

Reasonable Accommodation Policy

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§ 1. Purpose

It is the policy of the State of North Carolina to reasonably accommodate qualified individuals with disabilities and those who are pregnant unless the accommodation would impose an undue hardship. While many pregnant individuals and individuals with disabilities can work without accommodation, other qualified applicants and employees face barriers to employment without the accommodation process.

The purpose of this policy is to assist agency and university employers, current employees, and applicants for employment in requesting and processing reasonable accommodation requests. The overall intent of this policy is to ensure that the State of North Carolina fully complies with the Americans with Disabilities Act (ADA), Pregnancy Discrimination Act, the Americans with Disabilities Amendment Act (ADAA), and maintains equal opportunity in employment for all qualified persons with disabilities and those who are pregnant. This policy also prohibits retaliation against employees.

§ 2. Definitions

Disability – a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or being regarded as having such an impairment.

Essential Functions – the fundamental duties of the position or the primary reasons the position exists.

Known limitation – physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or employee's

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representative has communicated to the employer, whether or not such condition meets the definition of disability under the Americans with Disabilities Act.

Pregnant – concerning pregnancy, childbirth, or a related medical condition.

Qualified Individuals with Disabilities – a qualified employee or applicant with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question.

Reasonable Accommodation – a modification or adjustment to a job, an employment practice, or the work environment that makes it possible for a qualified individual with a disability or one who is pregnant to enjoy equal employment opportunities.

Undue Hardship – an action requiring significant difficulty or expense when considered in light of factors such as an employer's size, financial resources, and the nature and structure of its operation.

§ 3. Coverage

This policy applies to all applicants and employees with qualifying disabilities or those who are pregnant. If requested, reasonable accommodations must be provided to qualified employees regardless of whether they work part-time or full-time or are considered "probationary" or "noncareer status", as well as temporary employees.

§ 4. Reasonable Accommodation (Disability)

An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if requested and if it would not impose an "undue hardship" on the operation of the employer's business.

Reasonable accommodation for a disability may include, but is not limited to:

1. Making existing facilities used by employees readily accessible to and usable by persons with disabilities such as modifying existing office equipment for an employee in a wheelchair.
2. Job restructuring, modifying work schedules, reassignment to a vacant position such as allowing an employee with diabetes regularly scheduled breaks during the workday to eat properly, monitor blood sugar and insulin levels, or allowing an employee with cancer leave to have radiation or chemotherapy treatments.

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3. Acquiring or modifying equipment or devices, adjusting or modifying examinations, training materials, or policies, and providing qualified readers or interpreters such as providing a deaf applicant a sign language interpreter during the job interview or providing a blind employee someone to read information posted on a bulletin board.

Agencies may consider proposing temporary accommodation(s) if the agreed upon accommodation cannot be provided immediately.

§ 5. Reasonable Accommodation (Pregnancy)¹

A covered employer is required to make a reasonable accommodation for known limitations related to pregnancy, childbirth, or related medical conditions of a qualified applicant or employee if requested and if it would not impose an “undue hardship” on the operation of the employer’s business.

Reasonable accommodations for these known pregnancy-related limitations may include:

1. Redistributing marginal or nonessential functions (for example, occasional lifting) that a pregnant worker cannot perform, or altering how a non-essential or marginal function is performed.
2. Redistributing an essential function of a job if:
 - any inability to perform an essential function is for a temporary period;
 - the essential function could be performed in the near future²; and
 - the inability to perform the essential function can be reasonably accommodated.
3. Modifying workplace policies, such as allowing a pregnant worker more frequent breaks or allowing her to keep a water bottle at a workstation even though keeping drinks at workstations is generally prohibited.
4. Modifying a work schedule so that someone who experiences severe morning sickness can arrive later than her usual start time and leave later to make up the time.

¹ The Pregnant Workers Fairness Act (PWFA), a federal law effective June 27, 2023, requires employers to accommodate known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee or applicant.

² “In the near future” is not defined in the text of the PWFA. It is anticipated the EEOC will address this in their regulations. Agency HR staff should consult with their legal counsel for questions related to accommodations for pregnant workers.

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5. Allowing an employee to take leave or time off to recover from childbirth. These reasonable accommodations may include including instances in which the employee is not eligible for FMLA or other types of leave (see FMLA Policy, Paid Parental Leave Policy and Leave Without Pay Policy for types of leave that may be available after childbirth).

Employers shall not require an employee to accept an accommodation other than any reasonable accommodation arrived at through the interactive process. Employers shall not require an employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided. The employer shall not deny employment opportunities to an applicant or employee if the denial is based on the need to make reasonable accommodations to the known limitations related to pregnancy, childbirth, or related medical conditions.

§ 6. Accommodations that May Not be Considered Reasonable

There are several modifications or adjustments that are not considered forms of reasonable accommodation. An employer does not have to eliminate an essential function from the position³, nor is an employer required to lower quality or production standards to make an accommodation, as long as those standards are applied uniformly to employees with or without a disability.

An employer does not have to create a new position to accommodate an employee. An employer is not obligated to provide personal use items needed in accomplishing daily activities both on and off the job (i.e., eyeglasses, hearing aids, prosthetic limbs, or a wheelchair). Furthermore, an employer is not required to provide personal use amenities, such as a refrigerator, if those items are not provided to employees without disabilities.

§ 7. Process to Request Reasonable Accommodation

- Employees:

1. The employee shall inform their supervisor, EEO Officer, or HR Director or designee of the need for an accommodation. Supervisors who have been notified by an employee

³ See Section 5 of this policy, on reasonable accommodations in pregnancy, for an exception to this general guidance.

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of an accommodation need should contact the designated EEO or HR official for assistance.

2. The EEO Officer or HR Director/Designee may request documentation of the individuals' functional limitations to support the request. Any medical documentation must be collected and maintained in accordance with appropriate confidentiality procedures.

3. When a qualified individual with a disability or who is pregnant has requested an accommodation, the employer shall, in consultation with the employee:

- a. Discuss the purpose and the essential functions of the particular job involved.
- b. Determine the precise job-related limitation.
- c. Identify the potential accommodations and assess the effectiveness each would have in allowing the employee to perform the essential functions of the job.

Select and implement the reasonable accommodation that is the most appropriate for both the employee and the employer. While an employee's preference will be given consideration, the employer is free to choose among reasonably effective accommodations and may choose the one that is less expensive or easier to provide.

4. The EEO Officer or HR Director/Designee will work with the employee to obtain technical assistance, as needed.

5. The EEO Officer or HR Director/Designee will provide a written decision to the employee within a reasonable amount of time, not to exceed 30 days from original employee request, unless a longer time is agreed upon by the employee and the employer.

- Applicants:

1. The job applicant shall inform the supervisor, EEO Officer, or HR Director/Designee of the need for an accommodation. Hiring officials who have been notified by an applicant of a need for accommodation should contact the designated EEO or HR official for assistance. The EEO Officer or HR Director/Designee will discuss the needed accommodation and possible alternatives with the applicant.

2. The EEO Officer or HR Director/Designee will make a decision regarding the request for accommodation and, if approved, take the necessary steps to see that the accommodation is provided.

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§ 8. Appeals

Applicants or employees who are dissatisfied with the decision(s) pertaining to their accommodation request may file a grievance in accordance with the North Carolina State Government employee grievance policy within 15 calendar days of receiving the decision. Applicants or employees may also elect to file a grievance directly with the Equal Employment Opportunity Commission (EEOC). Individuals who file a grievance directly with the EEOC may not, however, file a contested case with the Office of Administrative Hearing if the internal process has not been completed.

§ 9. Sources of Authority

This policy is issued under any and all of the following sources of law:

- N.C.G.S. § 126-4(5), authorizing the State Human Resources Commission to establish policies on “other matters pertaining to the conditions of employment”
- N.C.G.S. § 126-4(10), authorizing the State Human Resources Commission to establish policies on “equal opportunity”

It is compliant with the following laws:

- The Americans with Disabilities Act, 42 U.S.C. Chapter 126 (beginning at 42 U.S.C. § 12101)
 - Pregnant Workers Fairness Act (PWFA), Pub. L. 117-328 (H.R. 2617), 42 U.S.C. § 2000gg to 2000gg-6 (signed into law December 29, 2022, and effective June 27, 2023)
 - Article 6 of the State Human Resources Act (G.S. 126-16 to 126-19), on equal employment opportunity
 - G.S. Chapter 168A, the Persons with Disabilities Protection Act
 - 25 NCAC 01L .0401
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§ 10. History of This Policy

Date	Version
November 1, 2006	First version. New policy to assist agencies and employees in requesting and processing reasonable accommodation requests and to assure compliance with the ADA

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October 6, 2016	<ul style="list-style-type: none"> • Updated the policy to include the amendment to the Americans with Disabilities Act, which is indicated as the “Americans with Disabilities Act Amendments Act.” • Updated the appeal process. Removed language that the decision could be appealed directly to the State Personnel Commission by filing a petition for a contested case with the Office of Administrative Hearings. • Added language that a grievance may be filed within 15 calendar days of receiving the decision from the agency. The new language is aligned with the current North Carolina State Government Employee Grievance Policy (eff. 12-3- 2015).
December 3, 2020	<ul style="list-style-type: none"> • Policy reviewed by Diversity and Workforce Services Division to confirm alignment with current practices and by Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. The following changes were reported to the SHRC on December 3, 2020: <ul style="list-style-type: none"> • Added Pregnancy Discrimination Act to purpose statement. • Expanded what reasonable accommodation includes. • Reasonable Accommodation (Pregnancy) section added. • Note removed from end of policy.
June 3, 2021	<ul style="list-style-type: none"> • Policy reviewed by Diversity and Workforce Services Division to confirm alignment with current practices and by Legal, Commission, and Policy Division to confirm alignment with statutory, rule(s), and other policies. • OSHR received feedback that the current version of the Reasonable Accommodation policy only provides accommodations for pregnancy based on an ADA qualifying condition. The recommendation changes clarify that accommodations will be consistent with the ADA as well as the PDA requiring that if a woman is temporarily unable to perform her job due to a medical condition related to pregnancy or childbirth, the employer or other covered entity must treat her in the same

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	<p>way as it treats any other temporarily disabled employee. Reported to SHRC on June 3, 2021.</p>
<p>August 7, 2023</p>	<p>Section 5 of the policy, Reasonable Accommodation (Pregnancy), was updated for compliance with the Pregnant Workers Fairness Act (PWFA), a federal law effective June 27, 2023. PWFA requires employers to make reasonable accommodations for the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity.</p>