

PHILLIPS COMMUNITY COLLEGE
ADMINISTRATIVE PROCEDURE

Administrative Procedure Number: 322.03

Subject: Accommodations Pertaining to Pregnancy, Childbirth, or Related Medical Conditions

Applicable Board Policy: 300

Date Adopted: 12/23

I. **Policy Statement**

- A. It is the policy of Phillips Community College to provide equal access and opportunity to Qualified Employees in compliance with the Pregnant Workers Fairness Act, 42 U.S.C. §§ 2000gg – 2000gg-6, and other laws that prohibit sex discrimination and protect pregnancy rights. The College prohibits discrimination based on pregnancy, childbirth, or related medical conditions in all aspects of the application process and the employment relationship.
- B. The College will provide Reasonable Accommodations to the Known Limitations related to the pregnancy, childbirth, or related medical conditions of a Qualified Employee, unless the accommodation would impose an Undue Hardship on the operation of the business of the College.
- C. The College will not require a Qualified Employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any Reasonable Accommodation arrived at through the Interactive Process.
- D. The College will not deny employment opportunities to a Qualified Employee if such denial is based on the need of the College to make Reasonable Accommodations to the Known Limitations related to the pregnancy, childbirth, or related medical conditions of the Qualified Employee.
- E. The College will not require a Qualified Employee to take leave, whether paid or unpaid, if another Reasonable Accommodation can be provided to the Known Limitations related to the pregnancy, childbirth, or related medical conditions of the Qualified Employee.
- F. The College will not take adverse action in terms, conditions, or privileges of employment against a Qualified Employee on account of the employee requesting or using a Reasonable Accommodation to the Known Limitations related to the pregnancy, childbirth, or related medical conditions of the employee.

II. Scope of Application

- A. This policy applies to all Applicants seeking employment with the College and College employees.
- B. Except as described in specific College policies, the policies and procedures concerning accommodations for pregnancy, childbirth, or related medical conditions for Applicants and employees are coordinated by the Human Resources Department.

III. Definitions

- A. The term “**Applicant**” means any individual pursuing employment with the College by submitting appropriate application materials for a specific, vacant position.
- B. The term “**Essential Functions**” means job activities that are determined by the employer to be essential or core to performing the job. A function may be essential because, for example, the position exists to perform the function; there are a limited number of employees available who could perform the function; and/or the function is highly specialized, and the incumbent is hired for special expertise or ability to perform it.
- C. The term “**Interactive Process**” means collaboration and communication between the employer (College officials) and employee to explore, discuss and determine the appropriate Reasonable Accommodation(s), if any. The employer and employee are expected to engage in the Interactive Process in a “good faith” manner.
- D. The term “**Known Limitation**” means physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or employee’s representative has communicated to the College.
- E. The term “**Qualified Employee**” means an employee or Applicant who, with or without Reasonable Accommodation, can perform the Essential Functions of the employment position, except that 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.

- F. The term “**Reasonable Accommodation**” means a modification, exception or a change to how things are customarily done in a position, practice, policy or the work environment that enables a qualified person an opportunity to be considered for a position, perform the Essential Functions of a position, or enjoy the same benefits and privileges of employment as are enjoyed by similarly situated Applicants or employees. The College’s obligation under the Pregnant Workers Fairness Act is to provide Reasonable Accommodation for pregnancy, childbirth, or related medical conditions, not necessarily the individual’s preferred accommodation.

Examples of Reasonable Accommodationsⁱ may include, but are not limited to, making existing facilities readily accessible to and usable, job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, auxiliary aids and services, and other similar accommodations.

- G. The term “**Undue Hardship**”ⁱⁱ means an action requiring significant difficulty or expense when considered in light of a number of factors, such as the nature and cost of the accommodation needed; the effect or impact of the accommodation upon the unit or department and its operation; the College’s size, financial resources, and the nature of its structure or operation. Undue Hardship also refers to an accommodation that is unduly extensive, substantial, or disruptive, or one that would fundamentally alter the nature of the position. Undue Hardship is determined on a case-by-case basis.

IV. Confidentiality

- A. Medical information obtained in connection with a request for Reasonable Accommodation shall be maintained by the Human Resources Department in files separate from the individual’s personnel file. Such information should be restricted to a need-to-know basis. The Human Resources Director may share certain information with an employee’s supervisor or other College/University official(s) as necessary to make appropriate determinations on a Reasonable Accommodation request. Employees receiving such information in connection with the Reasonable Accommodation process must keep the information confidential.
- B. The fact that a Reasonable Accommodation has been requested or approved and information about functional limitation is also confidential.

- C. Employees are not required nor encouraged to disclose medical information or information about an impairment(s) to their supervisors.

V. **Accommodation Requests**

A. **Employees**

1. **Request Process.** An employee seeking a Reasonable Accommodation for pregnancy, childbirth, or related medical conditions should submit the Accommodation Request Form and the Medical Statement Forms to the Human Resources Director. The accommodation request will not be processed without the completed Accommodation Request Form. In most instances, the Medical Statement Form will be required, as well.ⁱⁱⁱ

If an employee notifies a supervisor of a need for a Reasonable Accommodation for a pregnancy, childbirth, or related medical condition,^{iv} the supervisor should inform the employee that the College has established procedures for determining Reasonable Accommodations on a case-by-case basis and refer the employee to the Human Resources Director. Questions regarding an employee's medical condition should be left to the College's Human Resources Director.

2. **Assessment of Limitation.** The Human Resources Director will determine whether the employee has a Known Limitation related to pregnancy, childbirth, or related medical conditions by evaluating medical information received as necessary to make that determination. The Human Resources Director will contact the medical provider if additional information is needed to determine if the individual has a Known Limitation or to assist in determining an effective Reasonable Accommodation.

In the event the Human Resources Director determines it is appropriate to obtain an independent medical opinion concerning the limitation for which the accommodation is sought, the College will bear the cost of the independent medical evaluation. Failure to cooperate in obtaining an independent medical evaluation may result in cancellation of the request for accommodation.

3. **Interactive Process.** The Human Resources Director will facilitate the Interactive Process with the employee, the appropriate supervisor(s), and other College officials, as appropriate.
4. **Documentation.** At the conclusion of the Interactive Process, the Human Resources Director will ensure that the outcome of the process is documented and will work with the employee's supervisor and the employee regarding the implementation of any Reasonable Accommodations that are

approved.^v In the event that a requested accommodation is not approved because it would constitute an Undue Hardship, the Human Resources Director will document the basis for that determination in consultation with the supervisor.

The Department (Supervisor) is required to provide a statement supporting Undue Hardship to the Human Resources Director.

B. Applicants

1. An Applicant requesting a Reasonable Accommodation in the application/selection process should submit a Accommodation Request Form to the Human Resources Director. The form should be submitted prior to the posting closing date and as a soon as possible prior to the interview to allow enough time to process the request. The Applicant may or may not need to submit medical documentation to determine if the Applicant is an individual with a Known Limitation or to assist in determining an effective accommodation.
2. If the request is made to someone with responsibility for the hiring process, that person should refer the Applicant to the Human Resources Director.

VI. Records

Primary documentation pertaining to the Reasonable Accommodation request for Applicants seeking employment and employees will be kept in the Human Resources Department.

VII. Training

All first-time supervisors or newly hired supervisors are expected to participate in training concerning accommodations for pregnancy, childbirth, or related medical conditions within the first three months of beginning employment and will receive a copy of this Policy at that time. Supervisors/managers are expected to receive refresher training at least every three years.

VIII. Administrative Review

- A. An employee or Applicant may request an administrative review of a denial of an accommodation request under this policy by submitting additional information to the Vice Chancellor of College Advancement, who will consult with the University of Arkansas System Office.

- B. The administrative review may be based only on one or more of the following reasons:
 - 1. If the decision is contradictory to College policy or applicable law; or
 - 2. The Interactive Process did not substantially comply with the guidelines in this Policy.
- C. The request for review must be submitted within ten (10) business days after employee or Applicant has received the official decision notice in writing. The reviewing administrator shall communicate his or her decision in writing and the decision is final and not subject to further appeal.
- D. An employee or Applicant can contact the Human Resources Director with any questions about the administrative review process.

IX. Complaint

Any Applicant or employee who believes that he or she has been discriminated against on the basis of pregnancy, childbirth, or related medical conditions or retaliated against due to an accommodation request should contact the Human Resources Department. Any supervisor or other administrator who receives a written or oral complaint of discrimination, harassment or retaliation concerning pregnancy, childbirth, or related medical conditions shall promptly notify the Vice Chancellor for College Advancement.

X. Limitations

- A. Nothing in this policy shall be construed as creating rights or obligations in excess of any requirements of applicable law and regulations.
- B. Any questions regarding interpretation of this policy and procedures can be referred to the Human Resources Department.

ⁱThese are examples of possible accommodations but the type received is based on the particular facts of each individual (case-by-case basis). Reasonable Accommodations do not include personal use items needed to accomplish daily activities (e.g., eyeglasses, hearing aids, prosthetic limbs, or a wheelchair).

ⁱⁱA determination of Undue Hardship should be grounded in careful analysis, and not based on improper attitudes toward the individual's Known Limitation. Nor can Undue Hardship be based on the fact that provision of a Reasonable Accommodation might have a negative impact on the morale of other employees. However, an Undue Hardship may exist where provision of a Reasonable Accommodation would be unduly disruptive to other employees' ability to work.

ⁱⁱⁱThe Medical Statement Form will be required, unless the Known Limitation is obvious or visible and the request corresponds with the limitation. Employees may consult with the Human Resources Director as to whether the Medical Statement Form is required for their request.

^{iv}The employee or Applicant does not need to use the words, "Reasonable Accommodation," but may simply state that they need an adjustment, modification, assistance or change at work due to a Known Limitation; or in the application process due to the nature of their Known Limitation.

^vA supervisor, employee, or Applicant can request to revisit an approved accommodation for possible adjustments at any time by contacting the Human Resources Director.