

Maryland Judicial Branch

2.1.1 POLICY ON THE PREGNANT WORKERS FAIRNESS ACT

(a) Purpose and Scope

(1) Purpose

- (A) The Judicial Branch is committed to providing reasonable accommodations to its employees and applicants for employment necessitated by pregnancy, childbirth, and related medical conditions pursuant to the Pregnant Workers Fairness Act (PWFA). The goal is to enable an employee to continue to work despite any associated work limitation(s), and to provide applicants equal opportunities for employment.
- (B) This policy sets forth the process for making and resolving a request for a PWFA accommodation. Such accommodations may be distinct and separate from any accommodation to which an employee may be entitled under the American with Disabilities Act (ADA) or related state law.
- (C) Retaliation against an applicant or employee because they have requested such an accommodation or participated in the processing of such an accommodation request or complaint, or otherwise exercised their rights under the PWFA, is prohibited.

(2) Scope

- (A) This policy applies to:
 - (i) applicants for employment; and
 - (ii) all persons employed or formerly employed by a court, unit, or judicial entity organized within the Judicial Branch
 - (I) including regular, temporary, and contractual employees;
 - (II) regardless of the source of the employee's compensation (*e.g.*, county, state, federal, grant).
- (B) This policy does not apply to:
 - (i) employees of the Register of Wills or the Orphans' Court; and
 - (ii) justices and judges, except to the extent that certain judges serve as the Administrative Head of a judicial entity and, therefore, perform administrative duties consistent with this policy.

(b) Definitions

(1) Administrative Head:

- (A) For the Supreme Court of Maryland, the Clerk of the Court for all employees under the Clerk's supervision, and the Chief Justice for all other employees of that Court;
- (B) For the Appellate Court of Maryland, the Clerk of the Court for all employees under the Clerk's supervision, and the Chief Judge for all other employees of that Court;
- (C) For all employees under the Clerk's supervision, the Clerk of a circuit court;
- (D) For all employees under the Administrative Judge's supervision, the County Administrative Judge;
- (E) For the District Court, the Chief Judge of the District Court, the Chief Clerk, the Administrative Clerk, or Administrative Commissioner for all employees under their supervision;
- (F) For the Administrative Office of the Courts, the State Court Administrator;
- (G) For units organized within the Judicial Branch, the head of the unit where the employee works; and,

- (H) Any person who, by express written designation, serves as the authorized designee of an Administrative Head.
- (2) **Designee** – An individual designated by an Administrative Head to serve or act on their behalf in matters pertaining to this policy. Therefore, their authority to take an action pursuant to this policy also applies to their designee.
- (3) **Employee** – Pursuant to the PWFA, a current or former employee of the Judicial Branch, or an applicant for employment with the Judicial Branch. Therefore, the term employee may also include an applicant.
- (4) **Essential Functions** – The job activities that are determined by the employer to be essential or core to performing the job; these functions may be temporarily modified or suspended under this policy. Factors to consider in determining whether a function is essential include:
- (A) Whether the reason the position exists is to perform that function;
 - (B) The number of other employees available to perform the function or among whom the performance of the function can be distributed; and
 - (C) The degree of expertise or skill required to perform the function.
- (5) **Judicial Entity** – The Supreme Court of Maryland; the Appellate Court of Maryland; a Circuit Court or any department thereof; the District Court or any department thereof; the Administrative Office of the Courts (AOC) or any department thereof; a unit of the Judiciary.
- (6) **Judiciary Human Resources Division (JHRD)** – The division within the Administrative Office of the Courts that is responsible for, but not limited to, the following functions for State employees in the Maryland Judiciary: human resources policy development, administration, and interpretation; talent acquisition; employment and orientation services; employee benefits; position classification and salary administration; and employer-employee relations.
- (7) **Known Limitation** – The employee, or a representative of the employee, has communicated an employment limitation to the employer. The employment limitation may be a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or a related medical condition. The condition that causes the limitation may be a modest, minor, and/or episodic impediment or problem, or is related to maintaining the employee’s health or the health of the pregnancy.
- (8) **Near Future** – The term is defined by the PFWA as generally meaning forty (40) weeks after the suspension of essential functions.
- (9) **Predictable Assessments** – Simple modifications that, in virtually all cases, do not impose an undue hardship and must be granted based on the employee’s self-confirmation without requesting medical certification, including:
- (A) Allowing an employee to carry or keep water near and drink, as needed;
 - (B) Allowing an employee to take additional restroom breaks, as needed;
 - (C) Allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
 - (D) Allowing an employee to take breaks to eat and drink, as needed.
- (10) **Pregnancy, Childbirth, and Related Medical Condition** – Under the PWFA, this includes, but may not be limited to: current, past, and potential pregnancy; vaginal delivery or cesarian section; postpartum depression or anxiety; high blood pressure; edema; placenta previa; lactation including breastfeeding and pumping; use of birth control; menstruation; infertility and fertility treatments; endometriosis; miscarriage; still birth; having or choosing not to have an abortion; or other similar conditions. The employee does not have to specify a condition on this list or use medical terms to describe a

condition. However, to be a related medical condition and covered by the PWFA, the condition must be related to pregnancy or childbirth. A medical condition could have existed prior to the pregnancy or childbirth, such as high blood pressure or anxiety. If such a condition is exacerbated by the pregnancy or childbirth, then it is considered a related medical condition and covered by the PWFA. If not related, it may be covered by the ADA which may entitle the employee to a reasonable accommodation under that law.

- (11) Qualified Individual** – An applicant or employee who, with or without reasonable accommodation, can perform the essential functions of the position that such individual holds or desires; or, even if unable to perform an essential function, the inability is temporary, and they will be able to perform the function in the near future.
- (12) Reasonable Accommodation** – A modification or adjustment to a position, an employment practice, or the work environment that makes it possible for a qualified individual covered by the PWFA to perform the essential functions of the position, or to otherwise continue to work despite limitations caused by pregnancy, childbirth, or a related medical condition. Under the PWFA, reasonable accommodations may include, but are not limited to: making existing facilities readily accessible to and usable by a qualified individual; job restructuring; part-time or modified work schedules; more frequent breaks; reassignment to a vacant position; acquiring or modifying equipment or devices; adjusting or modifying examinations, training materials, or policies; allowing seating for jobs that require standing or allowing standing for jobs that require sitting; permitting the use of paid leave or providing unpaid leave; assignment of light duty; telework for applicable positions; or, temporarily suspending the requirement to perform an essential function if the inability to perform the function is temporary and the employee can perform the function in the near future.
- (13) Undue Hardship** – A significant difficulty or expense when considered in light of factors such as the size, financial resources, and the nature and structure of Judiciary operations. Undue hardship also refers to an accommodation that is unduly expensive, substantial, or disruptive, or one that would fundamentally alter the nature of Judiciary operations.
- (14) Unit** – The Attorney Grievance Commission, the Client Protection Fund, the State Board of Law Examiners, the Thurgood Marshall State Law Library, the Commission on Judicial Disabilities, and the Supreme Court of Maryland Standing Committee on Rules of Practice and Procedure.

(c) Policy Statements

(1) Reasonable Accommodations:

- (A) The Judicial Branch is committed to ensuring, to the extent possible, that applicants and employees who are pregnant, have experienced childbirth, or are experiencing related medical conditions, can continue to apply for a Judiciary position or work at the Judiciary despite any associated work limitations.
- (B) It is the policy of the Judicial Branch to provide reasonable accommodations to applicants and employees covered by the PWFA:
 - (I) when an individual needs an accommodation to compete for a job;
 - (II) when an employee needs an accommodation to gain access to the workplace, perform the essential functions of the job, or needs a temporary suspension of an essential function to continue to work; or
 - (III) when an employee needs an accommodation to enjoy equal access to the benefits and privileges of employment.

- (C) It is the policy of the Judicial Branch to provide such reasonable accommodations unless doing so imposes an undue hardship on the operation of the employing court, unit, or judicial entity's business, or it would permanently change the essential functions of the position.

(2) Confidentiality:

- (A) It is the policy of the Judicial Branch to treat a request for an accommodation as confidential to the maximum extent allowed by law.
- (B) Documentation of a request for an accommodation and any medical information submitted in support of the request, including information regarding a medical condition or history, shall be treated as a confidential medical record and be maintained apart from the employee's personnel file.

(d) General Management Responsibilities

(1) Each Administrative Head shall:

- (A) Ensure that each supervisor, manager, and director who reports to the Administrative Head is familiar with the Judicial Branch policy providing for the reasonable accommodation of persons covered by the PWFA, specifically that:
 - (I) The Judicial Branch provides reasonable accommodations when an employee needs an accommodation pursuant to Section (c)(1); and
 - (II) A substantiated complaint of discrimination or retaliation based on a violation of the PWFA shall result in remedial or disciplinary action, or both, up to and including termination of employment.
- (B) Ensure that a reasonable accommodation is provided based on the employee's self-confirmation without seeking medical documentation if any of the following situations apply:
 - (I) The request is for a predictable assessment;
 - (II) The limitation is obvious;
 - (III) There is already sufficient information;
 - (IV) The request is regarding lactation; or
 - (V) Existing policies or practices already allow for the accommodation.

- (2) The JHRD, in consultation with others as necessary, will provide support and guidance on the PWFA to Administrative Heads, management and supervisory staff, and employees.

(e) Requests for Accommodations

(1) Applicant Process:

- (A) Applicant Responsibilities
 - (i) An applicant covered by the PWFA, or a representative acting on their behalf, may request an accommodation pertaining to the application and/or interview process either orally or in writing.
 - (ii) A covered applicant may request an accommodation through any of the following: the JHRD talent acquisition partner, employee relations officer, or the Administrative Head.
 - (iii) Covered applicants may use the PWFA Request for Accommodation form.
- (B) Management Responsibilities
 - (i) If the covered applicant does not submit an accommodation request in writing, the JHRD talent acquisition partner, employee relations officer, or the Administrative Head shall complete a request form on behalf of the applicant upon being made aware of an oral request.

- (ii) The JHRD talent acquisition partner or the Administrative Head shall immediately send a copy of the request to JHRD Employee Relations & Compliance to determine what accommodations can be provided.
- (iii) The Administrative Head, after consulting with JHRD, shall authorize any accommodation that is a predictable assessment without the need for medical documentation.
- (iv) The Administrative Head, after consulting with JHRD, may authorize any additional accommodation for an applicant that is determined to be reasonable.

(2) Employee Process:

(A) Employee Responsibilities

- (i) A covered employee, or a representative acting on their behalf, may request an accommodation, either orally or in writing, by directing the request to the employee's supervisor, manager, or Administrative Head.
- (ii) Employees with access to CONNECT can submit a request for accommodation through CONNECT.

(B) Management Responsibilities

- (i) If the covered employee does not submit an accommodation request in writing, the supervisor, manager, or Administrative Head shall complete a request in CONNECT on behalf of the employee.
- (ii) The supervisor, manager, or Administrative Head shall consult with JHRD to determine what accommodations can be provided.
- (iii) The Administrative Head shall authorize any accommodation that is a predictable assessment without the need for medical documentation.
- (iv) The Administrative Head, after consulting with JHRD, may authorize any additional accommodation for a covered employee that is determined to be reasonable.
- (v) Locally funded circuit court employees and other employees without access to CONNECT are encouraged to use the PWFA Accommodation Request form.

(f) Responding to a Request for Accommodation

- (1)** The Administrative Head shall consult with JHRD for guidance on PWFA accommodation requests. The requirement that an Administrative Head consult with the JHRD, report requests, and submit documentation to the JHRD does not apply to requests for accommodation made by locally funded employees of a circuit court under the supervision of the County Administrative Judge.

(2) Receipt of Request Orally or in Writing:

- (A) If the employee requests an accommodation that is one of the predictable assessments, the supervisor, manager, or Administrative Head shall notify JHRD. The accommodation must be provided without seeking medical documentation.
- (B) If the employee has made an oral request, the supervisor, or manager shall memorialize the employee's oral request by notification to JHRD.
- (C) The supervisor or manager shall immediately send a copy of the request to the Administrative Head and the JHRD.
- (D) If PWFA documentation has been requested and documentation has not been submitted, the supervisor or manager, will direct the employee to provide documentation to JHRD.
- (E) The Administrative Head, after consulting with JHRD, may authorize any accommodation that is determined to be reasonable.

(3) Interactive Process:

- (A) If the request is not granted pursuant to section (2)(E) above, the Administrative Head should meet with the employee as soon as possible to engage in the interactive process and discuss the requested accommodation.
- (B) During the interactive process, the employee should communicate how the limitations associated with the pregnancy, childbirth, or related medical condition affects their ability to perform the essential functions of the job and identify what workplace accommodations they believe are necessary to assist them in performing the assigned job duties.
- (C) The Administrative Head, in consultation with JHRD, should discuss the essential functions of the position with the employee and the job-related limitations and offer suggestions for reasonable and effective accommodations.
- (D) The JHRD may request that the employee submit medical documentation citing the employee's limitations and need for an accommodation. The request for documentation should not be overly burdensome or invasive. The documentation needs to provide only the information necessary to confirm the physical or mental condition, the limitations, and to describe the accommodations needed for the employee to perform their duties. The employee may submit the documentation directly to JHRD.
- (E) The employee's supervisor should provide the Administrative Head and JHRD with information regarding the essential functions of the position and possible accommodations. Such as, the impact the requested accommodation will have on the operations of the department, unit, or office and the potential effectiveness of the accommodation in enabling the employee to perform the essential functions. The supervisor should also provide input concerning how the employee can otherwise continue to work and be productive if the employee cannot, temporarily, perform all the essential functions even with an accommodation.

(4) Granting or Denying the Accommodation Request:

- (A) Upon completing the interactive process, the Administrative Head, in consultation with JHRD, is responsible for assessing whether the employee's requested accommodation is reasonable, and, if not, determining what other accommodation or workplace adjustment, if any, is appropriate for both the employee and the Judiciary.
- (B) Consideration may be given to the accommodation preferred by the employee. However, the Administrative Head, in consultation with JHRD, may select and implement a different accommodation or other workplace adjustment that is reasonable but more cost-effective or easier to provide.
- (C) The Administrative Head or JHRD will provide a formal response to the request for accommodation within 30 calendar days of receipt of the request and notify the employee if a longer period is needed.
- (D) The Administrative Head and JHRD shall document the decision to grant or deny the accommodation request and include a timeframe when the accommodation is scheduled to end or scheduled to be reassessed with the employee.
- (E) Copies of any documentation shall be forwarded to the JHRD for central record keeping and will be kept apart from the employee's personnel file for employee of the Clerks' offices, courts, units, and judicial entities other than the circuit courts.

(g) Further Review or Action

(1) Informal Review of Accommodation Requests:

- (A) An applicant or employee who is dissatisfied with the resolution of their PWFA accommodation request may seek informal review with JHRD. The informal reconsideration may be sent to:
Judiciary Human Resources Division
Attention: ADA Officer
187 Harry S. Truman Parkway
Annapolis, MD 21401, or electronically to ada@mdcourts.gov.
- (B) Employees of the circuit courts (under the supervision of the County Administrative Judge) may file a complaint with the supervisor, manager, or Administrative Head (County Administrative Judge).

(2) Complaints Regarding Disability Discrimination or Retaliation:

- (A) An applicant or employee who believes that they have been discriminated against based on limitation related to pregnancy, childbirth, or related medical conditions, including the denial of an accommodation request, or retaliated against for exercising a right under the PWFA or civil rights statutes may file a complaint under the Judicial Branch Policy Prohibiting Discrimination, Harassment, and Retaliation, Sections (e)(5) and (6).
 - (i) An applicant or employee of a circuit court (under the supervision of the County Administrative Judge) may file a complaint with the supervisor, Manager, or Administrative Head (County Administrative Judge)
 - (ii) An applicant or employee of the Clerks' offices, courts, units, and judicial entities other than the circuit courts may file a complaint with:
 - (I) The supervisor, manager, or Administrative Head; or
 - (II) The Fair Practices Officer
Office of Legal Affairs & Fair Practices
Internal Affairs Division
187 Harry S. Truman Parkway
Annapolis, Maryland 21401
 - (iii) Complaint forms may be submitted to the FPO by email to fairpractices@mdcourts.gov.
- (B) Applicants and employees are encouraged to use the complaint form available on the Fair Practices resources webpage at <http://mdcourts.gov/fairpractices/forms/fpd305eeocomplaintform.pdf>.

- (3) **External Complaints:** An applicant or employee may also file a charge with the Maryland Commission on Civil Rights or the U.S. Equal Employment Opportunity Commission. Notice of this option does not constitute legal advice, nor does it represent all legal remedies or options available to an employee.

(h) Other Policies that May Apply

An employee who is experiencing a pregnancy, childbirth, or a related medical condition may also be entitled to benefits and protections afforded by other policies and guidelines that may apply in these situations. These include but may not be limited to: Policy on Accommodation of Disabilities; Policy on Family and Medical Leave Act; Policy on Leave; Policy on Parental Leave; Leave Bank Guidelines; Policy on Alternative Work Schedules; Policy on Telework; Policy on Prohibiting Discrimination, Harassment, and Retaliation; and Policy on Lactation Breaks.

(i) Exceptions

The Chief Justice of the Supreme Court or the State Court Administrator may make exceptions to any provision of this policy.

(j) Interpretive Authority

The JHRD is responsible for interpretation of this policy.

(k) Not a Contract

This policy does not constitute or create an express or implied contract. It is not intended to, and does not, create contractual obligations with respect to any matter it covers.