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TO: Dr. Monty Sullivan
LCTCS President

THROUGH: Joseph F. Marin ^{JFM}
Vice President of Operations

FROM: Gena Doucet ^{GD}
Chief Human Resources and Development Officer

DATE: April 10, 2024

Received
APPROVED
4-10-24
LCTCS BOARD OF SUPERVISORS

SUBJECT: Review and Advise: New LCTCS Policy #6.044 - Pregnant Workers Fairness Policy

FOR REVIEW AND ADVISEMENT

Recommendation: Staff recommends that the Board accept for review and advise the attached new LCTCS Policy #6.044 - Pregnant Workers Fairness Policy.

Background: There are a total of six laws either on the federal or state level that require LCTCS as an employer to ensure that pregnant workers are treated fairly. This new policy ensures we follow all current laws to protect employees and applicants for employment who have a known limitation related to, affected by, or arising out of pregnancy, childbirth or related medical conditions. As the policy indicates, LCTCS prohibits and will not tolerate discrimination or retaliation against any employee or applicant because of their pregnancy, childbirth or related medical conditions. We will provide reasonable accommodations to qualified employees and job applicants for the known limitations as stated above, unless doing so would create an undue hardship to the business operations of the LCTCS.

History of Prior Actions: None

Benefits to System: Enacting this policy will ensure that we clearly state what is expected to comply with all required laws. This also provides one document that can easily be given to an employee or job applicant to inform them of their rights.

4-10-24

Approved for Distribution to the Board
Dr. Monty Sullivan

Date

LOUISIANA COMMUNITY AND TECHNICAL COLLEGE SYSTEM
Policy #6.044

PREGNANT WORKERS FAIRNESS POLICY

Authority: Board Action

Original Adoption: TBD
Effective Date of Current Policy: TBD
Last Revision: TBD

I. Purpose

The Louisiana Community and Technical College System (LCTCS) recognizes that employees may need an accommodation for pregnancy, childbirth, or related medical conditions. Accordingly, this policy addresses the protections afforded to employees and applicants for employment who have known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, absent undue hardship on the operation of the LCTCS.

II. Applicability

This policy shall only apply to pregnant, postpartum, and nursing employees in accordance with the Pregnant Workers Fairness Act (PWFA), Pregnancy Discrimination Act (PDA), PUMP for Nursing Mothers Act, La. R.S. 23:342, and La. R.S. 49:148.4.1.

III. Definitions

- A. Essential Functions: The fundamental job duties of the employment position the individual with a disability holds or desires, excluding the marginal functions that may occur through the course of a job.¹
- B. Known: Means the employee or applicant, or a representative of the employee or applicant, has communicated the limitation to the covered entity.
- C. Known Limitation: Means a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or the employee's representative has communicated to the employer whether or not such condition meets the definition of disability under the Americans with Disabilities Act (ADA).
- D. Limitation: Means a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions. The physical or mental condition that is the limitation may be a modest, minor, and/or episodic impediment or problem. The physical or mental condition also may be that a worker affected by pregnancy, childbirth, or related medical conditions has a need or problem related to maintaining their health or the health of their pregnancy. The definition also includes when a worker is seeking health care related to pregnancy, childbirth, or a related medical condition itself.
- E. Pregnancy, Childbirth, or Related Medical Conditions: A phrase used in Title VII (42 U.S.C. 2000e(k)) and has the same meaning as in that statute. Moreover, pregnancy includes childbirth, or a related condition, including but not limited to, lactation, and lactation-related conditions such as mastitis, infertility and fertility treatments, endometriosis, stillbirth,

¹ The PWFA adopts the definition employed by the Americans with Disabilities Act (ADA); 29 CFR §1630.2(n).

menstruation, gestational diabetes, pregnancy-induced hypertension, hyperemesis, preeclampsia, depression, miscarriage, lactation, and recovery from childbirth, and miscarriage.

- F. Qualified Employee: under the PWFA, means an employee or applicant who, with or without reasonable accommodation, can perform the essential functions of the position. An employee or applicant who cannot perform one or more essential functions of the position meets the definition of qualified employee if three conditions are met:
 - 1. The inability to perform an essential function(s) is for a temporary period;
 - 2. The essential function(s) could be performed in the near future; and
 - 3. The inability to perform the essential function(s) can be reasonably accommodated.
- G. Related Medical Condition: Means the condition is related to pregnancy or childbirth and includes conditions that existed before pregnancy or childbirth. A medical condition absent pregnancy or childbirth is not considered a covered related medical condition for the purposes of the PWFA.
- H. Reasonable Accommodation: “Reasonable accommodation” has the meaning given this term in the federal Pregnant Workers Fairness Act, 42 U.S.C. §21G. Accommodations available under this subchapter may include but are not limited to: making existing facilities readily accessible to and usable by individuals with disabilities; job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities. For this policy, an employee may be excused from performing their essential functions for a temporary inability if it would not be an undue hardship.
- I. Undue Hardship: Any action that is unduly costly, extensive, substantial, disruptive or fundamentally alters the nature of operation of the business. To determine if undue hardship exists, the following non-exclusive factors should be considered: the nature and cost of the accommodation; the overall financial resources of the employer; the overall size of the business of the employer with respect to the number of employees, and the number, type, and location of its facilities; and the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the employer.

IV. Policy

The LCTCS prohibits and will not tolerate discrimination or retaliation against any employee or applicant because of their pregnancy, childbirth, or related medical conditions. To that end, the LCTCS will provide reasonable accommodations to qualified employees and job applicants to accommodate the employee or applicant’s known limitations related to pregnancy, childbirth, or related medical conditions, unless doing so would create an undue hardship to the business operations of the LCTCS.

In accordance with the Pregnant Workers Fairness Act (PWFA) and the Pregnancy Discrimination Act (PDA),

A. The LCTCS and its institutions shall not:

- 1. Deny a qualified employee or applicant with a known limitation a reasonable accommodation, absent undue hardship on the operations of the LCTCS,

2. Require a qualified employee or applicant to accept an accommodation other than the one arrived at through the interactive process,
3. Deny employment opportunities to a qualified employee or applicant if the denial is based on the LCTCS's need to make a reasonable accommodation for the known limitation of the employee or applicant,
4. Require a qualified employee with a known limitation to take leave, either paid or unpaid, if another effective reasonable accommodation exists, absent undue hardship,
5. Take an adverse action in terms, conditions, or privileges of employment against a qualified employee on account of the employee requesting or using a reasonable accommodation for a known limitation,
6. Retaliate against any employee, applicant, or former employee because that person has opposed acts or practices made unlawful by the PWFA or has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the PWFA,
7. Coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of rights under the PWFA or with any individual aiding or encouraging any other individual in the exercise or enjoyment of rights under the PWFA,
8. Deny employment, reemployment, promotion, or any other benefit of employment or be subjected to any adverse employment action based on that employee or applicant's pregnancy or parental leave, or
9. Discipline, intimidate, or otherwise retaliate against an employee or applicant because that person exercised rights under this policy and/or applicable federal or state law.

B. The LCTCS and its institutions shall:

1. Provide reasonable accommodations for the known limitations related to the pregnancy of employees or applicants, including temporarily excusing an employee from performing the essential functions of their position, provided the accommodation does not constitute an undue hardship for the LCTCS.
2. Provide reasonable accommodations related to the pregnancy of employees and applicants in the same manner as an agency provides to those employees and applicants with other qualified injuries or qualified disabilities.
3. In accordance with the PUMP Act, PWFA, and La. R.S. 49:148.4.1, designate a space or location, other than a toilet stall, for the exclusive use of nursing employees to express milk. The room shall have a lockable door, a work surface and chair, storage for cleaning supplies, conveniently placed electrical outlets and be shielded from view and free from intrusion from co-workers and the public.
4. Provide reasonable break time for an employee each time such employee has the need to express breast milk at work for up to one (1) year after the birth of the employee's child.
 - a. LCTCS member institutions may not require an employee to adhere to a fixed schedule that does not meet the employee's need for break time to express milk. However, member institutions may agree to a certain schedule based on the nursing employee's need to express milk. Such schedule shall remain open to adjustments as the employee's milk expressing needs change.
 - b. Lactation breaks shall not be considered FMLA leave.
 - c. An employee who expresses milk during a break must be compensated in the same way that other employees are compensated for break time.

- d. If an employee is not completely relieved from duty, time used to pump breast milk shall be compensated time.² As such, a member institution shall make every effort to relieve from duty an employee who has need to express the milk.
- e. Employees who take longer or more frequent breaks for a pregnancy-related condition shall be compensated in accordance with LCTCS and the member institution's policy governing break periods.

C. Limitation on Supporting Documentation: A member institution may require documentation only if it is reasonable to do so under the circumstances for the institution to decide whether to grant an accommodation related to pregnancy, childbirth, or a related medical condition. When both the limitation and the need for reasonable accommodation are obvious, documentation shall not be required of the employee or applicant, beyond self-attestation.

D. Procedure for Requesting a Pregnancy-Related Accommodation

1. The employee or job applicant who needs an accommodation for a pregnancy-related condition shall submit a written request to supervisor and/or Human Resources (HR).
2. The supervisor, HR, and the employee or job applicant shall engage in the interactive process to determine a reasonable accommodation related to a pregnancy-related condition.

E. Legal References

1. Pregnant Workers Fairness Act, 42 USC §21G
2. Pregnancy Discrimination Act of 1978 (amending Title VII), 42 U.S.C. §§ 2000e et. seq.
3. PUMP for Nursing Mothers Act, 29 U.S.C. § 218d
4. Americans with Disabilities Act (As Amended) 42 U.S.C. § 12101 et. seq.
5. Unlawful Practice by Employers Prohibited; Pregnancy, Childbirth, or Related Medical Conditions, La. R.S. 23:342
6. Public Buildings – Accommodations for Breastfeeding and Lactation, La. R.S. 49:148.4.1

Related Policies

As applicable, employees should refer to leave and FMLA provisions of **LCTCS Policy #6.003** and the provisions of **LCTCS Policy #6.023**, governing ADA accommodations.

Signature: 
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Signature: 
Gena Doucet (Apr 3, 2024 15:43 CDT)

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² Under the Fair Labor Standards Act (FLSA), an employee is not relieved if he/she is required to perform any duties, whether active or inactive.











Review and Advisement - New LCTCS Policy 6.044 - Pregnant Workers

Final Audit Report

2024-04-03

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