

# Exhibit E

# Pregnancy

---

March 2021

The IACP Law Enforcement Policy Center creates four types of documents: Model Policies, Considerations Documents, Concepts & Issues Papers, and Need to Know one-page summaries. Typically, for each topic, either a Model Policy or a Considerations Document is created, supplemented with a Concepts & Issues Paper. This file contains the following documents:

- **Considerations Document**: Offered as an alternative to the bright-line directives found in a Model Policy. Instead of providing exact policy language, the Considerations Document outlines items that agencies should address and provides options that agencies should examine when developing their own policies on the topic.
- **Concepts & Issues Paper**: Designed to provide context and background information to support a Model Policy or Considerations Document for a deeper understanding of the topic.

# Considerations Document

Updated: March 2021

## Pregnancy

### I. PURPOSE

This document seeks to ensure that a pregnant woman's right to work is free from discrimination, while guarding against the risks inherent to the performance of her duties. It is intended to provide agencies with items for consideration when developing its policies regarding pregnancy. Agencies should develop procedures that recognize the value of a diverse workforce and provide accommodations that enable a pregnant law enforcement officer either to remain working her regular assignment or to work an assignment with medical restrictions provided by the agency's physician or the pregnant officer's medical provider.

### II. POLICY

Agencies should develop a policy statement that concisely explains the agency's policy on pregnancy to agency personnel and the public.

*Sample: It is the policy of this agency that:*

- *This agency will modify regular assignments and, when available, provide temporary, alternative duty assignments to eligible pregnant law enforcement officers when they request such accommodations or are unable to safely perform the essential functions of their normal assignments, as determined by the pregnant officer in conjunction with their healthcare provider and/or chief or other supervisory officer.*
- *Pregnancy discrimination and/or harassment will not be tolerated. Should an instance of such discrimination be identified, appropriate counteractions will be taken.<sup>1</sup>*
- *Pregnant officers will not be subjected to special procedures to determine their ability to work.*
- *Pregnant officers may elect to take leave, including ensuring that a pregnant officer will be permitted to return to work, if desired, after a temporary absence resulting from a pregnancy-related condition.*
- *This agency will work with the pregnant officer and her medical provider on an ongoing basis to continually evaluate whether there should be any adjustments or changes to accommodations, including leave.*

---

<sup>1</sup> Issues related to pregnancy discrimination should be brought to the agency's Human Resources offices, and charges may be filed with the U.S. Equal Employment Opportunity Commission at <https://www.eeoc.gov/filing-charge-discrimination>. For more information, see the accompanying Pregnancy Concepts and Issues paper, which includes a detailed [Appendix on the U.S. Pregnancy Discrimination Act](#).

### III. DEFINITIONS

*Pregnancy Accommodations*: modifications to a pregnant officer's regular duties or schedule to comply with the restrictions recommended by the agency's physician or the pregnant officer's medical provider.

### IV. PROCEDURES

#### A. General Guidelines

Agencies should clearly articulate the scope and nature of the policy, including:

1. Ensuring that the policy does not interfere with or diminish any rights or privileges to which an employee may be entitled under law, agency policy, or collective bargaining agreements.
2. Clarifying that existing leave policies will apply if a pregnant officer is unable to work in any capacity due to medical complications.

#### B. Notification Procedures

Guidance should be provided for pregnant officers outlining notification procedures. Agencies should consider:

1. Prohibiting agency personnel from soliciting or requiring notification of pregnancy outside of those notifications required by leave laws.<sup>2</sup>
2. Encouraging pregnant officers to provide the anticipated due date to the agency to determine when leave should be taken under applicable laws and regulations.
3. Determining which additional personnel require notification, such as the chief medical officer, while adhering to laws and regulations governing confidentiality.

#### C. Duty Assignments

Agencies should be supportive of pregnant officers who choose to perform their duties throughout the pregnancy.

Considerations may include:

1. Encouraging pregnant officers to provide their physicians with the agency's job description that delineates the essential job functions of a law enforcement officer and a copy of the agency's policy.
2. Providing pregnant officers with information regarding the risks and benefits of remaining on a regular-duty status, such as the risk of trauma, toxins, noise, or night shift/circadian rhythm dysfunction.<sup>3</sup> An agency representative<sup>4</sup> may provide educational information about the risks of police work to pregnant officers but should refrain from making any recommendations and instead defer to the pregnant officer's medical provider.
3. Evaluating assignments and offering alternative assignment options.<sup>5</sup>

---

<sup>2</sup> For example, in the United States the Family and Medical Leave Act requires the person requesting leave to notify their employer when the need for leave is foreseeable.

<sup>3</sup> For a sample handout, see [Appendix A](#).

<sup>4</sup> This should not be the pregnant employee's immediate supervisor but may be the agency's medical examiner or a representative from Human Resources.

<sup>5</sup> For agencies in Canada, see the Canadian Human Rights Commission's *Pregnancy and Human Rights in the Workplace: A Guide for Employers* available at <https://www.chrc-ccdp.gc.ca/eng/content/pregnancy-human-rights-workplace-policy-and-best-practices>; for agencies in the United States, the U.S. Equal Employment Opportunity Commission provides guidance on compliance with the Pregnancy Discrimination Act at <https://www.eeoc.gov/laws/types/pregnancy.cfm>.

4. Working with the pregnant officer to determine when and what accommodations should be made. Considerations should include:
  - a. The pregnant officer's needs and preferences, and
  - b. The guidance of the agency physician and the pregnant officer's medical provider, particularly pertaining to the pregnant officer's continuing ability to safely and effectively perform their essential job functions.
  - c. Conducting ongoing evaluations of risk to the pregnant officer, their coworkers, and the community.
5. Implementing pregnancy accommodations. Accommodations may include:
  - a. Working with the pregnant officer, the agency's physician, and the pregnant officer's medical provider to develop any necessary or appropriate accommodations to the employee's regular duties, up to and including leave.
  - b. Providing pregnant officers with the option for part-time assignments as an accommodation to their regular duties where possible, when directed by the agency's physician and/or the pregnant officer's medical provider.
  - c. Ensuring that pregnant officers retain possession of their agency credentials.
  - d. Making accommodations for uniform and equipment modifications to the extent possible.
  - e. Ensuring that pregnant officers may retain possession of an agency-issued firearm if their certifications are up to date.
  - f. Providing firearms qualifications guidelines for pregnant officers as part of the agency firearms policy, including:
    - i. notifying the pregnant officer of potential risks to the fetus, such as those related to lead and noise toxicity;
    - ii. offering/suggesting reasonable precautionary measures to reduce potential contamination from these sources should the pregnant officer choose to qualify; and
    - iii. providing alternative methods for obtaining firearms qualifications, if feasible, such as non-toxic, lead-free ammunition or simulation testing and training.<sup>6</sup>

#### D. Returning to Work

Agencies should develop guidance to assist pregnant officers in returning to work after maternity leave. Procedures should be designed to safeguard the rights and needs of returning officers as well as the agency. Considerations may include:

1. Conducting a reintegration interview after extended absences.
2. Developing a reorientation program that takes the officer's unique circumstances into consideration.
3. Organizing a meeting between the returning officer and their supervisor or commanding officer.
4. Obtaining documentation from the officer's medical provider allowing return to full or restricted duty.
5. Evaluating the officer's fitness for duty by the agency's medical advisor.<sup>7</sup>

---

<sup>6</sup> See IACP Law Enforcement Policy Center documents on Firearms: Officer Carry, Training, and Safety available at <https://www.theiacp.org/resources/policy-center-resource/firearms>.

<sup>7</sup> For more information, see American College of Occupational and Environmental Medicine's (ACOEM) Guidance for the Medical Evaluation of Law Enforcement Officers at <https://www.leoguidance.org/>.

6. Ensuring that reasonable accommodations are made whenever possible. These may include:
  - a. Providing lactation breaks, taking into consideration of the individual officer's needs and circumstances.
  - b. Providing the use of a private, lockable space that is not a restroom to breastfeed or express milk. This should include seating, an outlet, reasonable access to drinkable water, and a clean surface upon which to place a breast pump. Access to a refrigerator should also be provided to safely store milk where it is not susceptible to exposure to contaminants.
  - c. Considering continued uniform and equipment accommodations for postpartum and/or nursing officers.
  - d. Continuing to offer accommodations for firearms qualifications/training in addition to encouraging standard firearms personal preventive measures for as long as an officer is breastfeeding.<sup>8</sup> Accommodations may include providing lead-free ammunition or compressed-air cartridges and/or alternatives to live-fire qualifications, such as simulation shooting systems.

---

<sup>8</sup> For more information, see IACP Law Enforcement Policy Center documents on Firearms: Officer Carry, Training, and Safety available at <https://www.theiacp.org/resources/policy-center-resource/firearms-officer-carry-training-and-safety>.

## APPENDIX A: PREGNANCY IN LAW ENFORCEMENT<sup>9</sup>

The following information is intended to help pregnant officers make informed decisions regarding their job activities if they are pregnant or considering becoming pregnant:

- The majority of pregnant law enforcement officers are able to continue to work throughout pregnancy, with some accommodations.
- Officers should discuss any individual conditions that may require limitation of activities during pregnancy with their treating physician.

First trimester – The following activities may have adverse effects at any time during pregnancy:

- Live-fire qualification and practice (for example, use of lead-free ammunition, avoidance of weapon cleaning solvents, and other modifications may reduce the exposure and resultant risks)
- Receiving an electronic control weapon discharge
- Exposure to toxic chemicals (for example, raids on clandestine drug labs or other events involving hazardous materials)
- Exposure to high-volume vehicular traffic (for example, assignments near tunnels and tolls, or foot patrol in an area with high exposure to vehicular exhaust)

Second trimester – In addition to the above, the following activities may have adverse effects:

- Defensive tactics training involving ground fighting, falls, or blunt abdominal trauma
- Contact with prisoners (due to risk of physical injury)
- Restraining and arresting suspects
- Alternating shift work
- Prolonged standing
- Heavy lifting

Third Trimester – In addition to the above, there are no other activities with an adverse effect known at this time.

Activities that involve or require speed, agility, and balance may be adversely affected by body changes of pregnancy.

Post-delivery – Return-to-work decisions should be based upon an individualized evaluation of the officer's current status (including type of delivery and any resulting complications) and the requirements of the officer's work assignment.

Lactation – Exposure to toxic substances as outlined above (for example, live-fire training) may result in these substances being present in breast milk.

Standard body armor is not designed to protect the fetus, and typically does not cover the lower abdomen. The body armor fitted pre-pregnancy might not offer the same level of protection during pregnancy.

---

<sup>9</sup> Used with permission American College of Occupational and Environmental Medicine. See <https://www.leoguidance.org/> for the full guidance document.



Every effort has been made by the IACP Law Enforcement Policy Center staff and advisory board to ensure that this document incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no model policy can meet all the needs of any given law enforcement agency. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives, and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities, among other factors. Readers outside of the United States should note that, while this document promotes procedures reflective of a democratic society, its legal basis follows United States Supreme Court rulings and other federal laws and statutes. Law enforcement administrators should be cautioned that each law enforcement agency operates in a unique environment of court rulings, state laws, local ordinances, regulations, judicial and administrative decisions, and collective bargaining agreements that must be considered and should therefore consult their agency's legal advisor before implementing any policy.

© Copyright 2021. Departments are encouraged to use this document to establish one customized to their agency and jurisdiction. However, copyright is held by the International Association of Chiefs of Police, Alexandria, Virginia U.S.A. All rights reserved under both international and Pan-American copyright conventions. Further dissemination of this material is prohibited without prior written consent of the copyright holder.

# Concepts & Issues Paper

Updated: March 2021

## Pregnancy

### I. INTRODUCTION

#### A. Purpose of Document

This paper was designed to accompany the Considerations Document on Pregnancy established by the IACP Law Enforcement Policy Center. This paper provides essential background material and supporting documentation to provide a greater understanding of the topics and procedures outlined in the Considerations Document. This material will be of value to law enforcement executives in their efforts to tailor the guidance of the Considerations Document to the requirements and the circumstances of their own communities and agencies.

Women are an integral part of modern policing and a valuable asset in community police engagement and crime control and prevention at the federal, state, tribal, and local levels. Successful recruitment and retention of female officers is crucial to advancing the policing profession.<sup>1</sup> The IACP Considerations Document on Pregnancy is intended to assist law enforcement agencies in managing and accommodating their pregnant employees so that women who wish to do so can safely perform their essential job functions during all or most stages of their pregnancies. This, in turn, should support agency efforts to maintain gender diversity while helping to safeguard women's rights under the law.

#### B. Intent and Focus of Relevant Policies

It is in the best interest of law enforcement agencies to both support their employees and protect themselves against liability. The accompanying Considerations Document is intended to provide law enforcement chiefs and executives guidance in making decisions about work-related issues involving pregnant law enforcement officers. This guidance is meant to help prevent discriminatory practices within police agencies, assist agencies in accommodating the unique issues related to pregnancy, and help guide agencies in the legal and professional considerations for creating their own relevant policies and guidelines. The Considerations Document is designed specifically for pregnant employees and is not the equivalent to a typical policy on light duty.

An agency's policy should provide options that allow a pregnant officer to remain working in a full-time capacity, performing full-duty assignments in combination with modified duty assignments, if needed, until such time that the pregnant officer's doctor recommends a leave status for the employee, or the employee independently requests leave due to her pregnancy or related medical condition. If the employee requests leave related to pregnancy or a medical condition, the agency may choose to require verification from the employer's physician.

---

<sup>1</sup> This paper is in large part adapted from Deborah Campbell and Karen Kruger Esq., "IACP Policy Assists Agencies to Define Pregnancy Policies," Chief's Counsel, *The Police Chief* 78 (April 2011): 12–13; and Karen J. Kruger Esq., "Pregnancy Policy: Law and Philosophy," Chief's Counsel, *The Police Chief* 78 (March 2006): 10–11.

No punitive action should ever be taken against a pregnant employee who requests the accommodations as suggested in the accompanying Considerations Document and/or an agency's relevant policy.

Other topics of consideration for law enforcement agencies include what should be done to retain employees who are pregnant, have children in the future (this includes adoption and foster children), or experience adverse medical conditions as a result of pregnancy. Furthermore, agencies should be concerned with avoiding liability for gender discrimination and safeguarding the physical and mental well-being of its employees. In no event may pregnant employees be treated any differently than other employees with comparable illnesses or medical conditions, even in the face of these concerns.

Some of the more difficult situations, though, arise prior to a pregnant officer being placed on leave due to childbirth. Law enforcement officers may be required to confront dangerous, high-stress situations that demand strenuous physical exertion. They must wear, carry, and use specialized equipment. They must be able to quickly get out of vehicles and perform rescue operations. In nearly every case, a pregnant woman will have difficulty performing these tasks during the later stages of pregnancy, but until that time, a pregnant employee must be allowed to work as long as they are physically able to do so. That is, the agency cannot mandate that a pregnant officer cease certain duties. Rather, this direction should come from her doctor but may be made in consultation with the employee and the police department's medical advisor.<sup>2</sup>

The guidelines in the Considerations Document are based on medical criteria and allow women to continue working while reducing the risk of injury. Accordingly, failure to follow these guidelines may result in liability for negligence by exposing pregnant employees to an unreasonable risk of injury. The guidelines strike a balance between actual safety risk and the risk of employee discrimination liability.

In cases of newly positioned pregnant officers who have requested or been temporarily assigned to duties outside of their typical scope, agency heads should consider involving labor representatives or human resources specialists in making these assignments to avoid "out-of-title" grievances.

The example policy and guidelines in the Considerations Document are unique in that they encourage agencies to provide opportunities for employees and employers alike by minimizing the absence of employees who are capable of working while pregnant. The policy suggests that agencies offer evolving, alternative assignments that parallel the development and physical changes associated with a typical pregnancy. The intent of the policy is that these assignments change as needed by the employee's actual changing physical or medical condition and are specific to the needs of the individual officer. An agency must coordinate the terms of this recommended policy with existing policies and applicable state, tribal, local, and federal laws and regulations.

When a pregnant officer is assigned to modified duties, she may also, as a result, be subjected to limitations imposed by other agency regulations such as rules regarding secondary employment, required physical fitness testing, mandatory overtime details, and reduction of pension benefits due to absence. Law enforcement agencies should consider those concurrent negative impacts and take measures to ameliorate them to avoid liability under the discrimination theory of "disparate impact."

---

<sup>2</sup> Title VII, 29 CFR Part 1604, EEOC-CVG-2015-01, Enforcement Guidance on Pregnancy Discrimination and Related Issues, <https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues>.

## II. LEGAL CONSIDERATIONS<sup>3</sup>

### A. Pregnancy and Police Work

Law enforcement officers who become pregnant may, throughout the course of their pregnancies, become unable to perform some or all of the essential functions required by their jobs. Certain antidiscrimination laws protect these women from losing their jobs or from otherwise being disadvantaged. In the United States, these include the Pregnancy Discrimination Act (PDA), sections of the Family Medical Leave Act (FMLA), and the Americans with Disabilities Act (ADA),<sup>4</sup> but only to a certain extent.

In the United States, discrimination in employment on the basis of gender is unlawful under Title VII of the Civil Rights Act of 1964. In 1978, as part of Title VII, Congress enacted the PDA, which requires that employers treat women who are pregnant similarly to other applicants or employees who have similar abilities or limitations. The law applies to employers with 15 or more employees and includes local, state, tribal, and federal government employers. The PDA was intended to “guarantee women the basic right to participate fully and equally in the workforce, without denying them the fundamental right to full participation in family life.”<sup>5</sup> If an employee is temporarily unable to perform her job due to pregnancy, the employer must treat her the same as any other temporarily disabled employee; for example, by providing light duty, modified tasks, alternative assignments, disability leave, or leave without pay.

Additionally, impairments resulting from pregnancy (for example, gestational diabetes) may be considered disabilities under the ADA. An employer may be required by law to provide a reasonable accommodation for a disability related to pregnancy, absent undue hardship (significant difficulty or expense) to the agency. For example, an employer may be required to provide modified duties for an employee with a 20-pound lifting restriction stemming from pregnancy-related sciatica, absent undue hardship. The ADA Amendments Act of 2008 makes it much easier to relate a medical condition to a covered disability.<sup>6</sup>

The ADA provides for pregnancy-related leave in limited circumstances. Specifically, a pregnant employee experiencing complications that limit a major life activity may be considered disabled under the ADA and entitled to its protections, including reasonable accommodations. In most cases, the ADA will not be a factor in how much time an employee may take for pregnancy or maternity leave. Pregnancy in and of itself isn’t a “physiological disorder” and therefore isn’t an “impairment” under the ADA. However, pregnant employees who suffer from severe pregnancy- or birth-related complications may be covered by the ADA if their medical complications substantially limit a major life activity.

While the ADA does not automatically provide for pregnancy leave, employers should be aware of its protections and their obligations. The ADA prohibits employers from discriminating in all aspects of employment against qualified individuals because of a disability and requires employers to reasonably accommodate disabilities if they can do so without suffering undue hardship.<sup>7</sup>

---

<sup>3</sup> The laws in this section pertain to the United States. For more information on the Canadian Human Rights Act, which prohibits pregnancy discrimination in Canada, see Appendix B. For more information on legal considerations worldwide, see the International Labour Standards on Maternity protection at <https://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/maternity-protection/lang--en/index.htm> and the related publication, *Maternity and Paternity at Work: Law and Practice across the World*, available at [https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms\\_242615.pdf](https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_242615.pdf).

<sup>4</sup> See Appendix A for details about the U.S. Pregnancy Discrimination Act, see Appendix B for the Canadian legal standards.

<sup>5</sup> *California Federal Sav. & Loan Assoc. v. Guerra*, 479 U.S. 272, 289 (1987), quoting 123 Cong. Rec. 29658 (1977) (remarks of Sen. Williams).

<sup>6</sup> For more information about the ADA, see [www.eeoc.gov/laws/types/disability.cfm](http://www.eeoc.gov/laws/types/disability.cfm). For information about the ADA Amendments Act, see [www.eeoc.gov/laws/types/disability\\_regulations.cfm](http://www.eeoc.gov/laws/types/disability_regulations.cfm).

<sup>7</sup> For further explanation, see Practical Law’s definition of undue hardship [https://content.next.westlaw.com/2-504-2937?\\_lrTS=20201211211459681&transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://content.next.westlaw.com/2-504-2937?_lrTS=20201211211459681&transitionType=Default&contextData=(sc.Default)&firstPage=true).

To determine whether a pregnant employee is entitled to ADA protection, an employer must determine both (1) whether the individual is qualified and (2) whether she has a covered disability. Employers may have a duty to provide an accommodation such as providing additional leave, making facilities more accessible, restructuring the applicable job, or allowing a change in a work schedule. A reasonable accommodation may include, for example, allowing an employee to telecommute or extending leave. In some cases, employers that terminate employees after 12 weeks of FMLA leave may be violating the ADA as extended leave could be a possible accommodation. This raises difficult issues because an employer may be unaware that a pregnant employee has a disability and there are no guidelines on the length of additional leave an employer must give to a pregnant employee under the ADA. Employers should review their policies and practices for granting leave and alternative work schedules to pregnant employees, especially when pregnant employees take leave due to complications. Policies that require termination of a pregnant employee after a set period of time may violate the ADA.

Adequate employment accommodations for pregnant women are generally recognized to be appropriate, especially since the passage of the FMLA.<sup>8</sup> Under the FMLA of 1993, a new parent (including foster and adoptive parents) may be eligible for 12 weeks of leave (unpaid or paid if the employee has earned or accrued it) that may be used for care of the new child. To be eligible, the employee must have worked for the employer for 12 months prior to taking the leave and the employer must have a specified number of employees.<sup>9</sup> Additionally, employees with proper medical certifications may use FMLA leave in lieu of working required overtime hours. Regulations clarify that the hours an employee would have been required to work but for the taking of FMLA leave can be counted against the employee's FMLA entitlement. Employers must select employees for required overtime in a manner that does not discriminate against workers who need to use FMLA leave.

If an employee has been absent from work as a result of a pregnancy-related condition and recovers, her employer cannot require her to remain on leave until the baby's birth. Nor may an employer have a rule that prohibits an employee from returning to work for a predetermined length of time after childbirth.

As a condition of restoring an employee who was absent on FMLA leave due to the employee's health condition, an employer may have a uniformly applied policy or practice that requires all similarly situated employees who take leave for such conditions to submit a certification from the employee's own health care provider that the employee is able to resume work. Under the regulations in the United States, an employer may require that the fitness-for-duty certification address the employee's ability to perform the essential functions of the position if the employer has appropriately notified the employee that this information will be required and has provided a list of essential functions. Additionally, an employer may require a fitness-for-duty certification up to once every 30 days for an employee taking intermittent or reduced schedule FMLA leave if reasonable safety concerns exist regarding the employee's ability to perform his or her duties based on the condition for which leave was taken.

Although under the PDA it is lawful for an employer to offer more benefits to pregnant employees than it offers to nonpregnant employees, those benefits must be monitored to ensure equity and deter abuse. If an employer provides any benefits to workers on medical leave, the employer must provide the same benefits for those on medical leave for pregnancy-related conditions.

Employees with pregnancy-related disabilities must be treated the same as other temporarily disabled employees for accrual and crediting of seniority, vacation calculation, pay increases, and temporary disability benefits.

---

<sup>8</sup> 29 U.S.C. §§2601–2654 (Family and Medical Leave).

<sup>9</sup> For more information, see U.S. Department of Labor, "Fact Sheet #28: The Family and Medical Leave Act," <http://www.dol.gov/whd/reg/compliance/whdfs28.htm>.

Nursing mothers may also have the right to express milk in the workplace under a provision of the Fair Labor Standards Act enforced by the U.S. Department of Labor’s Wage and Hour Division. For more information, see the U.S. Department of Labor’s Fact Sheet for Nursing Mothers.<sup>10</sup>

The failure of police agencies to adopt adequate pregnancy policies has contributed to a number of Title VII discrimination complaints filed by women in the workplace.<sup>11</sup> A finding that a law enforcement agency discriminates against women is costly both monetarily and to public relations, including detrimental to the recruitment of women into the profession.

A law enforcement agency may not remove a pregnant officer from her assignment or compel her to assume a light-duty assignment unless she cannot perform the essential functions of a police officer.<sup>12</sup> In other words, a pregnant officer should be assigned to a light-duty status only under the same criteria that other temporarily disabled employees are so assigned—namely, for medical necessity.

Any health insurance provided by an employer must cover expenses for pregnancy-related conditions on the same basis as expenses for other medical conditions. The PDA specifies, however, that insurance coverage for expenses arising from abortion is not required, except where the life of the mother is endangered or medical complications arise from an abortion.

Pregnancy-related expenses should be reimbursed in the same manner as those incurred for other medical conditions, whether payment is on a fixed basis or a percentage of reasonable and customary charge basis. The amounts payable by the insurance provider can be limited only to the same extent as costs for other conditions. No additional or larger deductible can be imposed.

Under the Affordable Care Act of 2010, which prohibits health insurance companies from denying coverage for pre-existing conditions, benefits cannot be denied for medical costs arising from an existing pregnancy.<sup>13</sup> Other laws, however, may apply to the coverage of pre-existing conditions.

Employers must provide the same level of health benefits for spouses of male employees as they do for spouses of female employees. Although agencies may not remove a pregnant officer from her assignment or change her responsibilities without her request or proof that she is unable to assume the essential functions of her job, employers should present the risks and potential hazards associated with pregnancy in some law enforcement capacities so that the employee is equipped to make informed decisions about her health. Employers should not try to persuade the pregnant employee to do anything but should instead present the facts of risk she would be assuming. Some issues to consider include standing/being on her feet for extended periods of time; carrying, use of, and potential exposure to pepper spray, electronic control weapons (ECW), firearms, and other weapons; considerations for the uniform and equipment; increased risk of overexposure to stressful situations and potential exhaustion; as well as driving and motor vehicle precautions. Further details on some of these considerations will be discussed later in this paper.

It is unlawful for an employer to take “anticipatory” action against a pregnant employee or to make general assumptions about the impact that a pregnancy might have on a woman’s ability to do her job.<sup>14</sup> Employers may not change a pregnant employee’s assignment against her will based on stereotypes or assumptions about what types of work pregnant women should do, concerns about public perceptions of pregnant officers, or to protect the fetus. A

---

<sup>10</sup> For more information, see U.S. Department of Labor, “Fact Sheet #73: Break Time for Nursing Mothers under the FLSA,” <http://www.dol.gov/whd/regs/compliance/whdfs73.htm>.

<sup>11</sup> For examples, see *Lehmuller v. Incorporated Village of Sag Harbor*, 944 F. Supp. 1087, 1092 (E.D.N.Y. 1996); *Germain v. County of Suffolk*, 07-CV-2523, 2009 WL 1514513 (E.D.N.Y. May 29, 2009); *United States v. City of Florence*, Kentucky Consent Decree, 2:16-cv-00190-WOB-JGW (E.D. Ky. 2016); *Jennifer Panattoni v. Village of Frankfort*, 17-cv-06710 (N.D. Ill. 2017).

<sup>12</sup> *O’Loughlin v. Pinchback*, 579 So.2d 788 (Fla. App. 1 Dist. 1991), termination of pregnant correctional officer unlawful in absence of evidence that her abilities were impaired.

<sup>13</sup> Patient Protection and Affordable Care Act of 2010, Pub. L. No. 111-148 Stat. 119 (2010).

<sup>14</sup> *Maldonado v. U.S. Bank*, 186 F.3d 759, 763 (7th Cir. 1999).

pregnant employee should not be forced into a light-duty assignment as long as she is physically able to perform her regular assignment. Likewise, she should not be permitted to elect a light-duty assignment before it is medically necessary, unless other, nonpregnant employees are allowed to make this election. Likewise, where a law enforcement agency provides light-duty assignments to temporarily disabled officers, it must offer the same opportunity to pregnant officers who are temporarily disabled by pregnancy or childbirth.

There are many court cases regarding action relating to pregnancy discrimination in law enforcement workplace settings. For example, in one case, a sheriff was found to have violated Title VII because he automatically reassigned female correctional officers to administrative duties upon their becoming pregnant.<sup>15</sup> In another case, *Adams v. Nolan*, Officer Adams requested and was denied a light-duty assignment from her supervisor during her pregnancy, even though she provided a doctor's note advising that she should be assigned to "lighter work."<sup>16</sup> The agency policy held that "no light-duty assignments will be made for employees due to non-work-related injury or illness." During the following months, Officer Adams continued to request light-duty work assignments, while two male officers were allowed to work at desk jobs because of non-work-related temporary injuries. When she was approximately five months pregnant, Officer Adams used her accumulated leave and some unpaid leave until after the birth of her child. She returned to work, and the department assigned her not to patrol work but in an administrative section, which would have been a suitable assignment for her during pregnancy. The appellate court found that Adams established a prima facie case of discrimination and that the agency failed to offer a legitimate nondiscriminatory reason for its actions. It also found that the agency's limited leave policy "strongly suggests intent to discriminate against women who are pregnant or have pregnancy-related conditions, which is expressly the type of discrimination prohibited by the Pregnancy Discrimination Act."<sup>17</sup> Aside from lawsuits, employees also have the ability to file complaints to the Equal Employment Opportunity Commission (EEOC). This is usually a faster process than full legal action and can warrant change in action fairly quickly.

In order to successfully recruit and retain female officers, agencies will find it useful to provide flexible policies to accommodate family needs but must do so in an equitable fashion. Although the PDA does not require employers to offer maternity benefits to make it easier for pregnant women to work and to return to work,<sup>18</sup> it is beneficial for law enforcement agencies to accommodate pregnant women in this way.<sup>19</sup> Many law enforcement agencies provide for maternity leave; light-duty assignments; maternity uniforms and body armor; deferral of in-service training; continuation of benefits and seniority credits while on leave; and flexible schedules upon return to work.<sup>20</sup> Such policies are laudable, but care must be taken in how they are implemented.

---

<sup>15</sup> *United States v. Bill Sturch*, CIV 09-234-FHS (2013).

<sup>16</sup> *Adams v. Nolan*, 962 F.2d 791 (8th Cir. 1992). Officer Adams sued the North Little Rock Police Department and Police Chief William P. Nolan.

<sup>17</sup> *Id.* at 794.

<sup>18</sup> *Troupe v. May Department Stores Co.*, 20 F.3d 734, 738 (7th Cir. 1994).

<sup>19</sup> Kim Lonsway et al., *Hiring and Retaining More Women: The Advantages to Law Enforcement Agencies* (Beverly Hills, CA: National Center for Women & Policing, 2003, <https://pdf4pro.com/cdn/hiring-amp-retaining-more-women-40ab7a.pdf>).

(accessed August 10, 2011); Susan Ehrlich Martin and Nancy C. Jurik, *Doing Justice, Doing Gender: Women in Law and Criminal Justice Occupations* (Thousand Oaks, Calif.: Sage Publications, 1996).

<sup>20</sup> National Center for Women and Policing, "Implementing Family-Friendly Policies" in *Recruiting and Retaining Women: A Self-Assessment Guide for Law Enforcement* (Los Angeles: 2003), chapter 9.

## B. Fetal Protection and Employer Liability

Employers may have concerns about the safety of their pregnant employees and the unborn fetuses, but those concerns should not be translated into formal or informal workplace policies applied to all pregnant employees. Banning women from work environments to which men have access, even for the seemingly noble purpose of protecting the unborn fetus, is a form of sex discrimination. Similarly, pregnant employees may not be forced to take leave based on a real or imagined threat to the fetus's health.

In *Automobile Workers v. Johnson Controls*, the U.S. Supreme Court ruled that an employer cannot exclude pregnant women from hazardous jobs without violating federal discrimination laws.<sup>21</sup> The court encouraged employers to offer women options that include different job assignments or accommodations in their usual jobs. Pregnant women who have been discriminated against because of their pregnancies—either because of so-called “fetal protection policies” or for other seemingly benevolent reasons—have sued law enforcement agencies and prevailed. Employers should offer alternatives and options for the pregnant employee to consider, but forcing or attempting to coerce or influence that person's decision as to what type of assignment change to make (or to stay) is unacceptable.

In *Johnson Controls*, the U.S. Supreme Court ruled that employers may not have fetal protection policies that exclude women from certain hazardous jobs, even if the intent of the policy is benevolent. Under Title VII, decisions about the welfare of future children are the responsibility of parents, not employers. Under this case, “women as capable of doing their jobs as their male counterparts may not be forced to choose between having a child and having a job.”<sup>22</sup> An employer “may only take into account the woman's ability to get her job done,”<sup>23</sup> not whether the job poses a risk to the fetus. Ultimately, if the woman is able to perform the duties of her job, and chooses to do so regardless of risk, it is her decision whether to assume a modified role or continue working as-is.

The court noted in *Johnson Controls* the “remote” prospect of liability for fetal injuries or death resulting from a mother's work environment. However, at that time, it was not yet known whether employers could be held liable under state tort law if they allowed pregnant women to work (in compliance with federal antidiscrimination law) and those workers' children were born with birth defects due to the mothers' working conditions. This has since been determined a possibility.<sup>24</sup> Tort law varies between states on this issue and law enforcement executives should familiarize themselves with any case law that has bearing on this issue. Moreover, executives should familiarize themselves with current medical and legal recommendations for maternal and fetal protection, a matter that will be explored later in this document.

The obligations of Title VII, in general, and the PDA, in particular, may seem to present conflicting obligations in some instances with OSHA regulations (29 C.F.R §1910). While it may seem that tort liability for workplace injury conflicts with Title VII anti-discrimination obligations, such arguments have typically been rejected. Tort liability typically requires proof of employer negligence, and this basis is often used to reconcile tort liability with Title VII requirements. However, Michael Starr and Christine Wilson discuss this conflict in a law review article and point out that negligence is highly contextual. They conclude that this decision must balance the goals of equal employment

---

<sup>21</sup> *Automobile Workers v. Johnson Controls*, 499 U.S. 187 (1991). The *Johnson Controls* decision is not limited to fetal protection and has also been applied to other individual employment decisions.

<sup>22</sup> *Id.* at 204.

<sup>23</sup> *Id.* at 205.

<sup>24</sup> Michael Starr and Christine Wilson, “Fetal Injury at Work: Employment Law,” *The National Law Journal*, October 29, 2007, <https://www.law.com/nationallawjournal/almID/1193130215852>; Michael Starr and Christine M. Wilson, “Employers Being Held Responsible for Workplace Fetal Injuries,” *The Connecticut Law Tribune*, November 06, 2007, <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=900005495405>.



opportunity for women against the potential cost of fetal injury, but the appropriate balance between these two aims is not always clear.<sup>25</sup>

At this point in time, the prospect of employer liability in the workplace for fetal injury or death resulting from the performance of police duties remains nominal. But, to help avoid the potentiality of liability in this regard, police administrators should exercise due diligence by (1) informing the employee about the nature of the hazards and making sure that she understands those risks and takes reasonable measures to mitigate those risks; (2) accommodating employee requests where reasonably possible to take alternative assignments, or leaves of absence; and (3) placing the decision of whether to work or how much to work and appropriate work assignments in the hands of competent medical professionals who are knowledgeable about the hazards of policing and who can work in concert with the employee to make reasonable and informed decisions.

### III. MEDICAL CONSIDERATIONS

To ensure that the decisions regarding a pregnant employee's ability to work in a particular assignment are based on sound medical advice, an agency must provide the employee's personal physician with a detailed description of the essential functions of her law enforcement position so that the doctor may objectively and thoroughly evaluate the employee's ability to safely perform those tasks. To be realistic and comprehensive, this description should ideally be based on a job-task analysis. Physicians may also benefit from a checklist specifying these tasks and highlighting some of the medical issues addressed in the Considerations Document.<sup>26</sup>

#### A. Confidentiality

Both agencies and physicians must remain mindful of medical confidentiality requirements that are imposed by federal and state law, as well as protections afforded by the ADA. While most law enforcement agencies are not subject to the restrictions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), they should generally be aware that the confidentiality of medical information and records is governed in the United States by HIPAA as well as many state laws.<sup>27</sup> HIPAA provides standards for the electronic exchange, privacy, and security of health information and is codified in 45 C.F.R. Part 160 and Part 164.<sup>28</sup> The law protects:

- The individual's past, present, or future physical or mental health or condition; the provision of health care to the individual; or
- The past, present, or future payment for the provision of health care to the individual.

Information concerning the diagnosis, prognosis, treatment, or other matters related to a pregnant employee in a law enforcement agency should be treated in a confidential manner when those records are under the control of a law enforcement agency. Perhaps a greater concern for most law enforcement agencies is the potential for liability arising from allegations that medical conditions were improperly considered in violation of the ADA (as amended).<sup>29</sup> It is important that information regarding pregnancy, as with other medical conditions and information associated with those conditions, must be protected from unauthorized access or distribution. If information is shared with personnel or individuals who do not have a legitimate need and right to know the information, it establishes potential liability for

---

<sup>25</sup> *Dimino*, 64 F. Supp. 2d 136.

<sup>26</sup> Physicians should review *Guidance for the Medical Evaluation of Law Enforcement Officers*, developed by the American College of Occupational and Environmental Medicine, available at <https://www.leoguidance.org>.

<sup>27</sup> Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule: A Guide for Law Enforcement. Available at [https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/special/emergency/final\\_hipaa\\_guide\\_law\\_enforcement.pdf](https://www.hhs.gov/sites/default/files/ocr/privacy/hipaa/understanding/special/emergency/final_hipaa_guide_law_enforcement.pdf).

<sup>28</sup> See 45 CFR § 160(A); 45 CFR § 164 (A)(E), <https://www.ecfr.gov/cgi-bin/text-idx?gp=&SID=a715daf73390816918f55b9acc794e24&pid=20180719&tpl=/ecfrbrowse/Title45/45CsubchapC.tpl>.

<sup>29</sup> See U.S. Equality Employment Opportunity Commission, *The Americans with Disabilities Act Amendments Act of 2008*, <https://www.eeoc.gov/statutes/americans-disabilities-act-amendments-act-2008>.

claims that the individual(s) improperly considered a medical condition in making employment decisions, in addition to other confidentiality and privacy violation claims.

As such, police departments should seek only information on an officer's ability to return to work as determined by an informed physician rather than receiving specific medical information that underlies that decision. Police agencies should control employee return-to-work clearances and medical restrictions for employees through their human resources unit or similar entity, or, in smaller departments, through an individual who has similar authority and the capability to maintain such information in confidence. Return-to-duty clearances or duty restrictions—without the underlying medical info—can then be communicated by the human resources department to supervisors and others in the chain of command who reasonably need that information.

## B. Weapons and Firearms Training and Exposure

Pregnant officers should be made aware of the risk of using firearms while pregnant. It is strongly recommended that the use of firearms during pregnancy be avoided whenever possible for the following reasons:

- **Lead toxicity**—Research has shown that the fetus may be exposed to the lead found in shooting environments, as it is transferred across the placenta from the mother. Serious complications may result, including spontaneous abortion, premature membrane rupture, preeclampsia, pregnancy hypertension, and neurobehavioral effects in infants and children. Even brief exposure to low levels of lead may have serious consequences. These include preterm delivery; congenital abnormalities; and decreased birth weight, length, and head circumference.<sup>30</sup>
- **Noise toxicity**—The noise associated with firearms training is known to be harmful during pregnancy and has been linked to miscarriage, intrauterine growth retardation, preterm delivery, and hypertension.
- **Other chemical hazards**—Exposure to additional metals other than lead, including barium, antimony, copper, and arsenic, is possible during firearms training. The levels of these chemicals appear to be nontoxic for regular adults, however, the potential harm to the pregnant officer and her unborn child are unknown at this time. Therefore, the pregnant officer should avoid shooting a firearm or spending time in or around a shooting range. If firearms' training is necessary while the officer is breastfeeding, lead-free ammunition should be utilized. In addition, the organic solvents used in firearm cleaning products may also pose a risk to the pregnant officer, as they are known to interfere with the growth and development of the fetus. Pregnant officers should not handle these chemicals. If necessary, guns should be cleaned by another individual, away from the pregnant officer.<sup>31</sup>

Other weapons and devices, such as pepper spray and ECWs, can cause additional stress and/or harm to a pregnant officer, not only putting herself in danger but escalating the risk of the pregnancy and health of the unborn child.

## C. Risk of Injury or Trauma

Law enforcement work, by nature, is often stressful and dangerous, and pregnant officers should be informed of related risks.<sup>32</sup> Knowing this, it is recommended that potential risk of injury to the mother or the fetus be minimized or avoided by pregnant officers. Accordingly, the pregnant officer may wish to refrain from certain activities or assignments. However, this must ultimately be the decision of the pregnant officer, in consultation with her physician.

<sup>30</sup> Fabrice Czarnecki, "The Pregnant Officer," *Clinics in Occupational Environmental Medicine* 3, no. 3 (August 2003): 641–648.

<sup>31</sup> Czarnecki, "The Pregnant Officer." For a more extensive review of recommendations, see the IACP Law Enforcement Policy Center documents on Firearms: Officer Carry, Training, and Safety (Alexandria, Va.: International Association of Chiefs of Police, 2019), <https://www.theiacp.org/resources/policy-center-resource/firearms-officer-carry-training-and-safety>.

<sup>32</sup> The Mayo Clinic, "Trauma in Pregnancy: A Unique Challenge," October 6, 2017, <https://www.mayoclinic.org/medical-professionals/trauma/news/trauma-in-pregnancy-a-unique-challenge/mac-20431356#:~:text=Force%20from%20trauma%20can%20sheer,Loomis>.

While agency supervisors cannot force a pregnant officer into any modified duty, an agency representative may provide the officer with information on the risks of police work, and the agency should offer the safest duty options possible to the pregnant officer for her consideration.<sup>33</sup>

In addition, precautions and care should be taken when training pregnant officers. Pregnant officers should not participate in combat simulations or other training situations that may result in injury, such as fighting techniques or actions that could lead to falls or physical trauma to the mother or unborn child. Training involving ECWs, pepper spray, or other similar tools should be postponed until after the officer has given birth.<sup>34</sup>

#### D. Additional Risks

Pregnant officers should consider limiting or avoiding the following activities:<sup>35</sup>

1. Lifting heavy objects.
2. Assignments that involve exposure to chemical hazards, such as clandestine drug laboratories and traffic enforcement.
3. Assignments that have the potential for exposure to biohazard materials.
4. Alternating shift work or night work, as these have been associated with increased fatigue and risk of preterm birth.
5. High-risk driving, such as vehicular pursuits.

### IV. RETURN TO WORK

When an employee returns to work following maternity leave, it is not uncommon for her to have been away from full-time, full-duty employment for 90 days or more. As a result, it can be expected that some of her previously second-nature skill sets may be out-of-practice or diminished and need to be refreshed (this may also be true of any extended leave for any officer—not just maternity leave). Firearms training is a good example. If an employee has not qualified for an extended period of time, her firearms proficiency will need to be restored (as is true after any extended leave of absence).

Following maternity leave, the employee should meet with her commanding officer for purposes of a reintegration interview and development of a reorientation program. Each employee's needs will vary, so an individualized plan should be developed and customized to the specific needs of the returning employee. In addition to firearms requalification, the officer may need to be brought up to speed on changes in operational policies and procedures; be required to attend some specific types of training to re-sharpen skills, abilities, or learning; and may even need to participate in a short period of evaluation with a field training officer or another officer before returning to solo patrol duties. These types of measures should be a routine part of reintegration for any officer who has been on extended leave for any injury, illness, or other reason.

Another factor that may be included in the reintegration plan is that of accommodations that will be needed for mothers who are breastfeeding their child.<sup>36</sup> Both federal, and, in most cases, state law governs this issue. The Patient Protection and Affordable Care Act, H.R. 3590 was signed into federal law in 2010 together with the Reconciliation Act, H.R.4872, amending the Fair Labor Standards Act (29 U.S. C. 27) to require an employer to provide reasonable breaks and accommodations for employees to express milk. Employers are not required to compensate employees for any work

---

<sup>33</sup> When possible, this should not be the pregnant officer's direct supervisor in order to avoid any perceptions of pressure or coercion.

<sup>34</sup> Fabrice Czarnecki, "The Pregnant Officer," *Clinics in Occupational Environmental Medicine* 3, no. 3 (August 2003): 641–648.

<sup>35</sup> Czarnecki, "The Pregnant Officer."

<sup>36</sup> For more information on suggested restrictions for breastfeeding officers, refer to the medical guidelines developed by the American College of Occupational and Environmental Medicine, available at <https://www.leoguidance.org>.

time spent for this purpose, and, if the requirements impose undue hardships for any employer who employs fewer than 50 persons, the employer is not subject to these requirements.<sup>37</sup>

In addition to the foregoing federal law, most states have made accommodations to allow employees to express milk while on the job. The allowances entailed in these enactments vary widely from those states that simply allow women to breastfeed in public or private locations, to broad brush enactments such as New York that has created a sweeping Breastfeeding Mothers' Bill of Rights. While state and federal law will form the bottom line for departmental policy allowances in this matter (federal requirements cannot preempt state laws that provide greater protections to employees), at a minimum, accommodations made for expressing milk should include a private room (not a public bathroom); access to use of a refrigerator; and limits on exposure to toxic levels of heavy metals and other chemicals.<sup>38</sup>

---

<sup>37</sup> National Conference of State Legislatures, "Breastfeeding State Laws," Washington D.C., *updated* May 2011, <http://www.ncsl.org/?tabid=14389>; U.S. Department of Labor, "Break Time for Nursing Mothers," <https://www.dol.gov/agencies/whd/nursing-mothers>.

<sup>38</sup> National Conference of State Legislatures, "Breastfeeding State Laws"; U.S. Department of Labor, "Break Time for Nursing Mothers."

## APPENDIX A: U.S. PREGNANCY DISCRIMINATION ACT<sup>39</sup>

Issued in 1997 as an amendment to the Civil Rights Act of 1964, the Pregnancy Discrimination Act (PDA) bars employers in the United States from discriminating against employees or applicants based on pregnancy, childbirth, or related medical conditions.

**Applicants.** An employer cannot refuse to hire a woman because of a condition related to pregnancy, as long as she is able to perform the major functions of her job. Furthermore, applicants cannot be discriminated against because of client, co-worker, or customer prejudices against pregnant workers.

**Employment Conditions.** Employers are not allowed to discriminate based on pregnancy for any aspect of employment, including, but not limited to, pay, job assignment, promotions, layoffs, training, fringe benefits, and firing.

**Pregnancy and Maternity Leave.** Employers may not single out women for pregnancy-related conditions for medical clearance procedures that are not also required for employees who are similar in their inability, or ability, to work.

Example: Employers may require all employees to submit documentation from a doctor concerning their inability to work before granting leave or paying sick benefits. If it is required for all other employees for leave or benefit reasons, the employer may require employees affected by pregnancy-related conditions to do the same.

Employees who are pregnant must be allowed to work as long as they are able to perform the functions of their job. If an employee has been absent from work as a result of pregnancy-related conditions and recovers, her employer may not require her to remain on leave until the birth of the child. Employers are also barred from having rules that prohibit employees from returning to work for a predetermined length of time following childbirth.

**Pregnancy and Temporary Disability.** If an employee is temporarily unable to perform her job duties because of pregnancy, the employer must treat her the same as any other temporarily disabled employee.

Example: Providing light duty options, modified tasks, alternative assignments, disability leave, or unpaid leave.

Employers that allow temporarily disabled employees to take disability leave or leave without pay must give an employee who is temporarily disabled due to pregnancy the same leave allowances. Further, employers must hold a job open for pregnancy-related absences for the same period of time that jobs are held open for employees on temporary disability or sick leave.

**Equal Benefits.** Employers who provide benefits to workers on medical leave must provide the same benefits to those on medical leave relating to pregnancy conditions. Further, employees with pregnancy-related disabilities must be treated the same as other temporarily disabled employees when it relates to accrual and crediting of seniority, vacation calculation, pay increases, and temporary disability benefits.

**Harassment.** Harassment of employees based on pregnancy, childbirth, or a pregnancy-related medical condition is unlawful under the PDA and ADA. Harassment is illegal when it is frequent or severe enough that it creates an offensive or hostile work environment, or when an adverse employment decision such as demotion or firing of the victim, results. Harassment can occur by a co-worker, supervisor, customer, client, or other related party.

**Health Insurance.** Any employer-provided health insurance must cover expenses for pregnancy-related conditions on the same basis as other medical condition expenses. Pregnancy-related expenses should be reimbursed in the same manner as expenses incurred from other medical conditions (whether that be on a fixed basis or percentage of reasonably and customary charge basis). Amounts payable by the insurance provider can be limited only to the same extent as costs for other conditions. No larger or additional deductible can be imposed. Additionally, employers must provide the same level of health benefits for spouses of both female and male employees. Under the Affordable Care Act of 2010, benefits cannot

---

<sup>39</sup> U.S. Equal Opportunity Commission, *Fact Sheet: Pregnancy Discrimination*, 1997, <https://www.eeoc.gov/laws/guidance/fact-sheet-pregnancy-discrimination>; U.S. Equal Opportunity Commission, *Pregnancy Discrimination*, <https://www.eeoc.gov/pregnancy-discrimination>.

be denied for medical costs arising from an existing pregnancy. However, some other laws may apply to the coverage of pre-existing conditions.

## APPENDIX B: CANADIAN HUMAN RIGHTS ACT<sup>40</sup>

The *Canadian Human Rights Act* prohibits discrimination in the workplace related to pregnancy. This Act applies to employers such as federal government departments and agencies, crown corporations, banks, inter-provincial transportation companies (bus, trucks, railway, and air), telecommunications service providers, and First Nations. The Act protects all federally regulated employees, including applicants, volunteers, temporary employees, probationary and contract workers, as well as full- and part-time employees.

“Pregnancy” includes the following conditions and circumstances for legal purposes:

- Family planning or fertility treatment(s)
- Childbirth
- Pregnancy via surrogate
- Miscarriage or conditions arising from miscarriage
- Stillbirth or conditions arising from stillbirth
- Reasonable recovery time after childbirth, miscarriage, stillbirth, or abortion
- Placing a baby up for adoption
- Maternity and pregnancy-related leave
- Breastfeeding
- Medical conditions or complications that might affect or be affected by pregnancy or childbirth (e.g., high blood pressure or diabetes)

*Pregnancy-related discrimination* is any decision, action, or policy that negatively affects an employee or group of employees because of pregnancy or pregnancy-related conditions or circumstances. Actions that can be considered pregnancy-related discrimination include (1) refusing to hire or promote someone because she is pregnant, recently gave birth, or is planning to become pregnant; (2) adverse differential treatment in employment because of pregnancy-related circumstances or conditions; (3) firing someone due to pregnancy-related circumstances or conditions; (4) creating or abiding by policies or practices that negatively impact an employee because of pregnancy-related circumstances or conditions; and (5) failing to provide reasonable accommodations for a pregnant employee, or one who recently gave birth or is trying to become pregnant. Additionally, harassment because of pregnancy-related conditions is also considered discrimination (this includes teasing, joking, touching, or making unwelcome comments).

**Four Phases.** Generally, there are four phases where employers can identify and prevent pregnancy-related discrimination:

- (1) During job selection and promotion
- (2) During pregnancy
- (3) During maternity leave or pregnancy-related absences
- (4) During an employee’s return to work after pregnancy-related or maternity leave

**Duty to Accommodate.** Employers have a legal obligation to accommodate to the changing needs of employees experiencing pregnancy-related conditions. Employees are entitled to reasonable accommodations when a rule, practice, or situation in the workplace has an adverse impact on them. This does not mean that the accommodation must be “perfect” or the employee’s preference; however, it does mean that employees should receive fair and dignified solutions that allow them to continue to do their jobs and maintain current wages and benefits, as they are entitled to.

Example: If a pregnant employee needs additional time for bathroom breaks, they should be allowed to do so without taking away from existing break times. Another example of an accommodation is providing maternity leave.

---

<sup>40</sup> Canadian Human Rights Commission, 2010, *Pregnancy and Human Rights in the Workplace: A Guide for Employers*, <https://www.chrc-ccdp.gc.ca/eng/content/pregnancy-and-human-rights-workplace-employers-guide>. See also, *Pregnancy & Human Rights in the Workplace: Policy and Best Practices*, available at <https://www.chrc-ccdp.gc.ca/eng/content/pregnancy-human-rights-workplace-policy-and-best-practices>.

***Undue Hardship.*** Duty to accommodate ends when you reach the point of “undue hardship,” which is considered to be when safety, health, or cost make the employer’s burden too high. Once this threshold is reached, the employer is not required to accommodate the employee any further.



© Copyright 2021. Departments are encouraged to use this document to establish a policy customized to their agency and jurisdiction. However, copyright is held by the International Association of Chiefs of Police, Alexandria, Virginia U.S.A. All rights reserved under both international and Pan-American copyright conventions. Further dissemination of this material is prohibited without prior written consent of the copyright holder.



**International Association of Chiefs of Police**  
44 Canal Center Plaza, Suite 200  
Alexandria, VA 22314  
703.836.6767 | FAX 703.836.4743  
**[www.theIACP.org](http://www.theIACP.org)**