



NEW MEXICO
**LAW OFFICES OF THE
PUBLIC DEFENDER**

**Chief Public Defender
Bennett J. Baur**

TITLE: 400 HUMAN RESOURCES ADMINISTRATION

CHAPTER: 108 EMPLOYMENT PRACTICES

PART: 7 PREGNANT WORKERS ACCOMODATION (PWA)

EFFECTIVE DATE: June 17, 2025

PURPOSE: To provide procedures for applying for reasonable accommodation related to known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions.

APPLICABILITY: All LOPD employees, Applicants (hereinafter referred to qualified person)

AUTHORITY: Pregnant Workers Fairness Act (PWFA); Pregnant Worker Accommodation Act(PWAA)

CROSS-REFERENCES: Title VII of the Civil Rights Act of 1964; ADA; FMLA; PUMP Act; Preganacy Discrimination Act ; LOPD Lactation Breaks Schedule

RELATED FORMS: Request for PWFA Accommodation; Health Care Certification Form; Lactation and Breaks Schedule Policy; LOPD Paid Parental Leave; LOPD Paid Parental Leave Request Form; FMLA DOL Forms (WH-380; WH-381-E; WH-382)

1. DEFINITIONS

- a. **Chief Public Defender:** Pursuant to the Public Defender Act, the administrative head of the Department. The Chief is responsible for the operations of the Department. It is the Chief's duty to manage all operations of the Department.
- b. **Review Panel:** A three (3) person panel to review any case forwarded by Human Resources or cases that fall outside the parameters outlined in this policy. This panel will consist of the following members:
 1. General Counsel for LOPD or designee
 2. HR Director or designee
 3. A Deputy Chief or designee

- c. **LOPD HR:** Human Resources Division.
- d. **Essential functions:** Fundamental job responsibilities assigned to a classification that an employee must be able to perform unaided or with the assistance of a reasonable accommodation.
- e. **Pregnant Workers Fairness Act:** A federal law that requires a covered employer to provide a “reasonable accommodation” to a qualified person known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an “undue hardship.”
- f. **Pregnant Workers Accommodation Act:** A State law prohibiting discrimination in employment on the basis of pregnancy, childbirth, or a related condition and requiring that employers make reasonable accommodations for a qualified person pregnancy, childbirth, or related condition.
- g. **New Mexico Human Rights Act:** A State law protecting employees from acts of discrimination on the basis of race, age, religion, color, national origin, ancestry, sex, sexual orientation, physical or mental handicap, serious medical condition, and age, or as provided in 1978 NMSA § 28-1-7.
- h. **Workplace:** Any LOPD office, parking lot, or other location being used or accessed to conduct LOPD business.
- i. **Reasonable accommodation:** Means modification or adaptation of the work environment, work schedule, work rules or job responsibilities, and reached through good faith efforts to explore less restrictive or less expensive alternatives to enable an employee to perform the essential functions of the job and that does not impose an undue hardship on the employer.
- j. **Qualified Person:** Means an employee, or applicant who, with or without reasonable accommodation, can perform the essential functions of the classification. Additionally, following the statute, an employee or applicant shall be considered qualified if: (1) any inability to perform an essential function is for a temporary period; (2) the essential function could be performed in the near future; and (3) the inability to perform the essential function can be reasonably accommodated.

- k. **Known Limitation:** A physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the qualified person or qualified persons' representative has communicated to the employer whether or not such condition meets the definition of disability specified in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).
- l. **Pregnancy:** The period in which a fetus develops inside a woman's womb or uterus.
- m. **Childbirth:** The act or process of giving birth to a baby.
- n. **Undue hardship:** An accommodation that is unreasonable for LOPD to implement due to significant difficulty and/or expense as determined by the following factors: the nature and cost of the accommodations; the overall budget of LOPD; the number of persons employed by LOPD; the overall financial resources and size of LOPD with respect to the number, type and location of the facilities; and the impact of the accommodation on the operation of the work unit and the agency as a whole, and any other factor that may be relevant to the determination.
- o. **Temporary:** Means that the need to suspend one or more essential functions is lasting for a limited time, not permanent and may extend beyond the definitions used for 'in the near future.'
- p. **In the Near Future¹:** Means "generally within 40 weeks" for pregnancy only. In situations other than when the qualified person is pregnant in the near future is determined on a case by case basis.
- q. **Self-Confirmation:** Means a simple statement where the qualified person confirms, the physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions (a limitation), and the adjustment or change at work needed due to the limitation.

2. **POLICY:**

Pursuant to the Pregnant Workers Fairness Act 2023, ("PWFA") and Pregnant Worker Accommodation Act ("PWAA"), LOPD is committed to providing reasonable workplace accommodations for qualified persons and applicants whose ability to perform job duties is limited because of pregnancy, childbirth, or a related medical condition. The LOPD is committed to providing all qualified persons with a workplace free of discrimination, including opportunities for professional growth and achievement. The LOPD is committed to removing barriers to continued employment.

- A. The duty to provide reasonable accommodation is ongoing; therefore, each request must be considered to determine if an accommodation is needed. If needed, what accommodation will be effective, and if effective, will the accommodation pose an undue hardship.

- B. The LOPD may request a medical examination, when it is reasonable under the circumstances, that is job-related and consistent with business necessity to determine the existence of a medical-related condition or the known limitations that require a reasonable accommodation.
- C. Qualified persons who violate uniformly applied conduct rules that are job related and consistent with business necessity may be disciplined if the same discipline would be imposed on an qualified person without a known limitation. Examples include but are not limited to workplace violence, theft, or destruction of property.
- D. The LOPD is not required to provide a reasonable accommodation that would cause an undue hardship. An undue hardship assessment of circumstances must show that a specific reasonable accommodation would cause significant difficulty or expense. Factors to be considered include: the nature and cost of accommodation needed; the overall financial resources of the office including number of people employed and the effect on expenses and resources of the office; the overall financial resources of the agency, size, number of employees and type and location of sub-entities; the type of operation of the agency including geographical separateness and administrative/ fiscal relationship with State of New Mexico; and the impact of the accommodation on the operation of the office.
- E. All purchases of items or services needed to provide reasonable accommodations are subject to the provisions of the New Mexico Procurement Code, the regulations of the Department of Finance and Administration, the regulations of the General Services Department, and LOPD's budget availability. Outside resources will be considered when evaluating a reasonable accommodation request.

3. EXCLUSIONS OR EXCEPTIONS. This policy only applies to pregnant, postpartum, and qualified persons.

4. PROCEDURES:

Responsibilities and procedures for qualified persons. A qualified person with a qualified known limitation may request a temporary reasonable accommodation to their supervisor and/or LOPD-HR if the qualified person believes it is necessary to perform the essential functions of their classification. If an interim accommodation is needed please ensure you submit this request to your supervisor and/or LOPD-HR. See HR Responsibilities, Section C for additional information.

- A. The initial request for a PWA-related reasonable accommodation does not have to be in writing however, the qualified person requesting a PWA-related

reasonable accommodation may be asked to submit supporting documentation as outlined in sections B-C to their Manager/Supervisor and HR that identifies and describes the functional limitations that require a PWA-related reasonable accommodation. Qualified persons are encouraged to contact HR prior to initiating a request for a PWA-related reasonable accommodation. [Click here](#) to obtain a copy of your position's job description for the essential functions of the classification.

- B. The PWFA Request for Reasonable Accommodation form is an LOPD generated document that the qualified person self completes. A completed Request for PWFA Reasonable Accommodation form identifies the essential function for which a reasonable accommodation is needed and the qualified person's suggestions for reasonable accommodations. If an qualified person is unsure of what kind of accommodation to request, the qualified person should visit the [Job Accommodation Network](#).
- C. A health care provider certification is a doctor's statement describing the condition necessitating reasonable accommodation, the anticipated duration of the condition, recommendations for accommodation, and any other relevant facts necessary to determine a request for reasonable accommodation. If this information is provided in a different format, the actual form is not required. If the information provided on any form is insufficient to provide a response to the request, then the qualified person must provide information sufficient to make a determination. **Employers shall not seek a health care provider certification in the following circumstances:**
 - 1. When the qualified person's limitation (physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions) and the adjustment or change at work that is needed due to the limitation are *obvious and the qualified person self-confirms the limitation* and the adjustment or change at work needed due to the limitation.
 - 2. When the employer already has sufficient information to determine whether the qualified person has a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions (a limitation) and needs an adjustment or change at work due to the limitation.

3. When the qualified person is pregnant and seeks one of the modifications listed below due to a physical or mental condition related to, affected by, or arising out of pregnancy (a limitation) and the qualified person provides self-confirmation.
 - i. Allowing an qualified person to carry or keep water near and drink, as needed;
 - ii. Allowing an qualified person to take additional restroom breaks, as needed;
 - iii. Allowing an qualified person whose work requires standing to sit and whose work requires sitting to stand, as needed; and
 - iv. Allowing an qualified person to take breaks to eat and drink, as needed.

When the reasonable accommodation is related to a time and/or place to pump at work, other modifications related to pumping at work, or a time to nurse during work hours (where the regular location of the qualified person's workplace makes nursing during work hours a possibility because the child is in close proximity), and the qualified person provides self-confirmation.

4. When the requested accommodation is available to qualified persons without known limitations under the PWFA pursuant to LOPD's policies or practices without submitting supporting documentation.

D. Qualified persons are required to participate in the interactive process with their management and HR.

Responsibilities of Managers and Supervisors. Managers and supervisors are required to enforce this policy by complying with the following.

- A. Shall immediately notify HR once an qualified person provides notice of pregnancy, childbirth or a related medical condition.
- B. Shall provide immediate notice to HR if an qualified person reports that inability to perform job duties is a physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions.
- C. Must participate in the interactive process to include reviewing information from the Job Accommodation Network and suggesting alternative reasonable accommodations, if appropriate.

- D. May initiate the reasonable accommodation interactive process if they know the qualified person has a known limitation; knows or believes the qualified person may be experiencing workplace problems because of the physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions.
- E. May determine if the Reasonable Accommodation falls under the need for an "Interim Reasonable Accommodation." A qualified person may have an urgent need for a reasonable accommodation due to the nature or sudden onset of a known limitation under the PWFA. Providing an interim reasonable accommodation is a best practice under the PWFA in certain circumstances. In this case, the supervisor must notify HR about the basis for the interim accommodation promptly.
- F. Monitor agreed upon reasonable accommodations to assess if the accommodation is effective.
- G. Contact HR and request a return to the interactive process if the accommodation is not effective or if additional accommodations are requested.
- H. Foster a workplace environment free of harassment, discrimination and retaliation against qualified persons with known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions.
- I. Abstain from making any statements or engaging in any behavior that could be interpreted as sexual harassment, discrimination or retaliation.
- J. Maintain confidentiality regarding an qualified person's known limitation and request for reasonable accommodation.

Human Resources (HR) Responsibilities: HR facilitates the informational meetings related to PWA, FMLA, PPL, and Lactation Rooms & Breaks policies and procedures, interactive process and evaluates a request for reasonable accommodation utilizing the following guidelines.

- A. HR shall provide written notice of an qualified person's rights, including the right to a reasonable accommodation for conditions related to pregnancy, child birth or a related medical condition pursuant to the Pregnant Worker Accommodation Act within 10 days of qualified person giving notice of pregnancy, childbirth or a related medical condition. HR will provide notice that an informational meeting can be scheduled upon request to go over PWA, PPL, FMLA and Lactation Rooms & Breaks policies and procedures.

- B. HR opens a separate confidential file for qualified persons when a PWA-related reasonable accommodation is requested.
- C. The Reasonable Accommodation file shall contain the LOPD employee's Request for PWA Reasonable Accommodation, the PWA Reasonable Accommodation Request Form, the essential functions of the classification, applicable information from the Job Accommodation Network, communications regarding scheduling of informational meetings, interactive meetings, and memorandum recording the outcome of the interactive meetings. HR or their supervisor may need to determine if the Reasonable Accommodation falls under the need for an "Interim Reasonable Accommodation." An qualified person may have an urgent need for a reasonable accommodation due to the nature or sudden onset of a known limitation under the PWFA. Providing an interim reasonable accommodation is a best practice under the PWFA in certain circumstances.
- D. HR schedules and facilitates informational meetings upon request; interactive meetings are held between, HR, the qualified person and the qualified person's Manager/Supervisor. The focus of the interactive meeting shall be to determine whether an accommodation is needed; if needed, what accommodation would be effective; and if effective, whether the accommodation would pose an undue hardship. Reasonable accommodations may be evaluated using but not limited to the following guidelines:
 - 1. The LOPD may offer an accommodation different from the qualified person's request if it is determined to be as effective as the qualified person's request.
 - 2. The LOPD shall explore alternative reasonable accommodations as requested.
 - 3. If there is more than one reasonable accommodation the LOPD may choose which accommodation to approve, providing it is effective and provides the qualified person with equal employment opportunity which includes not allowing an agency to reduce pay, deny advancement, or deny bonuses.
 - 4. If the qualified person declines an offered reasonable accommodation which would allow the qualified person to perform the essential function(s) of the job, the employer must also determine whether the essential function(s) can be temporarily suspended pursuant to the PWFA before a determination is made pursuant to this section that the qualified person is not qualified to remain in the job.

5. Adjusting an qualified person's work schedule through arrival or departure time or breaks may be approved if client services and work performance of other qualified persons will not impose an undue hardship.
 6. Modifying call in or attendance policies may be considered if client services will not impose an undue hardship.
 7. Marginal functions may be removed but may be replaced by another function the qualified person is able to perform.
 8. Altering when and/or how a function is performed if it will not impose an undue hardship related to client services.
 9. Reassignment to a different classification may be offered if there is a vacant position and the qualified person is qualified. Reassignment to a different vacant classification should be a last resort.
 10. Modifications or adjustments to office space may be offered.
 11. Purchase of specialized furniture or office equipment may be considered with the focus on supporting the qualified person's ability to perform job functions, and budget availability.
 12. Modifications of workplace policies may be approved provided qualified person safety is not compromised.
 13. The LOPD is not required to provide a new Manager/Supervisor however, supervisory methods may be altered.
 14. For PWA reasonable accommodations where absences are related to the known limitations, the qualified person may qualify for family medical leave under an Family Medical Leave Act (FMLA) qualifying reason, and granting additional leave may be considered.
 15. ADA shall be part of every PWA reasonable accommodation where absences related to the known limitation may occur and the qualified person is otherwise qualified for a reasonable accommodation under the Americans with Disabilities Act. Granting additional leave or reasonable accommodations may be considered.
 16. Agreements to reasonably accommodate an qualified person should be as specific as possible and provided in writing to the qualified person and the Manager/Supervisor.
- E. Reasonable accommodation agreements between the qualified person and the LOPD apply only to the qualified person and are not precedent setting.
- F. Determination of undue hardship shall be carefully evaluated with respect to disruption of provision of services to clients; the impact on the ability of other qualified persons to perform their work; sources of funding; and working with landlords to obtain needed modifications to premises.

Any requests for exception to this policy shall be made in writing to your District Defender, Division Head or LOPD-HR.

LOPD reserves the right to have the Review Panel, a three (3) person panel of members, review any case forwarded by HR that falls outside of the parameters outlined in this policy. The Review Panel will review requests in which the following is unclear: legal documentation, qualified person written request, the duration is not defined, or needs further consideration. The Review Panel may request additional information from the qualified person or deny requests at agency discretion.

Failure to comply with policies and procedures listed may result in the delay of an qualified person's request for reasonable accomodation.

Authorized Signature

APPROVED: _____

Bennett J. Baur, Chief Public Defender
Law Offices of the Public Defender