



**U.S. Department of Justice**  
Federal Bureau of Prisons

**PROGRAM STATEMENT**

OPI: HRM/PDB

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## **Staff Pregnancy and Parenting**

/s/

*Approved:* Thomas R. Kane

Acting Director, Federal Bureau of Prisons

### **1. PURPOSE AND SCOPE**

To provide information to all Bureau of Prisons (Bureau) staff members and applicants concerning issues that may arise in relation to pregnancy, adoption, and foster care, under the Pregnancy Discrimination Act, the Rehabilitation Act, Executive Orders, and applicable regulations of the Equal Employment Opportunity Commission and the Office of Personnel Management.

To offer family leave and other workplace flexibilities to parents to help achieve the goals of recruiting and retaining talent, lowering costly worker turnover, increasing employee engagement, boosting employee morale, and ensuring a diverse and inclusive workforce.

a. **Program Objectives.** The intent of this Program Statement is to ensure that:

- Staff members are informed of requirements concerning pregnancy, adoption, and foster care.
- The Bureau will meet legal requirements concerning pregnancy, adoption, and foster care, and obtain the benefits that arise from maintaining a diverse and inclusive workplace.

b. **Institution Supplement.** Required. Human Resource Offices for institutions, Human Resource Servicing Center (HRSC), Designation and Sentence Computation Center (DSCC), training centers, Regional Offices, and employees located in the Central Office are to have a written local supplement addressing lactation rooms and equipment or supplies addressed in this Program Statement, and/or a plan for such space/room when the need arises.

## 2. INTRODUCTION

This policy provides general information and references concerning pregnancy, adoption, and foster care. Substantive determinations will be made in each individual case in accordance with relevant statutes, case law, administrative decisions, and regulations.

Further, in any conflict between this policy and higher legal authority (e.g., Executive Orders, Government-wide regulations from the Equal Employment Opportunity Commission or Office of Personnel Management, etc.), the higher authority will be followed until this policy can be updated.

## 3. LEGAL STANDARDS

a. **Pregnancy.** Congress enacted the Pregnancy Discrimination Act (PDA) in 1978 to make clear that discrimination based on pregnancy, childbirth, or related medical conditions is a form of sex discrimination prohibited by Title VII of the Civil Rights Act of 1964 (Title VII).

The PDA forbids discrimination based on pregnancy when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, benefits such as leave and health insurance, and any other term or condition of employment.

By enacting the PDA, Congress sought to make clear that:

- Pregnant employees must be treated the same as non-pregnant employees who are similar in their ability or inability to work.
- When pregnant women are not able to work for medical reasons, they must be afforded the same rights, leave privileges, and other benefits as other workers who are disabled from working.

Staff members and applicants may use the EEO process concerning violations of PDA to allege disparate treatment and/or a hostile work environment due to pregnancy. Please see the Program Statements **Discrimination and Retaliation Complaints Processing** and **Bureau of Prisons Anti-Discrimination Policy**, and Section 7 of this policy.

b. **Parental Status.** Executive Order 13152 (May 2, 2000) prohibits discrimination based on an individual's status as a parent, regardless of gender. The Executive Order defines "status as parent" with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability as:

- A biological parent.
- An adoptive parent.
- A foster parent.
- A stepparent.

- A custodian of a legal ward.
- *In loco parentis* over such an individual.
- Actively seeking legal custody or adoption of such an individual.

Staff members and applicants may use the EEO process concerning violations of Executive Order to allege disparate treatment and/or a hostile work environment due to pregnancy. Please see the Program Statements **Discrimination and Retaliation Complaints Processing** and **Bureau of Prisons Anti-Discrimination Policy**, and section 8 of this policy.

#### 4. **TEMPORARY JOB MODIFICATIONS AND REASONABLE ACCOMMODATIONS**

If employees make known verbally or in writing the need for a temporary job modification or reasonable accommodation, the interactive process will be triggered between the employee and the supervisor. For further guidance see the Program Statement **Reasonable Accommodation Program**.

a. **Temporary Job Modification.** Employees may experience physical symptoms related to pregnancy and childbirth that fall short of constituting a disability under the Rehabilitation Act and/or Americans with Disabilities Act (ADA). If the staff member requests job modification, the Bureau should work with the staff member, consistent with PDA, under these circumstances in order to allow the employee to continue working. For example, the Bureau may have to provide modified duties within the current position, alternative assignments, telework (if appropriate), or compressed/flexible work schedules to pregnant employees if it does so for other employees temporarily unable to perform their job functions.

Upon their request, pregnant staff will be assigned modified emergency responses (non-physical) and will not be required to work in posts where chemical OC spray is carried.

b. **Reasonable Accommodations.** Pregnancy, on its own, is not considered a disability, and should not be treated or regarded as such. Further, not all pregnancies will have related conditions that will be considered disabilities under the Rehabilitation Act and/or Americans with Disabilities Act (ADA) standards.

However, some impairments resulting from pregnancy (for example, gestational diabetes or preeclampsia) may be disabilities under the Rehabilitation Act and/or the ADA. The Bureau may have to provide a reasonable accommodation (such as leave or modifications that enable an employee to perform her job) for a disability related to pregnancy in accordance with the Program Statement **Reasonable Accommodation Program**.

## 5. LEAVE USAGE

Pregnant employees, or parents of a newborn, a newly adopted child, or new foster child, may use Annual Leave, Sick Leave, Family Medical Leave, and/or Family Friendly Leave, as appropriate. See the Program Statement **Leave and Benefits**.

In addition, consistent with the OPM guidance referenced below (see “References”), supervisors shall provide, to the maximum extent practicable and consistent with applicable law and subject to the availability of funding, the following benefits:

- Up to 240 hours of advanced sick leave at the request of the employee for the birth or adoption of a child or for other eligible uses of sick leave, as specified in law and regulation, irrespective of existing leave balances. Employees do not have to exhaust their leave balances in order to request the advancement of leave for the purposes stated above.
- The maximum amount of advanced annual leave permitted by law for foster care placement in the employee’s home or bonding with a healthy newborn or newly adopted child.
- Donated annual leave under the Voluntary Leave Transfer Program.
- Donated annual leave under the Voluntary Leave Bank Program.
- Flexible work schedules, including part-time schedules and job sharing arrangements.

Pregnant employees will not be sent home on leave solely on the basis of pregnancy or for requesting a job modification or reasonable accommodation.

## 6. NURSING MOTHERS AND LACTATION ROOMS

The Patient Protection and Affordable Care Act requires employers to provide nursing mothers with:

- A reasonable break time to express milk for one year after her child’s birth each time such employee has need to express breast milk.
- A private space, other than a bathroom, that is shielded from view and free from intrusion of others, to express breast milk.

A nursing mother will typically need to express breast milk two or three times over the duration of an 8-hour work day.

At a minimum, a lactation room must be temperature-controlled and have a chair, counter space/table, access to electricity, and a door with a lock.

In addition, each facility should consider including the following items when determining location:

- Computer.
- Phone.

- Refrigerator.
- Sink.
- Cleaning wipes.
- Sign-up sheet.

## 7. RELATION OF PROCEDURES TO STATUTORY AND COLLECTIVE BARGAINING CLAIMS

Requirements governing the initiation of statutory and collective bargaining claims, including time frames for filing such claims, are not changed by this policy.

- a. **For an EEO Complaint.** Employees must contact an EEO counselor in the appropriate EEO office within 45 days from the date the staff member became aware of a denial of accommodation or other alleged discriminatory action.
- b. **For a Grievance.** For bargaining unit staff, a grievance must be filed and arbitration invoked in accordance with Articles 31 and 32 of the Master Agreement.
- c. **Merit Systems Protection Board.** Where the denial of a request results in an adverse action, initiate an appeal to the Merit Systems Protection Board within 30 days of an appealable adverse action, as defined in 5 C.F.R. § 1201.3

## 8. AGENCY ACA ACCREDITATION PROVISIONS

See the Program Statement **Directives Management Manual**, sections 2.5 and 10.3.

## REFERENCES

### *Statutes*

Pregnancy Discrimination Act of 1978, 42 U.S.C § 2000e(k)

Rehabilitation Act, 29 U.S.C. §§ 706, 794

Americans With Disabilities Act, 42 U.S.C. §12101, et seq., as amended

Patient Protection and Affordable Care Act, 42 U.S.C. § 18001, et seq.

### *Executive Orders*

Executive Order 13152, May 2, 2000

Executive Order 13164, July 26, 2000

### *Regulations*

29 CFR § 1604.10, Employment policies relating to pregnancy and childbirth

29 CFR § 1614.203, Federal Sector Equal Employment Opportunity, Rehabilitation Act

29 CFR Part 1630, Regulations To Implement The Equal Employment Provisions Of The Americans With Disabilities Act

*Office of Personnel Management Guidance*

Handbook on Leave and Workplace Flexibilities for Childbirth, Adoption, and Foster Care, April 2015.

<https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/handbook-on-leave-and-workplace-flexibilities-for-childbirth-adoption-and-foster-care.pdf>

Master Agreement

*Program Statements*

P3000.03	Human Resource Management Manual (12/19/07)
P3300.02	Employment (3/25/16)
P3330.02	Pre-Employment (7/25/16)
P3420.11	Standards of Employee Conduct (12/6/13)
P3630.02	Leave and Benefits (2/1/17)
P3713.24	Discrimination and Retaliation Complaints Processing (6/16/14)
P3713.25	Bureau of Prisons Anti-Discrimination Policy (6/16/14)
P3713.28	Conflict Resolution Policy (2/23/15)
P3713.30	Diversity Management and Affirmative Employment Programs (3/25/16)
P3906.24	Physical and Medical Standards for Newly Hired Correctional Employees (2/24/17)
P3720.03	Reasonable Accommodation Program (12/13/16)

*Records Retention Requirements*

Records should be retained for duration of individual's employment with the Bureau.

Requirements and retention guidance for records and information applicable to this program are available in the Records and Information Disposition Schedule (RIDS) on Sallyport.