change.

Accommodation factors to be considered:

- Length of time the employee will be unable to perform the essential function(s);
- Whether there is work for the employee to perform;
- Nature of the essential function to include frequency;
- Whether the employer has provided other employees in similar positions who are unable to perform the essential function(s) of their position with temporary suspensions of those functions and other duties;
- If necessary, whether there are other employees, temporary employees, or third parties who can perform or be hired to perform essential function(s);
- Whether the essential function(s) can be postponed or remain unperformed for any length of time and, if so, for how long.

The PWFA requires that the inability to perform the essential function(s) be reasonably accommodated.

- For some positions, this may mean that one or more essential functions are temporarily suspended (with or without reassignment to someone else), and the employee continues to perform the remaining functions of the job.
- For other positions, some of the essential functions may be temporarily suspended (with or without reassignment to someone else), and the employee may be assigned other tasks to replace them.

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- In yet other situations, one or more essential functions may be temporarily suspended (with or without reassignment to someone else), and the employee may perform the functions of a different job to which the System Office/College temporarily transfers or assigns them.

If it does not cause an undue hardship, the System Office/College must provide a reasonable accommodation—either what the employee or applicant requests or another effective accommodation arrived at through the interactive process.

Leave can be a reasonable accommodation that an employee requests under the PWFA. The System Office/College does not have to provide leave (or any other reasonable accommodation) if it causes an undue hardship.

V. PWFA MEDICAL DOCUMENTATION

Human Resources should determine if medical documentation is necessary under the PWFA. In many instances, a discussion with the applicant or employee may be sufficient and supporting medical documentation will not be needed. If the System Office/College requests supporting documentation, it is only permitted to do so if it is reasonable to require documentation to determine whether the employee (or applicant) has a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions (a limitation) and needs a change or adjustment at work due to the limitation.

Interim accommodations, if needed, should be agreed upon while awaiting the requested medical information. The System Office/College may not require that the employee seeking the accommodation be examined by a health care provider selected by the System Office/College.

A. Specific circumstances when requested documentation is not reasonable:

1. When the physical and mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions is “obvious.”
2. When the System Office/College already has sufficient information that the employee has such a condition and needs an accommodation to that condition.
3. When the employee requests one of the accommodations listed:
 - allowing an employee to carry or keep water near and drink, as needed;

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- allowing an employee to take additional restroom breaks, as needed;
 - allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
 - allowing an employee to take breaks to eat and drink, as needed.
4. When the employee is lactating and needs modifications to pump at work or nurse during work hours.
 5. When the requested accommodation is available to other employees without supporting documentation.
- B. If the System Office/College requests documentation from a health care provider, documentation is limited to that which:
1. Confirms the physical or mental condition. This means providing a simple statement of the physical or mental condition. This can be a modest or minor impediment or problem and does not need to be a medical diagnosis.
 2. Confirms that the physical or mental condition is related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions.
 3. Describes the adjustment or change at work that is needed due to the limitation (e.g., no lifting more than 20 pounds for three (3) months, the approximate number and frequency of health care appointments, the estimated time off for recovery, additional safety gear, work functions that should be suspended and for how long, or a later start time).

Maintain detailed documentation of all accommodation requests and relevant communication with the employee, applicant, or representative.

VI. PROHIBITIONS

The System Office/College must not:

- A. Fail to make a reasonable accommodation for the known limitations of an employee or applicant, unless the System Office/College can demonstrate that the accommodation would cause an undue hardship on the operation of the business;

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- B. Require an employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than a reasonable accommodation arrived at through the interactive process;
- C. Deny a job or other employment opportunities to a qualified employee or applicant based on the person's need for a reasonable accommodation to the known limitations related to pregnancy, childbirth, or related medical conditions of the qualified employee;
- D. Require an employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided that would let the employee keep working;
- E. Punish or retaliate against an employee or applicant for requesting or using a reasonable accommodation for a known limitation under the PWFA, reporting or opposing unlawful discrimination under the PWFA, or participating in a PWFA proceeding (such as an investigation);
- F. Coerce individuals who are exercising their rights or helping others exercise their rights under the PWFA.

VII. CONFIDENTIALITY

The System Office/College must keep medical information confidential and maintain all medical files separately from other personnel files.

VIII. OTHER LAWS

Other [laws](#) that the EEOC enforces make it illegal to fire or otherwise discriminate against employees or applicants on the basis of pregnancy, childbirth, or related medical conditions include:

- Title VII (enforced by the EEOC), which:
 - Protects workers from discrimination based on [pregnancy](#), childbirth, or related medical conditions; and
 - Requires the System Office/College to treat workers affected by pregnancy, childbirth, or related medical conditions the same as others similar in their ability or inability to work;
- The ADA (enforced by the EEOC), which:

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- Protects workers from discrimination based on [disability](#); and
- Requires the System Office/College to provide reasonable accommodations to a qualified individual with a disability if the reasonable accommodation would not cause an undue hardship for the System Office/College.
- Some pregnancy-related conditions may be disabilities under the law, but pregnancy itself is not a disability under the ADA.
- The FMLA (Family and Medical Leave Act) (enforced by the U.S. Department of Labor), which provides covered employees with unpaid, job-protected leave for certain family and medical reasons; and
- The PUMP Act (Providing Urgent Maternal Protections for Nursing Mothers Act) (enforced by the U.S. Department of Labor), which broadens workplace protections for employees to express breast milk at work.

ADDENDUM #1

“Reasonable accommodations” are changes in the work environment or the way things are usually done at work.

Some examples of possible reasonable accommodations under the PWFA include, but are not limited to:

1. Additional, longer, or more flexible breaks to drink water, eat, rest, or use the restroom;
2. Changing food or drink policies to allow for a water bottle or food;
3. Changing equipment, devices, or workstations, such as providing a stool to sit on, or a way to do work while standing;
4. Changing a uniform or dress code or providing safety equipment that fits;
5. Changing a work schedule, such as having shorter hours, part-time work, or a later start time;
6. Telework;
7. Temporary reassignment;
8. Temporary suspension of one or more essential functions of a job;
9. Leave for health care appointments;
10. Light duty or help with lifting or other manual labor; or
11. Leave to recover from childbirth or other medical conditions related to pregnancy or childbirth.

This list provides some examples; many other reasonable accommodations may exist. Also, a worker may need different accommodations at different times during the pregnancy or after childbirth.