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Title IX Pregnancy or Related Conditions-Tier 5

Presented by:

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Title IX Coordinator

Tier 5 – Pregnancy or Related Conditions

- Title IX Regulations – Students
- Title IX Regulations – Employees
- Title IX Guidance
- Related Laws
- Oversight & Response
- EEOC Case Examples



TITLE IX

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To receive a certificate, attendees must attend the majority of the class and have paid class invoice in full. This applies to both in-person classes and virtual classes. We understand that attendees may need to miss class for a legitimate reason for longer periods of time or may need to leave the room during a class for a few minutes to take a phone call or attend to other business. If an attendee misses a significant amount of the class (depending on the length of the class) or they miss an attendance poll, they will not be issued a certificate of completion for the class.

Attendees should report each absence using the online form provided (each class has its own unique form that is sent to all attendees via email prior to class). Attendees should complete the form twice for each absence: once to record their departure, and again to record their return. Attendees should complete the form immediately before leaving class and as soon as practicable upon their return. If an attendee signs out but does not sign back in, they will be marked absent for the remainder of the day.

The criteria for receiving a certificate is determined based on missed class time and participation in the Attendance Polls that will be launched throughout each day of class. Attendance polls are left up for approximately 5 minutes and the instructor notifies the attendees that a poll is being launched to ensure that everyone who is present can respond to the poll. If an attendee is unable to respond to the attendance poll, the attendee would need to **immediately post "I am here"** in the chat feature within the Zoom platform. That way we can give the attendee credit for being in attendance for that specific poll. Notifying us after the attendance poll has been closed will not allow us to give the attendee credit for being in class during the poll.

Some of our classes may qualify for credit toward a Master's Degree at New England College (and regardless if you decide to seek credit or not, accreditation requirements mandate that we follow the same standards for all class attendees), so we have strict attendance standards that we follow for issuance of a certificate. For DSA & NACCOP, issuance of a Certificate of Completion is verification of attendance.



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Adrienne Meador Murray, Vice President, **Equity Compliance and Civil Rights Services**



In January 2014, Adrienne Meador Murray joined D. Stafford & Associates where she currently serves as the Vice President, Equity Compliance and Civil Rights Services after having been affiliated with D. Stafford & Associates as a part-time Associate since 2012 and the National Association of Clery Compliance Officers & Professionals (NACCOP) where she currently serves as Director of Training and Compliance Activities. Murray began her career in municipal law enforcement as a civilian employee with the City of Richmond Police Department (Virginia). She graduated from the Virginia Commonwealth University Police Training Academy and began her career as a sworn police officer for the University of Richmond (UR) Police Department (Virginia). At UR, Murray progressed through the ranks from a night shift patrol officer to Operations Lieutenant (overseeing criminal investigations, crime prevention and patrol) over the span of a decade before becoming the Chief of Police at Davidson

College in North Carolina. Most recently, Murray served as Chief of Police at Trinity Washington University (in Washington, D.C.).

As the Executive Director, Equity Compliance and Civil Rights Services for DSA, Murray builds on her 17-year career in law enforcement in which she became a nationally recognized expert in the field of best practice postsecondary institutional response to the sexual victimization of college women in the United States and in Canada. She is also a trained civil rights investigator and is well respected throughout the country for her ability to aid institutions in understating how to do best practice criminal and civil rights investigations concurrently. She is well known for her work in having provided support, advocacy and criminal investigative services for victims of sexual assault, stalking and intimate partner violence and is a sought-out speaker and investigator. She has expertise in the construction of best practice law enforcement standard operating procedures and training police officers to respond in best practice and trauma-informed ways to victims of sexual assault and intimate partner violence. In her current role, Murray coordinates curriculum development and instruction for national classes, including basic and advanced sexual misconduct investigation classes; an investigation of dating violence, domestic violence and stalking class; and a Title IX Coordinator/Investigator class offered through D. Stafford & Associates. To date, Murray has trained more than 3,500 criminal and civil rights investigators throughout the U.S.

Drawing on her experiences as a trained criminal and civil rights investigator, Murray also oversees independent investigations of complex sexual misconduct cases; conducts audits of Title IX/VAWA



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Compliance; drafts institutional sexual misconduct policies and procedures; and conducts campus-based trainings pertaining to the resolution of sexual misconduct offenses on college and university campuses. Murray frequently presents at regional and national conferences on topics such as the *Sexual Victimization of College Women*, *Understanding Consent and Incapacitation*, and *Responding to Sexual Assault on Campus: Clery Act and Title IX Implications*. Murray also conducts provincially specific sexual misconduct trainings throughout Canada.

Murray is a graduate of the University of Richmond, where she received her Bachelor's Degree in Applied Studies in Human Resource Management and of New England College, where she received her Master's Degree in Campus Public Safety Administration. Murray is also a graduate of the 235th session of the prestigious FBI National Academy where she was awarded a graduate certificate in Criminal Justice from the University of Virginia. She has authored numerous journal articles.



Catherine Cocks, M.A.
Consultant, Student Affairs, Title IX, and
Equity Compliance Services



Ms. Cocks has been a higher education professional for over thirty years. Her work with D. Stafford & Associates focuses on Title IX investigations and training; assessment of student affairs policies, practices and services; and behavioral threat assessment. Cathy was the Director of Community Standards for the University of Connecticut for 14 years where she managed the student conduct process, which included managing all Title IX cases involving student respondents and chaired the University's student threat assessment team. Prior to that, she held several positions within Residential Life at the University of Connecticut and Roger Williams University.

She is a faculty member for the Association for Student Conduct Administration's (ASCA) Donald D. Gehring Academy teaching on subjects such as ethics, governance, threat assessment, media relations, and higher education trends. She was an affiliated faculty

member for many years in the University of Connecticut's Higher Education and Student Affairs Master's program teaching "The Law, Ethics, and Decision-Making in Student Affairs."

Cathy has co-authored the "Philosophy of Student Conduct" chapter in the 2nd edition of "Student Conduct Practice" (2020) and was a member of the writing team for CAS Standards' Cross-functional Framework for Identifying and Responding to Behavioral Concerns.

Cathy is a Past President of ASCA. She has also served as a Circuit representative, co-chair of the Public Policy and Legislative Issues Committee, and as a member of the ASCA Expectations of Members Task Force. Cathy has served in a variety of leadership roles in NASPA Region I.

She was the 2015 recipient of ASCA's Donald D. Gehring Award. She is a past recipient of the NASPA Region I Mid-Level Student Affairs Professional Award and the NASPA Region I Continuous Service Award.

She earned her Master's degree in Higher Education Administration from the University of Connecticut and Bachelor's degree in Communications/Media from Fitchburg State University.



Kacy J. Z. Hagan, Associate



Kacy J. Z. Hagan has worked in the Human Resources field for nearly 20 years, serving in a joint HR/Title IX Coordinator role in higher education for 8 of those years. Kacy has as her bachelor's degree in Political Science & International Affairs from the University of Mary Washington and her Master of Business Administration degree with a concentration in Human Resources Management from Strayer University. Kacy holds a number of certifications and credentials, including her SHRM-CP, PHR, Title IX Coordinator certification, Civil Rights Investigator certification, Social Justice Mediation certification, and has earned a certificate from eCornell in Diversity, Equity, & Inclusion for Human Resources.

Kacy currently serves as the Associate Vice President for Human Resources & Compliance and Title IX Coordinator for Lycoming College and previously served as the Director of Human

Resources, Social Equity Officer, and Title IX Coordinator for Mansfield University. In both of those positions, she has been responsible for overseeing Title IX compliance and leading cross-divisional teams of faculty and staff serving as investigators, hearing officers, advisors, and prevention and training professionals. Kacy has served as a guest lecturer on HR and Title IX-related topics at Elmira College, Mansfield University, and Lycoming College. While at Mansfield University, Kacy developed a Title IX investigation report template that was adopted by the Pennsylvania State System of Higher Education as a model for other schools in the system. Kacy started Mansfield University's LGBTQ+ Resource Center and Comfort Canine Program and established the Office of Sexual Misconduct Prevention & Response at Lycoming College.

Kacy particularly enjoys combining her love of training and theatre by creating mock Title IX hearing and mock investigation trainings for Title IX professionals. Prior to working in Title IX, Kacy had an extensive experience leading HR teams and conducting personnel investigations at various not-for-profit and for-profit organizations, and she continues to do Human Resources consulting work to support and develop HR professionals. Kacy has served on a number of non-profit boards, including Alliance for Empowerment, Inc., Capabilities, Inc., Haven of Tioga County, and Hamilton-Gibson Productions, among others, and was recognized for her community involvement and volunteer leadership by being awarded the 2021 NextGen Community Leader Award for the Twin Tiers of Pennsylvania and New York.

Kacy has been an associate with D. Stafford & Associates since 2024, where she serves as an instructor in Title IX, Diversity, Equity and Inclusion and a consultant.



NACCOP Title IX & Equity Alliance

The Alliance is a dedicated affinity group through which Title IX and Equity Professionals, and the practitioners who support and/or supervise them, can benefit from NACCOP's expertise in complying with the Clery Act, Title IX, and other civil rights laws that affect their work.

BENEFITS OF JOINING THE ALLIANCE

- **Access to NACCOP's annual 9 on IX webinar series at no additional cost (a \$710 value)**
 - These 60-minute succinct webinars will offer legal insight and practical guidance on Title IX topics from experts who have served or are currently serving as active practitioners on college and university campuses.
- **Alliance-Exclusive Professional Development Opportunities such as the Title IX & Equity Open House Discussion Series**
 - An Alliance-exclusive virtual open house will be held bi-monthly (every other month, 6 sessions annually) to engage with experts from NACCOP's partner organization, D. Stafford & Associates, as well as other invited guests, to discuss current trends and issues. Each open house will focus on a specific topic for discussion and participants will be encouraged to engage in the conversation.
- **Access to Alliance-Exclusive Whitepapers regarding Title VI, VII, and IX**
- **Connect and collaborate with other Title IX and Equity Professionals via an Alliance-restricted Listserv**
- **Discounted Professional Development Opportunities**
 - Coffee and Conversations webinar series and individual webinars focused on Title IX & Equity compliance issues
- **A 50% discount on the Title IX Notice Document Library developed by NACCOP's Partner Organization, D. Stafford & Associates (a \$335 value)**

Join the Alliance

Eligible individuals must have Institutional, Professional, or Committee Membership with NACCOP.

Cost: \$425 for 1 year subscription

(The first year of enrollment will be pro-rated to match the NACCOP membership expiration date.)

Request to Join: <https://naccop.memberclicks.net/join-the-alliance>

Questions? Contact us at info@naccop.org or 302-344-1068.



PREGNANCY OR RELATED CONDITIONS



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AGENDA

- Title IX Regulations – Students
- Title IX Regulations – Employees
- Title IX Guidance
- Related Laws
- Oversight & Response
- EEOC Case Examples

Discrimination or harassment on the basis of pregnancy or related conditions is illegal!

It's also not new! It has been a part of Title IX since its passing.

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TITLE IX REGULATIONS - STUDENTS



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DEFINITIONS (§106.2)

- **Admission** means selection for part-time, full-time, special, associate, transfer, exchange, or any other enrollment, membership, or matriculation in or at an education program or activity operated by a recipient.
- **Student** means a person who has gained admission.

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SUBPART C - DISCRIMINATION ON THE BASIS OF SEX IN ADMISSION AND RECRUITMENT PROHIBITED



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APPLICATION OF SUBPART C



Vocational education



Professional education



Graduate higher education (public and private)



Public institutions of undergraduate higher education (except for single sex)

§106.21(c) - PROHIBITIONS RELATING TO MARITAL OR PARENTAL STATUS

No rules which treat persons differently on the basis of sex

No discrimination or exclusion

Disabilities related to pregnancy and related conditions are treated as any other temporary disability or physical condition

No pre-admission inquiry as to the marital status of an applicant for admission

SUBPART D - DISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES PROHIBITED



FINANCIAL ASSISTANCE

Shall not apply any rule or assist with any rule concerning eligibility for assistance which treats persons of one sex differently because of marital or parental status.

§106.37(a)(3)

§106.39 - HEALTH AND INSURANCE BENEFITS AND SERVICES



Can provide a benefit or service which may be used by a different proportion of students of one sex, including family planning services



Any institution that provides full coverage health service must provide gynecological care

§106.40(a) STATUS GENERALLY

A recipient shall not apply any rule concerning a student's actual or potential parental, family, or marital status which treats students differently on the basis of sex.



§106.40(b) - PREGNANCY AND RELATED CONDITIONS



Voluntary participation in a comparable program



Documentation only if applied for other conditions



Treated in the same manner as other temporary disabilities



Justification for a leave of absence



VOLUNTARY PARTICIPATION

A recipient shall not discriminate against any student, or exclude any student from its education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

§106.40(b)(1)



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VOLUNTARY PARTICIPATION

A recipient which operates a portion of its education program or activity separately for pregnant students, admittance to which is completely voluntary on the part of the student as provided in paragraph (b)(1) of this section shall ensure that the separate portion is comparable to that offered to non-pregnant students.

§106.40(b)(3)

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DOCUMENTATION

A recipient may require such a student to obtain the certification of a physician that the student is physically and emotionally able to continue participation so long as such a certification is required of all students for other physical or emotional conditions requiring the attention of a physician.

§106.40(b)(2)

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TREATED IN THE SAME MANNER AS OTHER TEMPORARY DISABILITIES

A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom in the same manner and under the same policies as any other temporary disability with respect to any medical or hospital benefit, service, plan or policy which such recipient administers, operates, offers, or participates in with respect to students admitted to the recipient's educational program or activity.

§106.40(b)(4)

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JUSTIFICATION FOR LEAVE OF ABSENCE

In the case of a recipient which does not maintain a leave policy for its students, or in the case of a student who does not otherwise qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence for so long a period of time as is deemed medically necessary by the student's physician, at the conclusion of which the student shall be reinstated to the status which she held when the leave began.

§106.40(b)(5)

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TITLE IX REGULATIONS - EMPLOYEES



SUBPART E - DISCRIMINATION ON THE BASIS OF SEX IN EMPLOYMENT IN EDUCATION PROGRAMS OR ACTIVITIES PROHIBITED



WE ARE HIRING

How do you define
“employee”?

§106.57(a) GENERAL

A recipient shall not apply any policy or take any employment action:

- (1) Concerning the potential marital, parental, or family status of an employee or applicant for employment which treats persons differently on the basis of sex; or*
- (2) Which is based upon whether an employee or applicant for employment is the head of household or principal wage earner in such employee's or applicant's family unit.*



§106.57(b-d) - PREGNANCY



No discrimination or
exclusion



Pregnancy as a
temporary disability



Pregnancy leave



NO DISCRIMINATION OR EXCLUSION

A recipient shall not discriminate against or exclude from employment any employee or applicant for employment on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom.

§106.57(b)



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PREGNANCY AS A TEMPORARY DISABILITY

A recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy, and recovery therefrom as any other temporary disability resulting therefrom for all job related purposes, including commencement, duration, and extensions of leave, payment of disability income, accrual of seniority and any other benefit or service, and reinstatement, and under any fringe benefit offered to employees by virtue of employment.

§106.57(c)

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PREGNANCY LEAVE

In the case of a recipient which does not maintain a leave policy for its employees, or in the case of an employee with insufficient leave or accrued employment time to qualify for leave under such a policy, a recipient shall treat pregnancy, childbirth, false pregnancy, termination of pregnancy and recovery therefrom as a justification for a leave of absence without pay for a reasonable period of time, at the conclusion of which the employee shall be reinstated to the status which she held when the leave began or to a comparable position, without decrease in rate of compensation or loss of promotional opportunities, or any other right or privilege of employment.

§106.57(d)

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§106.60 - PRE-EMPLOYMENT INQUIRIES

Marital
status



Sex



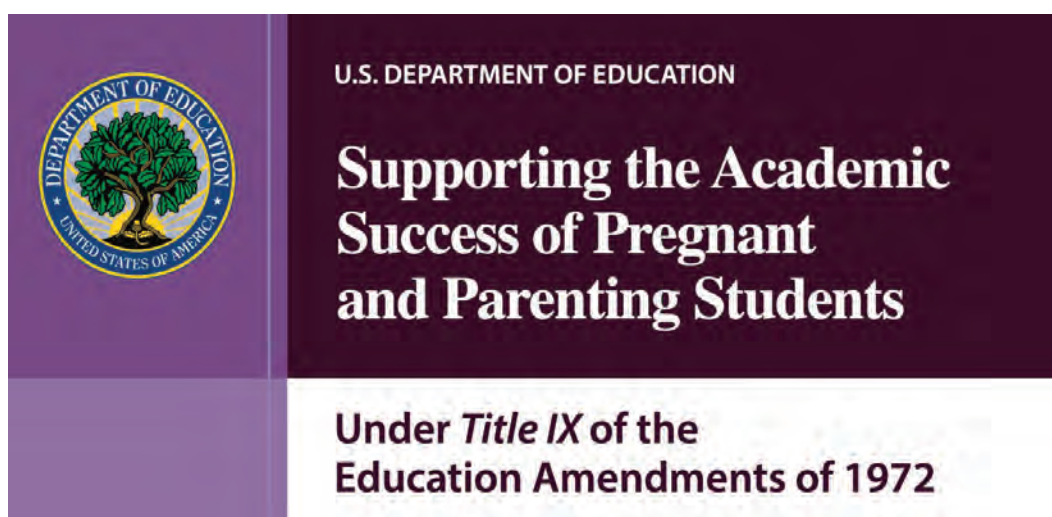
TITLE IX GUIDANCE



2022



2013 (FIRST PUBLISHED IN JULY 1991)



MAY A SCHOOL REQUIRE A PREGNANT STUDENT TO PARTICIPATE IN A SEPARATE PROGRAM FOR PREGNANT STUDENTS?

MAY A SCHOOL REQUIRE A PREGNANT STUDENT TO OBTAIN A DOCTOR'S PERMISSION BEFORE ALLOWING HER TO ATTEND SCHOOL LATE IN HER PREGNANCY IF THE SCHOOL IS WORRIED ABOUT THE STUDENT'S HEALTH OR SAFETY?

CAN HARASSING A STUDENT BECAUSE OF PREGNANCY VIOLATE TITLE IX?

WHAT TYPES OF ASSISTANCE MUST A SCHOOL PROVIDE TO A PREGNANT STUDENT AT SCHOOL?

IN ADDITION TO ALLOWING A PREGNANT STUDENT TO ATTEND CLASSES, DOES A SCHOOL NEED TO ALLOW HER TO PARTICIPATE IN SCHOOL CLUBS, CLASS ACTIVITIES, INTERSCHOLASTIC SPORTS, AND OTHER SCHOOL-SPONSORED ORGANIZATIONS?

DOES A SCHOOL HAVE TO EXCUSE A STUDENT'S ABSENCE DUE TO PREGNANCY OR CHILDBIRTH?

DOES A SCHOOL NEED TO PROVIDE SPECIAL SERVICES TO A PREGNANT STUDENT?

WHAT IF SOME TEACHERS AT A SCHOOL HAVE THEIR OWN POLICIES ABOUT CLASS ATTENDANCE AND MAKE-UP WORK?

WHAT PROCEDURES MUST A SCHOOL DISTRICT HAVE IN PLACE RELATED TO DISCRIMINATION ON THE BASIS OF SEX, INCLUDING DISCRIMINATION RELATED TO PREGNANCY AND PARENTAL STATUS?

HOW DO I ENFORCE MY RIGHTS UNDER TITLE IX?

RELATED LAWS



EMPLOYEE PREGNANCY DISCRIMINATION

Title VII of the Civil Rights Act of 1964

Pregnancy Discrimination Act

Fair Labor Standards Act

Pregnant Workers Fairness Act

PUMP Act

Americans with Disabilities Act

Section 504 of the Rehabilitation Act

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964



TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

Title VII is a federal law that prohibits employment discrimination based on:

- Race
- Religion
- National origin
- Color
- Sex, including gender, gender identity, pregnancy, and sexual orientation

LIABILITY

Liability can result from the conduct of a supervisor, co-workers, or non-employees such as customers or business partners over whom the employer has some control.

TITLE VII

- It is unlawful for an employer to take a negative action, or retaliate, against a person because they:
 - Complained about discrimination, whether formally or informally;
 - Filed a charge of discrimination with an agency like the U.S. Equal Employment Opportunity Commission, or
 - Participated as a witness in an employment discrimination investigation or lawsuit.
- It is unlawful to use policies or practices that seem neutral but have the effect of discriminating against people because of their race, color, religion, sex (including pregnancy, childbirth, and related conditions, sexual orientation, and gender identity), or national origin.

TITLE VII - UNLAWFUL TO DISCRIMINATE IN ANY ASPECT OF EMPLOYMENT



THE BASIS OF SEX

The terms “because of sex” or “on the basis of sex” include, but are not limited to:

- because of or on the basis of pregnancy, childbirth, or related medical conditions
- women affected by pregnancy, childbirth, or related medical conditions

TITLE VII - EMPLOYERS CANNOT...

- Harass an employee because of race, color, religion, sex (including pregnancy, childbirth, and related conditions, sexual orientation, and gender identity), or national origin
- Refuse or fail to make reasonable adjustments to workplace policies or practices that allow individual workers to observe their sincerely held religious beliefs
- Make employment decisions based on stereotypes or assumptions about a person's abilities, traits, or performance because of their race, color, religion, sex (including pregnancy, childbirth, and related conditions, sexual orientation, and gender identity), or national origin
- Deny job opportunities because a person is married to, or associated with, a person of a particular race, color, religion, sex (including pregnancy, childbirth, and related conditions, sexual orientation, and gender identity), or national origin



ABORTION

- A woman cannot be fired for having an abortion or contemplating having an abortion.
 - An employer that offers health insurance is not required to pay for coverage of abortion except where the life of the mother would be endangered.
 - An employer is permitted to provide health insurance coverage for abortion.
 - Adverse employment actions against an employee based on her decision not to have an abortion are prohibited.
-

THE PREGNANCY DISCRIMINATION ACT

... the PDA extended to pregnancy Title VII's goals of "[achieving] equality of employment opportunities and remov[ing] barriers that have operated in the past to favor an identifiable group of . . . employees over other employees."

By enacting the PDA, Congress sought to make clear that "[p]regnant women who are able to work must be permitted to work on the same conditions as other employees; and when they are not able to work for medical reasons, they must be accorded the same rights, leave privileges and other benefits, as other workers who are disabled from working."

Enforcement
Guidance on
Pregnancy
Discrimination and
Related Issues



PDA

Pregnant employees treated the same as non-pregnant employees

May not discriminate

Treated the same as other persons

TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, AS AMENDED BY THE PREGNANCY DISCRIMINATION ACT



DISPARATE TREATMENT

- Discrimination on the basis of pregnancy occurs if an employee's pregnancy, childbirth, or related medical condition was all or part of the motivation for an employment decision.
- Includes failure to treat women affected by pregnancy "the same for all employment related purposes...as other persons not so affected but similar in their ability or inability to work."
- The "totality of evidence" is examined to determine whether there is discriminatory action.

PREGNANCY DISCRIMINATION UNDER TITLE VII

Pregnancy discrimination occurs when an employer refuses to hire, fires, or takes any other adverse action against a woman because she is pregnant, without regard to her ability to perform the duties of the job.

Karen informs her supervisor that she is pregnant. When performance evaluations are completed the following month, Karen receives a negative rating, although throughout the year she has received nothing but stellar reviews. When she confronts her supervisor regarding the negative feedback on the document, the supervisor tells Karen that Karen received the negative feedback because she has been more tired at work and not “pulling her weight.” Karen’s supervisor can cite no example of incomplete work or other projects for which Karen is responsible. As a result of the negative mark on Karen’s performance evaluation, she did not receive a score of “5”, which she needs to be eligible for promotion. Karen believes the negative mark is a direct result of her pregnancy disclosure and not her actual work product.

THE PREGNANT WORKERS FAIRNESS ACT



THE PREGNANT WORKERS FAIRNESS ACT (PWFA)

- (1) Requires a covered entity to make reasonable accommodation to the known limitations of a qualified employee related to pregnancy, childbirth, or related medical conditions, absent undue hardship;
- (2) Prohibits a covered entity from requiring a qualified employee to accept an accommodation, other than a reasonable accommodation arrived at through the interactive process;
- (3) Prohibits the denial of employment opportunities based on the need of the covered entity to make reasonable accommodation to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee;
- (4) Prohibits a covered entity from requiring a qualified employee to take leave if another reasonable accommodation can be provided to the known limitations related to the pregnancy, childbirth, or related medical conditions of the employee;

29 CFR Part 1636.1

THE PREGNANT WORKERS FAIRNESS ACT (PWFA)

- (4) Prohibits a covered entity from requiring a qualified employee to take leave if another reasonable accommodation can be provided to the known limitations related to the pregnancy, childbirth, or related medical conditions of the employee;
- (5) Prohibits a covered entity from taking adverse actions in terms, conditions, or privileges of employment against a qualified employee on account of the employee requesting or using a reasonable accommodation for known limitations related to pregnancy, childbirth, or related medical conditions;
- (6) Prohibits discrimination against an employee for opposing unlawful discrimination under the PWFA or participating in a proceeding under the PWFA;
- (7) Prohibits coercion of individuals in the exercise of their rights under the PWFA; and
- (8) Provides remedies for individuals whose rights under the PWFA are violated.

29 CFR Part 1636.1

THE FAIR LABOR STANDARDS ACT (AS IT RELATES TO PREGNANCY)



Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP for Nursing Mothers Act or PUMP Act)

Amended the FLSA

LACTATION TIME AND SPACE



§ 106.57(e)

COMPENSATION FOR BREAK TIME

- As with other breaks under the FLSA, the nursing employee must be completely relieved from duty or the time spent pumping must be counted as hours worked for the purposes of minimum wage and overtime requirements.
- If an employer already provides paid break time and if an employee chooses to use that time to pump, they must be compensated in the same way that other employees are compensated for break time.
- An employer must also pay for pump breaks if required by Federal or State law or municipal ordinance.

TO PAY OR NOT TO PAY?



Carlotta is an administrative assistant in the Business Office and takes time at work to pump breast milk but continues to answer emails or take a work phone call during this time. **Must she be compensated for this time?**

Linda pumps during her unpaid meal break. **Must she be compensated for this time?**

Suzanne works in Facilities at the College and pumps during one of her required 15-minute breaks. On her break, she is required to listen to the dispatch radio in case she is needed. **Must she be compensated for this time?**

SARAH'S STORY



Sarah is a student at ABC College. She purchased a breast pump to wear under her shirt so that she could pump while in class. Sarah tells her faculty member that she is wearing the pump and that if it gets too full, she may have to leave class for a few minutes to empty it. The pump is nearly silent and not observable through Sarah's clothing.

Sarah's faculty member tells her that wearing the pump in class is "not hygienic" and that she must use the lactation space to express her breast milk. She also tells Sarah to "be quick" because she is missing class time, which will not be excused.

If you were the Title IX Coordinator, what would you say to the faculty member?
To Sarah?

DISABILITY LAW



DISABILITY LAWS

Federal Law	Public Colleges	Private Colleges - Recipient of Federal Financial Assistance	Private Colleges - Non-Recipient of Federal Financial Assistance
Section 504	Yes	Yes	No
ADA Title II	Yes	No	No
ADA Title III	No	Yes	Yes

AMERICANS WITH DISABILITIES ACT (ADA)

- While pregnancy itself is not a disability, pregnant workers and job applicants are not excluded from the protections of the ADA.
- The ADA Amendments of 2008 have made it easier for pregnant workers with pregnancy-related impairments to demonstrate they have disabilities which may entitle them to a reasonable accommodation.

Reasonable accommodations may include:

- More frequent breaks
- Keep a water bottle at a workstation
- Use a stool
- Altering how job functions are performed
- Temporary voluntary assignment to light duty

SECTION 504 OF THE REHABILITATION ACT

Section 504 of the Rehabilitation Act is a federal law that prohibits entities that receive federal funds from discriminating against people with disabilities.

Similar to the ADA, medical issues resulting from pregnancy can qualify as a disability under Section 504.

OVERSIGHT & RESPONSE



OVERSIGHT



WE HAVE TO
STOP TREATING
PREGNANCY LIKE
IT'S A HOT
POTATO, WITH
NO ONE
WANTING TO
HOLD IT.

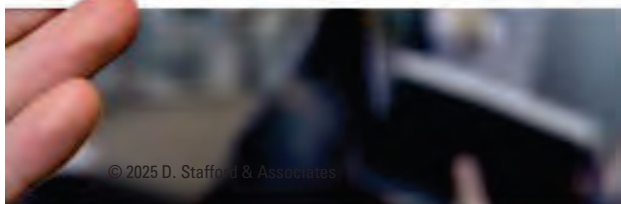
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Contact us



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§106.8 DESIGNATION OF COORDINATOR...

- Must notify applicants, students, employees, and all unions or professional organizations holding collective bargaining or professional agreements of the name or title, office address, email, and phone number of the Title IX Coordinator(s)
 - Must disseminate the nondiscrimination policy
 - Must share information on how to report issues
 - Contact information for the Title IX Coordinator must be prominently displayed in publications.
-

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RECOMMENDED PRACTICE

- When an employee is informed of a student's pregnancy or related conditions, they should:
 - Share the Title IX Coordinator's contact information
 - Explain that the Title IX Coordinator can coordinate specific actions.
 - For an employee contact Human Resources.
-

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ANTICIPATING NEEDS

Lactation Spaces

- Do you have lactation spaces on campus?
- Are they in reasonable locations?
- Are they not a bathroom?
- Are they shielded from view and free from intrusion?

Reasonable Modifications or Accommodations

- Are you ready to offer any of these?
 - Breaks during class
 - Intermittent absences
 - Access to online or homebound education
 - Changes in schedule or course sequence
 - Extensions of time
 - Allowing sit/stand/water
 - Counseling
 - Changes in space or supplies (e.g., bigger desk)
 - Elevator access
-

RESPONSE



TITLE IX RESPONSE

Sex Discrimination

§106.8(c)

- Any person may report sex discrimination to the Title IX Coordinator
- Must publish grievance procedures to address sex discrimination
- No procedural requirements other than provided a process that has a “prompt” and “equitable” resolution

Sex-Based Harassment

§106.44 and §106.45

- Quid pro quo
- Hostile environment
- Sexual assault
- Stalking
- Domestic violence
- Dating violence

HOSTILE ENVIRONMENT HARASSMENT

“Unwelcome conduct [on the basis of sex] determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the recipient's education program or activity”

§ 106.30

HOSTILE ENVIRONMENT FACTORS



Degree affected educational access



Type, frequency, duration



Parties' ages, roles, previous interactions, other factors



Location and context in which occurred



Other sex-based harassment in educational setting



CONSIDERATIONS FOR A SEX DISCRIMINATION RESPONSE

- Offer multiple resolution options (e.g., fix the problem, mediation, investigation)
- Investigation process:
 - Treat parties equitably
 - Provide notice (sufficient information to respond to the allegations)
 - Provide an opportunity for the parties to respond
 - Provide an opportunity for the parties to present fact witnesses and relevant information
 - Provide an investigation report with an opportunity to respond
 - Written notification of the result and any remedy, if applicable

SEX DISCRIMINATION OR HOSTILE ENVIRONMENT?

Janet Smith is a faculty member in your Engineering Department. She is 28 weeks pregnant and has come to HR because she “is struggling.” Specifically, she tells HR the following:

- She has morning sickness and has been late a few times. Her chair told her, “If you can’t manage your course load, I will find someone else who can.” She also cannot travel. She is scheduled to present at a conference and has requested to appear via Zoom, but she was declined. Her chair advised that she must present her findings to a national audience, or she will fail to meet Item #3 in her contract.
- Her Chair has commented that he “isn’t sure how she is going to balance her workload and responsibilities when she becomes a mother” and that “maybe she should consider staying home full-time when the baby is born.”
- Her Chair has also commented that none of the men in the department “seem to have these issues with punctuality and course load” and that he “isn’t giving her a break simply because she got herself pregnant.”
- When she arrived at work this morning, she found that she had not been invited to a staff meeting. After the meeting concluded, she questioned the Chair about why she had not been included. She said the Chair told her that “since she can’t seem to be at work on time nor will she be around in the spring semester when she is home taking care of her baby, he decided she didn’t need to attend.”

EEOC CASE EXAMPLES



THE FOLLOWING SLIDES CONTAIN CASE LAW AND CASE STUDY EXAMPLES FOUND IN:

Enforcement Guidance on Pregnancy
Discrimination and Related Issues, U.S.
Equal Employment Opportunity
Commission (eoc.gov)

<https://www.eoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues>



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STEREOTYPES AND ASSUMPTIONS EXAMPLE 1



Three months after Maria told her supervisor that she was pregnant, she was absent several days due to an illness unrelated to her pregnancy. Soon after, pregnancy complications kept her out of the office for two additional days. When Maria returned to work, her supervisor said her body was trying to tell her something and that he needed someone who would not have attendance problems. The following day, Maria was discharged. The investigation reveals that Maria's attendance record was comparable to, or better than, that of non-pregnant co-workers who remained employed. It is reasonable to conclude that her discharge was attributable to the supervisor's stereotypes about pregnant workers' attendance rather than to Maria's actual attendance record and, therefore, was unlawful.

STEREOTYPES AND ASSUMPTIONS EXAMPLE 2



Darlene, who is visibly pregnant, applies for a job as office administrator at a campground. The interviewer tells her that July and August are the busiest months of the year and asks whether she will be available to work during that time period. Darlene replies that she is due to deliver in late September and intends to work right up to the delivery date. The interviewer explains that the campground cannot risk that she will decide to stop working earlier and, therefore, will not hire her. The campground's refusal to hire Darlene on this basis constitutes pregnancy discrimination.

EEOC Enforcement Guidance: Pregnancy Discrimination and Related Issues

UNLAWFUL DISCHARGE DURING PREGNANCY OR PARENTAL LEAVE EXAMPLE



Shortly after Teresa informed her supervisor of her pregnancy, he met with her to discuss alleged performance problems. Teresa had consistently received outstanding performance reviews during her eight years of employment with the company. However, the supervisor now for the first time accused Teresa of having a bad attitude and providing poor service to clients. Two weeks after Teresa began her pregnancy-related medical leave, her employer discharged her for poor performance. The employer produced no evidence of customer complaints or any other documentation of poor performance. The evidence of outstanding performance reviews preceding notice to the employer of Teresa's pregnancy, the lack of documentation of subsequent poor performance, and the timing of the discharge support a finding of unlawful pregnancy discrimination.

EEOC Enforcement Guidance: Pregnancy Discrimination and Related Issues

KNOWLEDGE OF PREGNANCY EXAMPLE



When Germaine learned she was pregnant, she decided not to inform management at that time because of concern that such an announcement would affect her chances of receiving a bonus at the upcoming anniversary of her employment. When she was three months pregnant, Germaine's supervisor told her that she would not receive a bonus. Because the pregnancy was not obvious and the evidence indicated that the decision makers did not know of Germaine's pregnancy at the time of the bonus decision, there is no reasonable cause to believe that Germaine was subjected to pregnancy discrimination.

EEOC Enforcement Guidance: Pregnancy Discrimination and Related Issues

DISPARATE TREATMENT EXAMPLE 1



In Wallace v. Methodist Hospital System, the employer asserted that it discharged the plaintiff, a pregnant nurse, in part because she performed a medical procedure without a physician's knowledge or consent. The plaintiff produced evidence that this reason was pretextual by showing that the employer merely reprimanded a non-pregnant worker for nearly identical misconduct.

EEOC Enforcement Guidance: Pregnancy Discrimination and Related Issues

DISPARATE TREATMENT EXAMPLE 2



In Nelson v. Wittern Group, the defendant asserted it fired the plaintiff not because of her pregnancy but because overstaffing required elimination of her position. The court found a reasonable jury could conclude this reason was pretextual where there was evidence that the plaintiff and her co-workers had plenty of work to do, and the plaintiff's supervisor assured her prior to her parental leave that she would not need to worry about having a job when she got back.

EEOC Enforcement Guidance: Pregnancy Discrimination and Related Issues

DISPARATE TREATMENT EXAMPLE 3



In Cumpiano v. Banco Santander Puerto Rico, the court affirmed a finding of pregnancy discrimination where there was evidence that the employer did not enforce the conduct policy on which it relied to justify the discharge until the plaintiff became pregnant.

EEOC Enforcement Guidance: Pregnancy Discrimination and Related Issues

DISPARATE TREATMENT EXAMPLE 4



In Young v. United Parcel Serv., Inc., the Court said that evidence of an employer policy or practice of providing light duty to a large percentage of nonpregnant employees while failing to provide light duty to a large percentage of pregnant workers might establish that the policy or practice significantly burdens pregnant employees. If the employer’s reasons for its actions are not sufficiently strong to justify the burden, that will “give rise to an inference of intentional discrimination.”

EEOC Enforcement Guidance: Pregnancy Discrimination and Related Issues

POTENTIAL OR INTENDED PREGNANCY



Anne, a high-level executive who has a two-year-old son, told her manager she was trying to get pregnant. The manager reacted with displeasure, stating that the pregnancy might interfere with her job responsibilities. Two weeks later, Anne was demoted to a lower paid position with no supervisory responsibilities. In response to Anne’s EEOC charge, the employer asserts it demoted Anne because of her inability to delegate tasks effectively. Anne’s performance evaluations were consistently outstanding, with no mention of such a concern. The timing of the demotion, the manager’s reaction to Anne’s disclosure, and the documentary evidence refuting the employer’s explanation make clear that the employer has engaged in unlawful discrimination.

EEOC Enforcement Guidance: Pregnancy Discrimination and Related Issues

EEOC V. POLARIS (FILED SEPTEMBER 25, 2024)



The agency filed against the manufacturing company after Polaris refused to excuse an employee's absences for pregnancy-related conditions and medical appointments and required her to work mandatory overtime despite knowing that her physician had restricted her from working over forty hours per week during her pregnancy. Because of her pregnancy-related absences, the company assessed attendance points against her and warned that she would be terminated if she acquired another point. As a result, the employee resigned to avoid termination and protect her pregnancy.

EEOC Press Release, 9-26-2024

EEOC V. UROLOGIC SPECIALISTS OF OKLAHOMA, INC. (FILED SEPTEMBER 25, 2024)



The agency filed against the specialty medical practice when it did not allow a medical assistant at its Tulsa facility to sit, take breaks, or work part-time as her physician said was needed to protect her health and safety during the final trimester of her high-risk pregnancy. Instead, the practice forced her to take unpaid leave and refused to guarantee she would have breaks to express breastmilk. When she would not return to work without those guaranteed breaks, Urologic Specialists terminated her.

EEOC Press Release, 9-26-2024

Now What?

- Policies
- Procedures
- Website
- Training
- Lactation Spaces
- Public Awareness Campaigns
- Targeted Prevention
- Faculty Awareness
- HR/Title IX Collaboration



WHAT DO I DO NOW?

- Policies
- Procedures
- Website
- Training
- Lactation Spaces
- Public Awareness Campaigns
- Targeted Prevention
- Faculty Awareness
- HR/Title IX Collaboration







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