

Policy

It is the law of the State of California and the policy of the California Department of Food and Agriculture (CDFA) to provide accommodations related to the condition of being pregnant and includes accommodations made for any physical or mental condition related to, affected by, or arising out of pregnancy and/or childbirth.

It is also the policy of CDFA to provide a reasonable amount of break time and an appropriate location to accommodate an employee desiring to express breast milk for their infant child.

This policy extends to all CDFA owned and operated facilities including the District Agricultural Associations.

Authority

California Code of Regulations, [Title 2, Section 11040](#)

California Fair Employment and Housing Act, Government Code Sections [12940 et seq.](#), [12926](#)

California Labor Code, [Sections 98.7, 1030-1034](#)

Federal Pregnant Workers Fairness Act, [29 CFR Part 1636](#)

Definitions

<i>Interactive Process</i>	A timely, good-faith communication between the employer and the employee, with a need for a pregnancy or lactation accommodation. Communication may be fulfilled in person, via video conferencing, email, or telephone conversations.
<i>Lactation Accommodation</i>	An accommodation that an employee shall be provided a reasonable amount of break time to accommodate an employee desiring or needing to express breast milk for the employee's infant child.
<i>Known Limitation</i>	Physical and mental conditions related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that has been communicated to the employer by the employee/applicant, their representative, or of which the employer should be aware given the circumstances.
<i>Obvious</i>	For the purpose of this policy, a condition is obvious when it is clearly visible, self-evident, or apparent and a doctor's certification is not required to accommodate the employee.

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<i>Predictable Assessments</i>	Accommodation(s) specifically defined under the law for which there are no undue hardships.
<i>Reasonable Accommodation (RA)</i>	Any modification or adjustment to a job, work environment, or in the method of performing functions, which enables an individual with a disability or medical condition, including pregnancy and lactation, to enjoy equal employment opportunities.
<i>Undue Hardship</i>	An action requiring significant difficulty or expense when considered in light of a number of factors.

Responsibility

<i>Office of Civil Rights (OCR):</i>	<p>Administer the Pregnancy and Lactation Accommodation Policy and the RA program including designating an RA coordinator and maintaining the RA policy and forms.</p> <p>Investigate complaints of failure to accommodate, discrimination, harassment, and retaliation.</p>
<i>RA Coordinator:</i>	<p>Provide consultation and assistance to ensure compliance with state and federal laws and regulations and the RA process.</p> <p>Facilitate the interactive process between the RA requestor and the program by discussing the requested modifications necessary to enable the employee to perform the essential functions of the job.</p> <p>Provide the employee with a timely written notice concerning the status of the request within 10 working days. The notice approves or denies the request, seeks additional information, or continues the interactive process.</p> <p>Provide written notification to departmental staff, including, but not limited to; the Human Resources Branch (HRB), the Labor Relations Officer, or Departmental Services Branch (DSB) staff in the event additional resources are required to implement an accommodation.</p> <p>Once a request is approved, engage in regular follow-ups and consultations with the employee and their manager or supervisor to evaluate the effectiveness of the accommodation.</p>

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<i>Human Resources Branch:</i>	Provide consultation when the accommodation requires a personnel action, such as a major or substantial change in job duties, a job transfer, a temporary reassignment, or when the Family Medical Leave Act/California Family Rights Act (FMLA/CFRA), Pregnancy Disability Leave (PDL), State Disability Insurance (SDI), or Non-Industrial Disability Insurance (NDI) is involved.
<i>Departmental Services Branch:</i>	Where feasible, work to ensure that there are spaces designated specifically for expressing breast milk that meet the requirements of this policy.
<i>Managers, Supervisors, Chief Executive Officers (CEOs):</i>	<p>Notify the OCR immediately upon receipt of an RA request for pregnancy related conditions or lactation.</p> <p>Provide a private location, close in proximity to the employee's work area to express breast milk that is not part of a restroom.</p> <p>Be flexible in providing break time to accommodate the employee.</p> <p>Document all discussions regarding the request.</p> <p>Provide copies of all relevant documentation to the OCR.</p> <p>Discuss accommodation(s) with others only on a need-to-know basis and limit disclosure of accommodation(s) to other staff or management unless absolutely necessary.</p> <p>Provide the OCR with a timely written notice concerning the status of the request within five working days. The notice should indicate whether the request can be approved or denied, if additional information is needed, or whether additional time is needed to evaluate alternative methods to accommodate the employee's request.</p> <p>Notify the OCR within five working days of implementation of the accommodation.</p>
<i>Employees:</i>	<p>Initiate the request for accommodation and discuss the need with their immediate supervisor or the OCR.</p> <p>Provide enough information about their condition for the manager or supervisor and the OCR to make informed decisions about the requested accommodation.</p> <p>Make every attempt to confine the time to express breast milk to scheduled break times.</p>

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Complete the [SO-142 Reasonable Accommodation Request Form](#) if requested by the OCR.

File a complaint with the OCR if they feel they are being discriminated or retaliated against or harassed based on their protected characteristic or for requesting an accommodation.

Conditions Related to, Affected by, or as a Result of Pregnancy and Childbirth

Under the law and this policy, conditions intrinsic to pregnancy and childbirth are interpreted broadly and include but are not limited to the following which are protected and may require accommodation:

- Conditions and disabilities associated with or caused by the condition of being pregnant including but not limited to:
 - Preeclampsia
 - Gestational diabetes
 - Morning sickness
 - Sciatica
 - Other conditions associated with high-risk pregnancy
 - Anxiety, stress, depression
 - Pregnancy loss/Miscarriage/Stillbirth
- Conditions and disabilities associated with childbirth including but not limited to:
 - Physical complications arising from childbirth or surgery
 - Post-partum depression
 - Anxiety
 - Stress
 - Lactation
- Other conditions/items related to pregnancy and childbirth include but are not limited to:
 - Menstruation
 - Fertility issues/In vitro fertilization
 - Use of birth control
 - Endometriosis
 - Choice to have or not have an abortion
 - Any pre-existing conditions exacerbated by the pregnancy/childbirth

Requests for Pregnancy or Lactation Accommodation

Should a pregnant employee have a need for accommodation due to a physical or mental condition intrinsic to pregnancy or childbirth, please notify your supervisor, manager, or the OCR as soon as the need for accommodation arises. If the OCR is

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not made aware of the need for accommodation, the supervisor shall notify the OCR immediately upon becoming aware of the employee's need. The OCR will then engage in the interactive process with the employee and the supervisor.

Should an employee have a need for lactation accommodation, they should consult with their supervisor to determine if the office or facility they usually work at has pre-existing facilities designed for expression of breast milk. If there are no pre-existing facilities, or if there are special needs or requirements the supervisor shall contact the OCR for guidance. Lactation accommodations are considered "obvious" conditions under the law; a doctor's note is NOT required. The OCR, employee, and supervisor will proceed with the interactive process to determine an appropriate accommodation.

Examples of Accommodations for Pregnancy and Related Conditions

Possible temporary accommodations for physical or mental condition related to, affected by, or arising out of pregnancy, childbirth include, but are not limited to:

- Modified, light, or alternative duty.
- Additional, longer, or more flexible breaks for the restroom, to drink water, eat, or rest.
- Modifying where an employee works in the office.
- Additional telework days.
- Modified work schedules such as fewer working hours, or modified start or end times.
- Flexible schedules for doctor's appointments.
- Working in regulated temperatures such as limited exposure to heat or inclement weather.
- Temporary suspension of essential functions

Accommodations for pregnancy related conditions are considered temporary unless otherwise determined by a medical care provider. If this arises, long term accommodations will be determined on a case-by-case basis during the interactive process.

Placing an employee on full-time leave due to pregnancy will only be considered as a last resort if no other accommodation is viable, or if ordered to do so by a doctor.

Suspension of Essential Functions

Suspension of essential functions can occur for accommodations related to pregnancy and childbirth. Essential functions can be suspended if the employee can perform the essential function "in the near future," the inability to perform the essential function is "temporary," and the suspension of the essential function can otherwise be accommodated.

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Factors to determine if the inability to perform the essential function is temporary:

- Length of time the employee is unable to perform the essential function.
- Whether the temporary inability can be accommodated (i.e., is there other work for the employee to do).
- The nature of the essential function and its frequency.
- Whether there are other employees, temporary employees, or third parties who can perform or be temporarily hired to perform the essential function.
- Whether the essential function can be postponed or underperformed for any length of time and for how long.

“In the near future” refers to the time between when the employee can no longer perform the essential function and when they can return to full duty. Based on the circumstances, the following will typically apply:

- Current pregnancy permits 40 weeks from the start of the suspension of the essential function. Leave is not counted toward the 40 weeks and the clock restarts when the employee returns to work.
- Conditions arising after birth have no 40-week rule and will be determined on a case-by-case basis with the assistance of the employee’s medical provider.

Accommodations will be reassessed upon the employee’s return to work regardless of whether the employee received the same or a different accommodation prior to or during pregnancy.

Lactation Accommodation Requirements

The law provides that a reasonable amount of break time be provided for an employee to express breast milk for the employee’s infant child. That break time shall, if possible, run concurrently with any break time already provided to the employee. Typically, the act of expressing breast milk requires approximately 15 to 30 minutes. And, although it varies from person to person, the need to express breast milk may occur every two to three hours that they are away from the infant. While routine break times provided may be sufficient for some employees to complete the process of expressing milk, additional time may need to be allowed for others.

The lactation space shall:

- Be safe, clean, and free of toxic or hazardous materials.
- Contain a place to sit and a surface to place a breast pump and personal items.
- Have access to electricity, a sink with running water, and a refrigerator suitable for storing milk in close proximity to the employee’s work area.

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Examples of workplace locations appropriate for expressing breast milk include a vacant office, a women's lounge area, a first aid room, a dressing room, or a room or office space which can be made available during specific times of the day for this purpose. Should a manager have trouble accommodating these requests, contact the OCR immediately.

Medical Certification

The condition of being pregnant and related predictable assessments and the need for lactation accommodation are considered obvious conditions and do not require doctor's documentation to substantiate the need for accommodation.

Accommodations requested beyond predictable assessments and standard lactation needs may require medical certification from the employee's medical care provider on a case-by-case basis to be determined through the interactive process. In this situation, an employee may be requested to complete the [SO-142](#) and provide more thorough information to assist in the interactive process.

Undue Hardship and Predictable Assessments

If a program denies a pregnancy or lactation accommodation request because the accommodation would impose an undue hardship on its operations, the employee's manager or supervisor shall submit in writing to the OCR the criteria upon which the undue hardship is based. The determination of undue hardship must be made on a case-by-case basis. Factors for determining undue hardship include, but are not limited to:

- The overall size of the program with respect to the number of employees, number and type of facilities, and size of budget.
- The type of operation includes the composition and structure of the program's workforce. If undue hardship is claimed based on the composition and structure of the program's workforce, it must be clearly documented that all available alternatives have been explored to accommodate qualified disabled applicants or employees.
- The cost of the accommodation needed. A claim of undue hardship based on cost must clearly indicate alternatives explored and how the cost will impact the operation of the program.

A program cannot claim an undue hardship for a predictable assessment as defined by the law. Predictable assessments are:

- Carrying water and drinks as needed in the employee's work area.
- Additional restroom breaks.
- Standing/sitting as needed.
- Additional breaks to eat/drink.

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Discrimination, Harassment, and Retaliation Prohibition and Complaints

Discrimination or harassment against an individual because of their actual or perceived protected characteristic, including pregnancy related conditions and lactation¹, is strictly prohibited and will not be tolerated by the Department. Additionally, retaliation against an individual for exercising their right to request accommodation is strictly prohibited and will not be tolerated by the Department.

These prohibitions apply to all employees, not only managers and supervisors of those requesting accommodation.

An employee may file a complaint through the Department's discrimination and harassment complaint process, in the event they believe they are experiencing discrimination, retaliation, or harassment because of their protected characteristic, because they requested accommodation, or because they have been denied access to the interactive process. Please refer to the [Discrimination and Harassment Prevention Policy](#) for the processes and procedures for filing a complaint with the OCR or other entity.

Appeal Rights and Procedure

If a request for an accommodation is denied, the OCR fails to acknowledge an RA or lactation accommodation request, or if the employee is not provided adequate break time and/or a place to express milk as described above, the employee may file an appeal or complaint with the following entities:

- **California Civil Rights Department**
Website: <http://www.cacivilrights.ca.gov>
English to Voice/TTY: 800-588-7100
Spanish Voice/TTY: 800-855-7200
Speech to Speech (STS): 800-855-7300
Visually Assisted STS: 800-855-7400
- **Equal Employment Opportunity Commission**
Website: <https://www.eeoc.gov>
Telephone: 800-669-4000
- **State Personnel Board**
Telephone: (916) 653-0799
Online: <https://appeals.spb.ca.gov/aos/appeal.html>
Email: appeals@spb.ca.gov

¹ For a comprehensive list of all protected characteristics, please refer to the [Discrimination and Harassment Prevention Policy](#).

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- **Department of Industrial Relations**
Telephone: (883) 526-4636
Online: <https://www.dir.ca.gov/dlse/>
Email: dlse2@dir.ca.gov

Please refer to the [Discrimination and Harassment Prevention Policy](#) for further directions and timelines for filing complaints with these entities.

Distribution

Distribution of the above policy/procedure includes all employees.

Questions concerning this policy or if seeking advice or consultation regarding an accommodation request should be directed to the OCR at (916) 654-1005 or civil_rights@cdfa.ca.gov.