

The Connecticut Commission on Human Rights and Opportunities
Legal Enforcement Guidance: Pregnancy, Childbirth, or Related Conditions at Work

Questions and Answers for Employers¹

Discrimination against employees on the basis of pregnancy, childbirth, and related conditions, including but not limited to lactation, is prohibited by federal law and the Connecticut Fair Employment Practices Act (“CFEPA”). *See* Connecticut General Statutes § 46a-60.

The Connecticut Commission on Human Rights and Opportunities (“CHRO”) enforces and administers anti-discrimination laws in the State of Connecticut, including the CFEPA. Connecticut law also bars discrimination in employment on the basis of race, color, religious creed, age, sex, sexual orientation, gender identity or expression, marital status, national origin, ancestry, present or past history of mental disability, intellectual disability, learning disability, physical disability, or status as an honorably discharged veteran. Discrimination complaints must be filed with the CHRO within 180 days of the alleged act of discrimination, with limited exceptions.

It is unlawful to terminate or otherwise discriminate against an employee or applicant because of the individual’s pregnancy, childbirth, or related condition (e.g., lactation). It is also unlawful to deny an employee or applicant reasonable accommodations or leave absent a showing of undue hardship to the employer. Policies or practices that violate these protections from discrimination may expose you to liability under current state or federal law. This document is intended to serve as a legal enforcement guidance and is not necessarily exhaustive.

Who is covered?

Employers with three or more employees must comply with the CFEPA. The statute covers current employees and applicants for employment. For example, an employer cannot refuse to hire an applicant who is pregnant if the applicant can perform the essential duties of the job with a reasonable accommodation. Similarly, an employer should provide reasonable accommodations for the hiring process itself, such as a phone or video interview rather than an in-person interview for a pregnant applicant who may be close to term.

There is no length-of-employment requirement before the protections under the CFEPA are triggered. An employee may request a reasonable accommodation, such as more frequent restroom breaks, immediately after beginning a job.

What does the law require?

A. Reasonable accommodations for pregnancy, childbirth, and related conditions

¹ This guidance uses the singular pronoun “they” to refer to any employee who may become pregnant. The use of this pronoun reflects the recognition that not all persons who become pregnant identify as women or use “she/her” pronouns.

It is unlawful to fail or refuse to make a reasonable accommodation(s) for an employee, or applicant for employment, due to pregnancy, childbirth, or a related condition (including but not limited to expressing breast milk), unless the employer can demonstrate that such accommodation would impose an undue hardship on the employer. Conn. Gen. Stat. § 46a-60(b)(7)(G).

Examples of **reasonable accommodations** include, but are **not limited to**:

- Being permitted to sit or to eat while working;
- More frequent or longer breaks, including but not limited to bathroom, water, or rest breaks;
- Modifying policies prohibiting food or drinks while an employee is working;
- Periodic rest;
- Assistance with manual labor;
- Being provided assistive equipment, such as a stool, chair, or assistive lifting equipment;
- Job restructuring;
- Light duty or desk duty assignments;
- Modified work schedules, including but not limited to the option to telework;
- Modified dress code or uniform requirements;
- Moving a workstation to permit the movement or stretching of extremities, or to be closer to a bathroom;
- Temporary transfers to less strenuous or hazardous work;
- Time-off to attend pre-natal or post-natal appointments.

An employer may not require a medical certification or doctor's note before discussing the need for a reasonable accommodation with an employee or job applicant. In many instances a medical certification should not be needed before granting the request.

It is unlawful to force an employee, or applicant, to accept a reasonable accommodation they do not seek, if they do not have a known limitation related to their pregnancy, or if they do not require a reasonable accommodation to perform the essential duties related to their employment. Conn. Gen. Stat. § 46a-60(b)(7)(I). It is also unlawful to force an employee to take a leave of absence if another reasonable accommodation can be provided instead of leave. Conn. Gen. Stat. § 46a-60(b)(7)(J).

B. Reasonable leaves of absence

Employees may request a **reasonable leave of absence** due to disability resulting from pregnancy. Conn. Gen. Stat. § 46a-60(b)(7)(B). "Disability resulting from pregnancy" includes any pregnancy-related impairment or physical limitations imposed by any pregnancy or delivery. Such limitations typically give rise to a need for leave six (6) weeks following a vaginal delivery or eight (8) weeks following a caesarian section. Although these time-frames for leave are typical for pregnancies and deliveries with no complications, an employee has the right to take **more or less of a reasonable leave of absence** as needed.

It is unlawful to force an employee to take a leave of absence if another reasonable accommodation can be provided in lieu of leave, or if a reasonable accommodation is not needed at all. Conn. Gen. Stat. § 46a-60(b)(7)(I)-(J).

An employer **may** require an employee to provide medical certification for a reasonable leave of absence, but **only if** the employer requests documentation from other employees requesting leave for reasons other than pregnancy, childbirth, or related condition. If an employer has a medical certification requirement, the employer must provide the employee advance notice of this requirement. Additionally, an employer should allow an employee **at least** fifteen (15) days, or as long as is reasonably needed, to comply with a medical certification requirement.

When an employee knows in advance that they will need to take a reasonable leave of absence, they should provide advance notice in accordance with their employer's policy. (An employer **may not** require an employee exercising their right to leave to provide more advance notice than an employee requesting leave for reasons other than pregnancy, childbirth, or related condition.) When an employee's need for leave is not foreseeable, they should notify their employer as soon as possible and practical. For example, if an employee unexpectedly goes into labor and is rushed to the emergency department, the employee is not required to alert their employer that same day.

Under other federal and state laws, such as the Family and Medical Leave Act ("FMLA"), employers are permitted (but not mandated) to require employees returning to work following leave for a serious health condition to provide a "fitness-for-duty" certification. A fitness-for-duty certification is a statement from a healthcare provider that the employee is able to resume work. If an employer requires a fitness-for-duty certification, it must provide notice of that requirement to the employee prior to the leave. An employer **may not** require an employee to provide a fitness-for-duty certification in order to return to work following a *pregnancy disability* leave unless the employer requires such a certification for *all* employees returning from temporary disability leaves unrelated to pregnancy. Under the FMLA, an employer **may not** require an employee returning from a *baby bonding* leave to provide a fitness-for-duty certification.

C. Examples of pregnancy-related conditions

Pregnancy-related symptoms and conditions that may give rise to the need for reasonable accommodations or a reasonable leave of absence from work include, but are **not limited to**:

Nausea; morning sickness; dehydration; lower blood sugar; swelling of extremities; increased body temperature; need for bed rest; anemia; abnormal placentation; bladder disfunction; fatigue; migraines; sciatica; carpal tunnel syndrome; severe morning sickness; gestational diabetes; pregnancy-induced hypertension; preeclampsia; postpartum depression; infertility or need for fertility treatments; loss or termination of pregnancy; and lactation conditions such as mastitis.

D. Reasonable accommodations for lactation needs

Employers **must** allow employees to use their break time to express breast milk or breastfeed. Conn. Gen. Stat. § 31-40w(a). In many circumstances, an employer **must** provide an employee a reasonable amount of break time to express breast milk. Conn. Gen. Stat. § 46a-60(a)(2). An employer should allow an employee to express breast milk as frequently as needed, typically three (3) times per 8-hour workday. Break time includes time the employee spends getting to and from the appropriate facility and time spent setting up necessary equipment. Frequency of such break times may also vary over time. If an employer compensates employees for break time, such as paid lunch breaks, the employer must similarly compensate an employee using break time to express breast milk. Conn. Gen. Stat. § 46a-60(b)(7)(F).

An employer **must** make a reasonable effort to provide a room or other location in close proximity to an employee's work area, other than a toilet stall, where the employee can express breast milk in private. Conn. Gen. Stat. § 31-40w(b). The space should, at minimum, provide a place to sit, a surface to place a pump or other pumping equipment, and an outlet for electricity, and it should be near running water suitable for the employee to clean pumping equipment. The employer should also provide access to a refrigerator for storing breast milk.

The lactation laws are jointly enforced by the Connecticut Department of Labor, the U.S. Department of Labor, and CHRO.²

E. Reasonable accommodations for fertility treatment

It is unlawful to discriminate on the basis of child-bearing capacity, fertility, and conditions related to pregnancy or childbirth. Conn. Gen. Stat. §§ 46a-51(17), 46a-60(a)(1). Likewise, subject to certain limitations, health insurance plans must provide coverage for medically necessary expenses of the diagnosis and treatment of infertility. Conn. Gen. Stat. §§ 38a-509, 38a-536.

Fertility treatment directly relates to the state of seeking to become pregnant and therefore employers must provide accommodations for such treatment. Individuals undergoing fertility treatment may need unpaid leave to attend appointments or a modified or flexible work schedule. If the request involves time away from work to attend appointments, employers may require medical documents of appointments related to fertility. Employers must accommodate these requests absent an undue hardship.

F. Confidentiality

An employee may choose to keep any medical diagnosis confidential. An employee need only reveal: (1) the nature of the limitations that give rise to the need for an accommodation (e.g., back pain or inability to concentrate); and (2) that the limitations are related to the employee's pregnancy, childbirth, or related condition.

² More information about employees' rights and employers' obligations regarding lactation are available at https://www.ct.gov/chro/lib/chro/faq_breastfeeding_joint_10-2-11.pdf. Additionally, the Connecticut Breastfeeding Coalition may be available to assist employees and employers with questions about accommodations for breastfeeding employees: www.breastfeedingct.org.

An employer should not engage in direct contact with an employee's healthcare provider or request an employee's medical records without first obtaining the employee's permission. An employer should always allow an employee to submit a written medical certification in lieu of permitting their employer to speak directly with the healthcare provider. If an employee otherwise submits a complete and sufficient written medical certification, then the employee's refusal to consent to their employer's direct contact with the healthcare provider should not limit the employee's right to reasonable accommodations.

An employer who has obtained an employee's permission to contact their healthcare provider should also give the employee the option to request that someone other than the employee's direct supervisor make that contact, such as a human resource professional, leave administrator, another healthcare provider, or a management official.

Communication between an employer and an employee's health provider, where authorized by an employee, should be limited to (1) the nature of the limitations that give rise to the need for an accommodation (e.g., back pain or inability to concentrate); and (2) that the limitations are related to the employee's pregnancy, childbirth, or related condition.

G. Good faith, interactive process

1. Starting the Process

Employers must engage in a **good faith interactive process** with an employee (a) anytime an employee makes a request for accommodation or leave, either orally or in writing; and (b) anytime an employer **knows or has a reasonable basis to believe** that the employee may be in need of an accommodation.

2. Engaging in the Good Faith, Interactive Process

If an employee requests reasonable accommodations or leave, the employee and the employer must **communicate** with each other about the request and the nature of the limitation that is generating the request.

An employer must grant an employee's request for reasonable accommodation or leave, unless it constitutes **undue hardship**. If the employer reasonably determines that the request constitutes an undue hardship, the employer must explore alternative accommodations that might meet the employee's needs.

If an employer is: (a) considering taking adverse employment action against an employee, and (b) has knowledge or a reasonable basis to believe that the employee's performance deficit is related to pregnancy, childbirth, or a related medical condition, the employer should first initiate a cooperative dialogue to ask the employee if a reasonable accommodation might address the performance deficit. For example, if a pregnant employee's frequent tardiness due to known morning sickness jeopardizes their employment, the employer should ask the employee, "I have noticed that you have been tardy to work lately; is there anything I can do to help?"

An employer has engaged in **good faith** if they (1) consulted pre-existing policies regarding accommodations or temporary leave; (2) responded in a timely manner; and (3) explored alternatives if an initial proposal for accommodations or leave was rejected.

3. Concluding the Interactive Process

The interactive process concludes when either (1) a reasonable accommodation is reached or (2) the employer and employee arrive at the conclusion that no accommodation is available that will either not cause undue hardship or allow the employee to perform essential duties. When the dialogue concludes, it is a best practice for the employer to **inform the worker in writing of the determination** and maintain records of the process.

An employee may request new accommodations or additional leave if their condition changes over time. In such a case, an employer must engage anew in a good faith interactive process. Employers should keep records of efforts to engage in the interactive process.

4. Examples of Good Faith, Interactive Processes

- a) A pregnant employee requests lifting restrictions during her pregnancy because she is worried that lifting packages over twenty pounds may compromise her pregnancy. In making this request, the employee is initiating the interactive process. She informs her employer that she is pregnant and does not wish to lift packages over twenty pounds, which is a task she is frequently required to do. The employer concludes the cooperative dialogue by offering the accommodation of lifting restrictions for the remainder of the employee's pregnancy, which the employee accepts. The employer provides the employee with written notice that the accommodation has been granted.
- b) An employee who does data entry at a mid-size company initiates a cooperative dialogue with her employer by asking the employer if she can take time-off every Friday morning to attend medical appointments not available outside of work related to her pregnancy. The employee is one of three people who does data entry at the office. Though the employee's absence may have a small impact on the pace of data entry, the employer will not face an undue hardship and agrees to the accommodation. The employer provides written notice to the employee that the cooperative dialogue has concluded and the proposed accommodation accepted.
- c) An employer notices that an employee has been leaving work early and not finishing tasks as quickly as usual. The employer heard a rumor that the employee is pregnant, but the employee has not told the employer this directly. The employer approaches the employee and initiates a cooperative dialogue. The employer says, specifically, "I have noticed you are struggling to finish your tasks as quickly as usual, is there something I can do to help?" The employee says no. The problem persists, and the employer again approaches the employee and offers assistance, but also notifies the employee that the tasks need to be completed more quickly and something needs to change. The employer tells the employee that he will check in again in a week

or so, and reiterates that he will work to accommodate or otherwise support the employee if there is anything going on. The employer never mentions pregnancy specifically because he does not know with any certainty that the employee is pregnant. During the next follow-up conversation, the employer tells the employee that the employee will be written up if the behavior does not improve and again asks if the employee needs assistance and offers to set up a meeting to discuss the issue. The employee declines, and after another week, the employer issues a disciplinary notice. The employer attempted to engage the employee in a cooperative dialogue because he believed the employee may have needed accommodations based on pregnancy. Despite repeated attempts to engage the employee in a cooperative dialogue, the employee was not responsive. Under these circumstances, the employer was justified in taking disciplinary action.

- d) All employees must participate in a mandatory meeting every Thursday morning. An employer notices that one employee has been consistently missing the weekly meetings or joining late. The employer approaches the employee, admonishes her, and says if this happens again, she will be written up. The employee is eight weeks pregnant and has been missing the meetings because she has not been feeling well; however, due to the early stages of her pregnancy, she does not share this information with her boss. Two weeks later, after continued lateness, the employee is disciplined. The employee would have been entitled to a reasonable accommodation if she had requested one or if her employer had been on notice of her pregnancy. However, because the employer had no reason to know that the employee was pregnant, the employer was under no obligation to initiate a cooperative dialogue.
- e) A pregnant employee who works at a small shop is suffering from back pain. The employee tells her employer that she needs a state-of-the-art ergonomic chair. This model of chair is very expensive, and the employer is also worried that its large size would make it difficult for other employees to move around behind the counter. During a cooperative dialogue, the employer explains these concerns and offers her an inexpensive ergonomic pillow insert to fit the current chair instead, which she accepts.

H. Undue hardship

Employers must provide employees with reasonable accommodations or leave unless the employer demonstrates that it would constitute an **undue hardship**. Conn. Gen. Stat. § 46a-60(b)(7)(G). Undue hardship is a high bar, requiring an employer to show significant difficulty or expense.

In determining whether this high bar has been met, CHRO takes into account the cost of the accommodation, the size and resources of the employer, and the impact of the accommodation on the operations of the employer. Conn. Gen. Stat. § 46a-60(a)(3). CHRO also considers whether the employer has an existing policy whereby it accommodates on-the-job or non-pregnancy-related off-the-job-injuries. Findings of undue hardship are rare, given the relatively inexpensive nature of most reasonable accommodations.

I. Equitable maintenance of pay, health coverage, other fringe benefits, and seniority prior, during, and following reasonable leaves of absence

An employer must provide **pay** to an employee during reasonable leave if the employer provides pay to any other similarly situated employee during temporary disability leave.

An employer must maintain the same **health coverage** for an eligible employee who takes a reasonable leave for disability resulting from pregnancy as the employer maintains for any other similarly situated employee on temporary disability leave.

An employee taking reasonable leave shall continue to accrue **seniority** and participate in **employee benefit plans** to the same extent and under the same conditions as would apply to any other employee taking a temporary disability leave. An employee returning from taking reasonable leave shall return with no less seniority than the employee had when the leave began.

An employee shall retain **employee status** while taking reasonable leave. The leave shall not constitute a break in service for purposes of longevity and/or seniority under any collective bargaining agreement or under any employee benefit plan. Benefits must be resumed upon the employee's reinstatement in the same manner and at the same levels as provided when the leave began, without any new qualification period, physical exam, or other qualifying provisions. Conn. Gen. Stat. § 46a-60(b)(7).

J. Reinstatement of employee to original job after reasonable leave

It is unlawful for an employer to fail or refuse to reinstate an employee to their **original job** or to an **equivalent position** after taking reasonable leave due to disability resulting from pregnancy, unless circumstances have so changed as to make it impossible or unreasonable for the employer to do so. Conn. Gen. Stat. § 46a-60(b)(7)(D).

An **equivalent position** is one that is virtually identical to the employee's former position:

- With equivalent pay, benefits, work schedule/shift, and working conditions, including privileges, perquisites, and status;
- With substantially equivalent duties and responsibilities;
- Entailing substantially equivalent skill, effort, responsibility, and authority; and
- That is performed at the same worksite, or at a worksite that is geographically proximate to the employee's original job.

An employer must so restore an employee unless (i) the employer is a private employer and (ii) circumstances have so changed as to make it impossible or unreasonable for the employer to do so. Conn. Gen. Stat. § 46a-60(b)(7)(D). Such "circumstances" are limited to those events that would have happened even if the employee had never taken leave. For instance, in order to deny restoration to employment, an employer must be able to show that an employee would not otherwise have been employed at the time reinstatement is requested (e.g., due to mass layoffs).

K. Notification to employees of their rights

An employer must provide employees written notice of the right to be free from discrimination on the basis of pregnancy, childbirth, and related conditions, including reasonable accommodation and reasonable leave. Conn. Gen. Stat. § 46a-60(d)(1). Written notice should be provided in a language in which the employee is proficient.

An employer must provide such notice, at minimum, to:

- a. New employees at the beginning of employment;
- b. Any employee who notifies the employer of her pregnancy, within 10 days of the notification. Conn. Gen. Stat. § 46a-60(d)(1).

L. Retaliation prohibited

It is unlawful to retaliate against an employee in the terms, conditions, or privileges of employment based upon the employee's **request for reasonable accommodations or leave**. Failing to excuse absences arising from pregnancy-related medical needs (e.g., under a no-fault attendance policy)³ constitutes unlawful retaliation. Conn. Gen. Stat. § 46a-60(b)(7)(K). An employer shall not interfere with, restrain, or deny the exercise of, or the attempt to exercise, an employee's right to accommodation or reasonable leave.

Finally, it is unlawful to demote, suspend, discharge, terminate, adversely affect the working conditions of, fail to treat impartially in the context of any recommendations for subsequent employment, fail to hire or consider for hire, fail to give equal consideration in making employment decisions to, or otherwise discriminate against any person because they have opposed a discriminatory employment practice, filed a complaint, or testified, assisted, or participated in an investigation, proceeding, or hearing of the Connecticut Commission on Human Rights and Opportunities. Conn. Gen. Stat. § 46a-60(4).

What are other forms of pregnancy discrimination, and how can I avoid violating the law?

It is unlawful to discriminate against an employee on the basis of pregnancy, childbirth, or a related condition. This includes discrimination on the basis of pregnancy-related conditions following the end of pregnancy, such as postpartum depression or lactation.

Examples of unlawful conduct include, but are **not limited to**:

- **Terminating** an employee because of sex, including pregnancy, childbirth, child-bearing capacity, sterilization, fertility, or related conditions. Conn. Gen. Stat. §§ 46a-51(17), 46a-60(a)(1), 46a-60(b)(1), 46a-60(b)(7)(A).
- **Discriminating** against an employee, or applicant for employment, on the basis of sex, including pregnancy, childbirth, child-bearing capacity, sterilization, fertility, or related conditions, in the terms or conditions of employment (e.g., refusing to hire a pregnant applicant or taking away responsibilities from a worker who is breastfeeding, absent that

³ No-fault attendance policies track employee absences through a point system, in which a certain number of points results in disciplinary action, including termination. It is unlawful to punish pregnant workers for lawful absences.

employee's request for reasonable accommodation). Treating an employee or applicant "less well" based on their pregnancy constitutes unlawful discrimination. Policies that single out pregnant or parenting workers for adverse treatment based on stereotypes are also unlawful. Conn. Gen. Stat. §§ 46a-60(b)(1), 46a-60(b)(7)(F). For example:

- It is unlawful for an employer to decide not to offer a promotion to a pregnant employee, who is otherwise qualified, based on the assumption that they will likely not return to work after childbirth.
- It is unlawful for an employer to joke about a pregnant worker's weight gain and then to respond to the worker's complaints about the jokes by claiming that the worker is "overly sensitive" and "emotional."
- **Assigning responsibilities to, removing responsibilities from, or classifying** an individual in a way that would deprive the individual of employment opportunities due to sex, including pregnancy, childbirth, child-bearing capacity, sterilization, fertility, or related conditions. Conn. Gen. Stat. §§ 46a-60(b)(1), 46a-60(b)(7)(E). For example:
 - It is unlawful to reassign an employee to lower-earning client matters because the employee is pregnant.
 - It is unlawful to refuse to hire a pregnant individual for a position because the position involves working with hazardous chemicals.
- **Harassing** an employee or applicant on the basis of sex, including pregnancy, childbirth, child-bearing capacity, sterilization, fertility or related conditions, including but not limited to lactation (e.g., making jokes about pregnancy weight gain or about an employee being overly emotional due to pregnancy). Prohibited harassment includes, but is not limited to, conduct that has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. Conn. Gen. Stat. §§ 46a-60(b)(1), 46a-60(b)(8).
- **Denying an employee a reasonable accommodation**, absent undue hardship. Conn. Gen. Stat. § 46a-60(b)(7)(G).
- **Denying an employee reasonable leave** due to disability resulting from pregnancy, absent undue hardship. Conn. Gen. Stat. § 46a-60(b)(7)(B).
- **Denying employment opportunities** based upon an employee's or applicant's **request for a reasonable accommodation** due to pregnancy, childbirth, or related condition. Conn. Gen. Stat. § 46a-60(b)(7)(H).
- **Failing to restore an employee to same or equivalent position** following a reasonable leave of absence from work due to pregnancy, childbirth, or related condition. Conn. Gen. Stat. § 46a-60(b)(7)(D).
- **Denying an employee compensation** to which that employee is entitled as a result of the accumulation of disability or leave benefits accrued under an employer plan. Conn. Gen. Stat. § 46a-60(b)(7)(C).
- **Forcing an employee or applicant to accept a reasonable accommodation** if they do not have a known limitation related to their pregnancy, or do not require a reasonable accommodation. Conn. Gen. Stat. § 46a-60(b)(7)(I).
- **Forcing an employee to take a leave of absence** if a reasonable accommodation may be provided in lieu of leave, or if no accommodation is needed at all. Conn. Gen. Stat. § 46a-60(b)(7)(J).
- **Requesting or requiring information** from an employee or applicant relating to the individual's child-bearing age or plans, pregnancy, function of the individual's reproductive

system, use of birth control methods, or the individual's family responsibilities, unless such information is directly related to a bona fide occupational qualification or need. Conn. Gen. Stat. 46a-60(b)(9).

- **Failing or refusing to take reasonable measures, upon an employee's request,** to protect an employee from workplace exposure to substances that may cause birth defects or constitute a hazard to an employee's reproductive system or to a fetus. Conn. Gen. Stat. § 46a-60(b)(10).