

Collective Bargaining Agreement Model Language

Accommodating Pregnancy, Childbirth, and Related Medical Conditions

Employers are required under the federal Pregnant Workers Fairness Act and the laws of many states to accommodate pregnancy, childbirth, and related medical conditions. In fact, nearly all of the employer obligations below are already required by federal law. Negotiating to include this language in your collective bargaining agreement is still important for ensuring employers cannot rely on the contract to escape their legal obligations under federal employment law, as well as to make these protections more visible to union representatives and members.

To learn more about how these model provisions overlap with federal law, or to seek assistance in finalizing language for your contract, please contact [WorkLife Law](mailto:info@worklifelaw.org) at info@worklifelaw.org.

Accommodation of Pregnancy, Childbirth, and Related Medical Conditions

The Employer and the Union are committed to providing reasonable accommodation to employees for pregnancy, childbirth, and related medical conditions, including lactation, infertility, use of contraception, miscarriage, pregnancy loss, abortion, and postpartum mental health [*consider adding* menopause]. The Employer and the Union recognize that providing temporary pregnancy and postpartum accommodation typically requires flexibility and individualized, time-limited exceptions to the standard terms of this *CBA/MOU*.

An employee's physical or mental condition does not have to be severe, disabling, ongoing, or long-lasting to warrant accommodation. For example, an employee may request accommodation for common pregnancy symptoms (such as fatigue, increased thirst, or episodic nausea), pregnancy conditions (such as high-risk pregnancy or gestational diabetes), and postpartum conditions (such as breastfeeding or postpartum depression). An employee may also request accommodation to maintain a healthy pregnancy (such as restricting lifting or taking water breaks), to stay safe (such as avoiding chemical exposure), and to avoid discomfort (such as switching between sitting and standing to ease pain or avoiding lengthy commuting to lessen pregnancy illness).

Requesting Accommodation

An employee may make a request for reasonable accommodation on their own or through the Union by providing a completed Reasonable Accommodation Request Form, Appendix B, to Human Resources [*or other relevant department*]. However, in accordance with federal law (Pregnant Workers Fairness Act), the Employer shall provide accommodation for pregnancy,



childbirth, and related medical conditions, no matter how the Employer becomes aware of the employee's need for accommodation (including by an employee's communication with their direct supervisor).

An employee requesting accommodation must cooperate with the Employer in any discussion necessary to identify a reasonable accommodation that meets the employee's needs. The Employee may have a union representative present during this discussion.

Employer's Obligation to Respond and Accommodate without Delay

The Employer shall respond to all accommodation requests in a prompt manner and will provide the requested accommodation without unnecessary delay. In the event a final accommodation cannot be provided without delay, the Employer shall provide a short-term, interim accommodation to address the pregnant employee's immediate health needs.

Employer's Right to Determine or Deny Accommodation

The accommodation(s) provided will depend on the employee's individualized health needs, which can change over the course of their pregnancy. In identifying an effective accommodation, the Employer shall consider changes to how, when, or where the employee performs their normal job duties and/or temporary excusal from job duties.

No employee shall be required to accept an accommodation that they did not request and do not want. However, the Employer has the authority to decide which reasonable accommodation to provide when an employee has requested accommodation and multiple options exist. However, the accommodation provided must be as effective in meeting the employee's health needs and must provide at least the same level of employment opportunity (seniority, status, opportunity, skill-building, compensation, and the like) as the accommodation requested.

The Employer may deny any reasonable accommodation that would impose an undue hardship, which is a highly significant difficulty or expense. Opposition or discomfort expressed by coworkers is not a valid undue hardship. In the event that the Employer denies a reasonable accommodation on grounds of undue hardship, it must inform the Union and identify the hardship in writing, within 2 business days of the denial.

The Employer cannot require an employee who has requested reasonable accommodation to take a leave of absence that the employee did not request (regardless of length, and whether paid or unpaid), unless there is no other accommodation available that would meet the employee's needs. Likewise *[if applicable]*, the Employer cannot reassign an employee to a light duty position that the employee did not request, if some other reasonable accommodation is available that would allow the employee to continue working in their normal position.



Medical Documentation

- A. The Employer shall not seek medical certification for reasonable accommodation in the following circumstances:
 1. The employee states that they are pregnant and need any of the following:
 - a. To sit or stand
 - b. To carry or keep water and/or food nearby, and to eat and drink as needed
 - c. To take additional breaks as needed for going to the bathroom, eating, drinking, or resting
 - d. To take time off or modify their schedule to attend up to 20 prenatal healthcare appointments
 2. The requested accommodation is related to pumping breast milk at work (such as break time or private space) or for time to nurse a child during work hours (so long as the child is already near the normal working location, like at a nearby childcare center).
 3. The need for the accommodation is obvious (for example, the employee requests a modified uniform to accommodate their growing torso) or where the employer already has sufficient information.
- B. The Employer may seek medical documentation for all other reasonable accommodations by requesting that the employee have a healthcare provider fill out the Medical Certification for Accommodation for Pregnancy, Childbirth, and Related Medical Conditions, attached as Appendix A.
- C. Once an employee has provided the information requested by Medical Certification for Accommodation for Pregnancy, Childbirth, and Related Medical Conditions (whether through use of Appendix A or by a separate note from a healthcare provider), the Employer may not seek any additional health information or medical documentation.
- D. The Employer and the Union shall keep all medical documentation and health information concerning an employee's accommodation request private and confidential, including from the employee's immediate supervisor and any impacted coworkers. It is the employee's decision whether to share this information beyond Human Resources [*or whichever department will process requests*]. Medical information disclosed to the Employer will be stored separately from the employee's personnel file.

Non-Retaliation

The Employer shall not penalize, discriminate, or take other negative action against an employee because the employee has requested or used a reasonable accommodation for pregnancy, childbirth, or a related medical condition.



Disability Leave

WorkLife Law recommends incorporating pregnant workers into existing disability leave policies, so that employees who are unable to work because of pregnancy and/or childbirth will receive the same benefits as other employees who are unable to work because of disability, as required by federal law, including paid time off, continuation of health benefits, seniority accrual, etc. Keep in mind that extended leave during pregnancy and following childbirth are a form of reasonable accommodation under federal law and should be available under your CBA/MOU's accommodation provisions.

Medical Certification Form Accommodations for Pregnancy, Childbirth, and Related Medical Conditions

Federal pregnancy accommodation law allows employers to seek only the information provided by this form. To learn more, visit www.PregnantAtWork.com/MedCertEmployerGuide.

Employee Name: _____ **Date:** _____

Please identify the employee’s workplace limitation(s). A physical or mental condition, impediment, or problem, such as needing to rest, reduce risk, or alleviate pain. It may be modest, minor, or episodic. It also can be for maintaining the health of the employee or pregnancy (if applicable), such as obtaining healthcare or childbirth recovery. You are not required to identify the employee’s symptoms or provide a diagnosis.

Is the identified workplace need(s) related to, affected by, or arising out of pregnancy, childbirth, or a related medical condition? Related medical conditions include pregnancy symptoms such as nausea and fatigue; conditions such as gestational diabetes and preeclampsia; complications of pregnancy and childbirth such as ectopic pregnancy; prenatal and postpartum mental health conditions; labor and delivery; termination of pregnancy; lactation and related conditions such as low milk supply and engorgement; and (in)fertility. You can answer yes even if pregnancy, childbirth or a related medical condition is not the sole or primary cause of the limitation.

Please circle one: **YES** **NO**

Describe the adjustment(s) or change(s) at work that would address the limitation. You may, but are not required to, suggest a specific accommodation. You may state what the employee should or should not do.

What is the expected duration of the need for the adjustment(s) or change(s)?

Certifying Health Care Provider Information. Doctors, midwives, nurses, nurse practitioners, physical therapists, lactation consultants, doulas, occupational therapists, vocational rehabilitation specialists, therapists, industrial hygienists, licensed mental health professionals, psychologists, psychiatrists, and other health care providers may certify employees for pregnancy/childbirth/related accommodations.

Provider Name: _____

Practice Name and/or Specialty: _____

Provider Signature: _____ **Date:** _____

PREGNANCY, CHILDBIRTH, LACTATION, RELATED MEDICAL CONDITIONS
Reasonable Accommodation Request Form

As an employee of [Company], you may request changes that you need at work to meet your needs related to your pregnancy, childbirth, lactation, or related medical conditions. You do not have to submit your request for a reasonable accommodation in writing, but doing so will help us to provide an accommodation that meets your needs. For more information, please see the Pregnancy Policy.

Date: _____

Name: _____

Department: _____

Phone: _____

Supervisor: _____

Limitation

A limitation is a physical or mental condition, an impediment, or a problem, such as needing to rest, reduce risk, or alleviate pain. The limitation(s) may be modest, minor, or episodic, such as nausea or fatigue. It also can be related to maintaining your health or the health of your pregnancy (if applicable), such as obtaining healthcare. You are not required to identify your symptoms or provide a diagnosis.

What limitation(s) do you have?

Is your limitation related to pregnancy, childbirth, lactation, or a related medical condition?

Yes No

Requested Accommodation

What accommodation(s) are you requesting?

Proposed start date: _____

Anticipated end date: _____

Please provide any additional information you think would be helpful for deciding an accommodation that meets your needs:

Thank you. You will receive a prompt response, usually in less than 48 hours. If necessary, we will set up a time with you to discuss accommodation options. If you need an accommodation immediately, please contact _____ in Human Resources at _____ and _____.

PHONE

EMAIL