

## 6.04.00.00 Pregnancy, Childbirth, and Related Medical Conditions (Employees)



### Policy/Guideline Area

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Sexual Discrimination/Harassment/Misconduct

### Applicable Division

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TCATs, Community Colleges, System Office

### Purpose

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The Tennessee Board of Regents prohibits discrimination against employees because of sex and requires institutions to comply with all legal obligations regarding pregnancy, childbirth, and related medical conditions in accordance with Title VII of the Civil Rights Act of 1964, the Pregnant Workers Fairness Act, Title IX of the Education Amendments of 1972, the PUMP Act, Tennessee Code Annotated § 50-1-305, and all other applicable state and federal statutes and regulations.

### Definitions

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- “Institution” means each college within the TBR System and includes the TBR System Office.
- “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 institution, whether or not such condition constitutes a disability under the Americans with Disabilities Act.
- “Employee” means an employee or applicant who, either with or without reasonable accommodation, can perform the essential functions of the job position. An employee or applicant is considered qualified if any inability to perform an essential function is for a temporary period, the essential function can be performed in the near future, and the inability to perform the essential function can be reasonably accommodated.
  - This policy applies to all qualified employees of the institution, whether full- or part-time; whether faculty, adjunct, or staff; [P-080, Discrimination & Harassment -- Complaint Investigation Procedure](#) and regardless of length of employment.

- A qualified applicant is considered to be a qualified employee.
- “Reasonable accommodation” generally has the same meaning as under the ADA.
  - Reasonable accommodation means a modification or adjustment to a job or the work environment that will enable a qualified employee to perform the essential functions of the job. (Unlike the ADA, reasonable accommodation under this policy may include temporarily relieving a qualified employee of an essential function of the job.) If multiple reasonable accommodations are available, the institution may select among reasonable accommodations.
  - Reasonable accommodation may include, but is not limited to, making existing facilities accessible, leave, job restructuring, a part-time or modified work schedule, acquiring or modifying equipment, changing or making exceptions to a policy, and reassignment to a vacant position.
- “Related medical condition” includes any illness, complication, or symptoms arising out of pregnancy or childbirth. Examples of related medical conditions include, but are not limited to, morning sickness, gestational diabetes, pregnancy-induced hypertension, miscarriage, sciatica, lactation or the need to express breast milk, medical procedures and recovery, physical injuries from childbirth, and postpartum depression.

## **Policy/Guideline**

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- I. Nondiscrimination in General
  - A. Discrimination or harassment based on current, potential, or past pregnancy, or related medical condition, is prohibited sex discrimination. Complaints of discrimination or harassment based on any alleged violation of this policy should be submitted to the Title IX Coordinator and will be investigated pursuant to TBR Guideline [P-080 Discrimination & Harassment - Complaint Investigation Procedure](#) or TBR Policy [6.01.00.00 Sex Discrimination, Sexual Harassment or Sexual Misconduct](#).
  - B. Retaliation against someone who requests a reasonable accommodation for pregnancy, childbirth, or a related medical condition or who files a complaint based on

pregnancy is prohibited. Retaliation complaints will be investigated under TBR Guideline [P-080 Discrimination & Harassment - Complaint Investigation Procedure](#) or TBR Policy [6.01.00.00 Sex Discrimination, Sexual Harassment or Sexual Misconduct](#).

- C. An institution shall treat employees who are temporarily unable to perform their job duties or participate in educational programs due to pregnancy, childbirth, or related medical conditions the same as non-pregnant employees who are similar in their ability or inability to work or participate in educational activities, for example with respect to temporary and light duty assignments.
- II. Reasonable Accommodation on the Basis of Pregnancy, Childbirth, and Related Medical Conditions
- A. Anyone seeking a reasonable accommodation under this policy should contact the institution's Title IX Coordinator or other individual designated by the institution. Employees are required to participate in an interactive process to determine a reasonable accommodation. A request for accommodation may be made orally or in writing.
  - B. Anyone with regular supervisory responsibilities over an employee who learns from the employee or employee's representative about a potential need for a reasonable accommodation due to pregnancy, childbirth, or a related medical condition must inform the employee or representative how to request a reasonable accommodation and must inform the Title IX Coordinator or other person designated by the institution about the employee's need for a potential accommodation.
  - C. An institution shall make reasonable accommodation to known limitations related to pregnancy, childbirth, or related medical condition of a qualified employee. The institution and employee must engage in a good faith, interactive process to identify a reasonable accommodation.

- D. An institution may deny a reasonable accommodation if it would result in undue hardship to the institution. The Office of General Counsel must be consulted prior to denying a reasonable accommodation based on undue hardship.
- E. Any request for documentation for pregnancy, childbirth, or a related medical condition must be made by the human resources department. The human resources department may only ask for documentation that is reasonable under the circumstances to determine a reasonable accommodation, and any request must comply with the limitations on requests for information in TBR Policy [5.01.01.14 Family, Medical, and Service Member Leave](#).
- F. An institution shall not:
  - 1. require a qualified employee to accept a reasonable accommodation other than one arrived at through an interactive process;
  - 2. deny equal employment opportunities to a qualified employee based on the need to make reasonable accommodations; or
  - 3. take adverse action against a qualified employee because the employee requested or used a reasonable accommodation, or otherwise retaliate against an individual in violation of applicable law.
- G. A qualified employee may elect to take leave in accordance with TBR Policy [5.01.01.08, Parental Leave](#) or TBR Policy [5.01.01.14, Family, Medical, and Service Member Leave](#). An institution shall not require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided. Human Resources is responsible for coordinating leave under various policies.
- H. If an employee who is pregnant, gives birth, or has a related medical condition does not have enough leave or does not qualify for leave, the institution must allow the employee to take unpaid leave for a reasonable period of time for pregnancy, childbirth, or a related medical condition, after which the employee must be reinstated

to the status held when the leave began or to a comparable position without decrease in pay, loss of promotional opportunity, or other right or privilege of employment.

- I. Reasonable accommodation, including unpaid leave, pursuant to this policy is available only to qualified employees who are pregnant, have given birth, or have a pregnancy-related condition. Leave for family members may be available pursuant to TBR Policy [5.01.01.08, Parental Leave](#) or TBR Policy [5.01.01.14, Family, Medical, and Service Member Leave](#).

### III. Lactation

- A. An institution shall provide space other than a restroom to express milk. The institution may either create dedicated space or provide temporary space on an as-needed basis. The space must be clean, shielded from view, and free from intrusion from others.
- B. Institutions must provide a reasonable amount of break time, as frequently as needed by the nursing mother, to express milk. Breaks must be provided for one year following birth, and any employee who wishes to continue expressing breast milk beyond one year should contact the Title IX Coordinator to discuss additional time to provide breaks.
- C. Employees taking breaks to express milk shall be compensated in the same manner as other employees are compensated during break time. No deduction may be made from an exempt employee's salary. No deduction from a non-exempt employee's pay is permitted unless the Title IX Coordinator has approved in advance.

## Sources

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### Authority

Tenn. Code Ann. § 50-1-305

Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (as amended by the Pregnant Workers Fairness Act)

Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688

Fair Labor Standards Act § 18d (as amended by the Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act))

## History

TBR Board Meeting, June 16, 2023; TBR September 20, 2024, Board Meeting.

## Related Polices

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[5.01.01.08 Parental Leave](#)

[5.01.01.14 Family, Medical, and Service Member Leave](#)

[6.01.00.00 Sex Discrimination, Sexual Harassment or Sexual Misconduct](#)

[6.02.00.00 Sex Discrimination and Sexual Harassment](#)

[6.03.00.00 Sexual Misconduct](#)

[P-080 Discrimination & Harassment - Complaint & Investigation Procedure](#)