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ATTORNEYS



JULY 16, 2024

TITLE IX REGULATIONS COMPLIANCE CHECK-IN: PREGNANCY AND RELATED CONDITIONS

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FABIANO**



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**CHELSIE
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AUGUST 22

11:00AM ET

**COMPLIANCE CHECK-IN #4:
TITLE IX IMPLEMENTATION CHALLENGES**

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ROADMAP FOR TODAY'S CHECK-IN

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- BRIEF OVERVIEW
- LAWS IMPACTING PREGNANT STUDENTS
- LAWS IMPACTING PREGNANT EMPLOYEES
- BEST PRACTICES AND COMPLIANCE STRATEGIES
- Q&A

LAWS IMPACTING STUDENTS

TITLE IX

STATE LAW, AS APPLICABLE

LAWS IMPACTING EMPLOYEES

TITLE IX

TITLE VII

PWFA (2023)

PUMP (2022)

STATE LAWS, AS APPLICABLE

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LAWS IMPACTING STUDENTS

A grayscale photograph of a pregnant woman sitting at a desk. She is wearing a light-colored jacket and has her hands resting on her belly. In front of her is a laptop and some papers. The background is bright and out of focus.

LAWS IMPACTING STUDENTS – TITLE IX

PREGNANCY OR RELATED CONDITIONS MEANS:

- Pregnancy, childbirth, termination of pregnancy, or lactation;
- Medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or
- Recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions.

34 C.F.R. 106.2



TITLE IX CONTINUED: NOTICE REQUIREMENT

WHEN FACULTY/STAFF LEARNS OF A STUDENT'S PREGNANCY OR RELATED CONDITION FROM THE STUDENT, THE EMPLOYEE MUST:

1. Provide the student with the TIXC's contact information; and
2. Inform the student that the TIXC can coordinate specific actions to prevent sex discrimination and ensure the student's equal access

34 C.F.R. 106.40(b)(2)



TITLE IX CONTINUED: TIXC ROLE

AFTER RECEIVING NOTICE, THE TIXC MUST:

- Notify the student of the college's obligations with respect to pregnancy/related conditions
- Provide the student with voluntary reasonable, individualized modifications
- Provide the student with voluntary access to separate/comparable portion of the education program/activity
- Provide the student with a voluntary LOA
- Ensure student access to lactation spaces

34 C.F.R. 106.40(b)(3)

TITLE IX CONTINUED: REASONABLE MODIFICATIONS

REASONABLE MODIFICATIONS FOR STUDENTS EXPERIENCE PREGNANCY/RELATED CONDITIONS ARE:

- Voluntary
- Based on student's individualized needs
- Informed through the interactive process (fundamental alteration exception)

EXAMPLES LISTED IN THE REGULATIONS + OBLIGATION TO ENSURE ACCESS TO LACTATION SPACE

LIMIT ON SUPPORTING DOCUMENTATION – ONLY NECESSARY AND REASONABLE SUPPORTING DOCUMENTATION

REASONABLE MODIFICATIONS ARE NOT REQUIRED IF IT WOULD FUNDAMENTALLY ALTER THE EDUCATION PROGRAM/ACTIVITY

34 C.F.R. 106.40(B)(3)(II)

TITLE IX CONTINUED: REASONABLE MODIFICATION DOCUMENTATION

CANNOT ASK FOR SUPPORTING DOCUMENTATION WHEN:

- Need is obvious – bigger uniform
- Student previously provided with sufficient supporting documentation
- Modification is:
 - Carry/keep water nearby and drink
 - Use a bigger desk
 - Sit or stand
 - Take breaks to eat, drink, use the restroom
 - Lactation needs
- When the modification is available to other students for other reasons without submitting supporting documentation

INSTEAD, THE STUDENT'S SELF-CONFIRMATION OF THEIR NEED FOR THESE REASONABLE MODIFICATIONS IS SUFFICIENT

34 C.F.R. 106.4(B)(3)(VI)



TITLE IX CONTINUED: LEAVE OF ABSENCE & REINSTATEMENT

LOA FOR STUDENTS EXPERIENCE PREGNANCY/ RELATED CONDITIONS ARE:

- Voluntary
- Cover (at a minimum) the period of time deemed **medically necessary** by the **student's licensed healthcare provider**
- Upon return, reinstatement to the academic and extracurricular status before the leave

34 C.F.R. 106.40(b)(3)(iv)

TITLE IX CONTINUED: COMPARABLE TREATMENT; CERTIFICATION TO PARTICIPATE



- Pregnancy/related conditions must be treated in the same manner as other temporary medical conditions
- Certification to Participate – only allowed if required for all students participating in the program/activity

34 C.F.R. 106.40(b)(4) and (b)(5)

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LAWS IMPACTING EMPLOYEES

LAWS IMPACTING EMPLOYEES – TITLE IX

- Must treat pregnancy or related conditions:
 - As any other temporary medical condition
 - As justification for a voluntary leave of absence (if policy not already maintained)
- Reasonable break time for lactation as needed
- Lactation space must be clean, shielded from view, free from intrusion, and available as needed

34 C.F.R. 106.57



LAWS IMPACTING EMPLOYEES – PUMP ACT (2010 & 2022)

REQUIRES REASONABLE BREAK TIME TO
NURSE FOR UP TO ONE YEAR AFTER THE
CHILD'S BIRTH

REQUIRES LACTATION SPACE THAT IS:

- Not a bathroom
- Shielded from view
- Free from intrusion
- Available as needed

DOCUMENTATION CANNOT BE REQUIRED



LAWS IMPACTING EMPLOYEES – MA PWFA (2018)



- Reasonable accommodations must be available to employees experiencing pregnancy and pregnancy-related conditions
- Reasonable accommodation allows an employee or applicant to perform the essential functions of the job
- Reasonable accommodations are **not** required if it would cause an undue hardship



LAWS IMPACTING EMPLOYEES – MA PWFA DOCUMENTATION

Cannot ask for supporting documentation when request is for the following accommodation(s):

- More frequent restroom, food, or water breaks
- Seating
- Limits on lifting no more than 20 pounds
- Private, non-bathroom space for expressing breast milk



LAWS IMPACTING EMPLOYEES – PWFA (2023)

MUST ACCOMMODATE QUALIFIED
APPLICANTS OR EMPLOYEES WITH
KNOWN LIMITATIONS

“LIMITATIONS” MEANS PREGNANCY,
CHILDBIRTH OR RELATED MEDICAL
CONDITIONS

E.G., BREASTFEEDING, MISCARRIAGE,
ABORTION, (IN)FERTILITY TREATMENTS

LAWS IMPACTING EMPLOYEES – PWFA REASONABLE ACCOMMODATIONS

REASONABLE ACCOMMODATIONS AVAILABLE TO EMPLOYEES EXPERIENCING PREGNANCY, CHILDBIRTH, OR RELATED MEDICAL CONDITIONS

REASONABLE ACCOMMODATIONS INCLUDE SUSPENDING ESSENTIAL JOB FUNCTION(S) IF:

- Temporary
- Essential job function(s) can be performed in the near future
- Inability to perform the essential functions can be reasonably accommodated

REASONABLE ACCOMMODATIONS ARE **NOT** REQUIRED IF IT WOULD CAUSE AN UNDUE HARDSHIP

LAWS IMPACTING EMPLOYEES – PWFA DOCUMENTATION

- The employer is not required to obtain medical documentation
- Documentation can be requested when reasonable under the circumstances
- Documentation must be minimum sufficient to confirm the limitation and needed modification



A large, stylized warning sign graphic on the left side of the slide. It features a black exclamation mark inside a white triangle with a thick black border, all set against a grey circular background.

LAWS IMPACTING EMPLOYEES – PWFA DOCUMENTATION PROHIBITIONS

Cannot ask for supporting documentation when limitation is obvious **or** when request is for the following accommodation(s):

- carrying water and drinking, as needed;
- taking additional restroom breaks;
- sitting or standing
- breaks, as needed, to eat and drink

Instead, the employee's self-confirmation of their need for the reasonable accommodation(s) is sufficient

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BEST PRACTICES AND COMPLIANCE STRATEGIES

PRELIMINARY QUESTIONS TO ASK

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- How does your college currently support pregnant students and employees?
- Which offices are involved? HR, Disability Services, Student Affairs?
- What will the Title IX Coordinator's role be - only oversight, advising offices and providing training, providing accommodations for pregnancy?

POLICIES & PROCESS: *STUDENTS*

HOW TO DESCRIBE YOUR REASONABLE MODIFICATION PROCESS?

- Title IX Policy? Disability Accommodations Policy? Separate Process Document? Website?
- Update your LOA process
- Any other policies or processes that need to be updated – athletics, clinical programs, study abroad

WEBSITE UPDATES

1-PAGER FOR SHARING INFORMATION WITH EMPLOYEES AND STUDENTS

POLICIES

PROCEDURES



POLICIES & PROCESS: *EMPLOYEES*

POLICY UPDATES REQUIRED FOR:

- PWFA Notice/Policy (Federal and MA can be combined)
- Employee disability accommodations policy
- Employee voluntary leave policies

POLICIES

PROCEDURES



DOCUMENTATION PERMITTED OR NOT?

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STUDENTS:

ONLY AS REASONABLE AND NECESSARY

CANNOT REQUEST DOCUMENTATION IF:

- Need is obvious
- Student previously provided with sufficient supporting documentation
- Carrying/keeping water nearby and drinking
- Using a bigger desk
- Sitting or standing
- Breaks to eat, drink, use the restroom
- Lactation needs
- Lactation space
- When the modification is available to other students for other reasons without submitting supporting documentation

EMPLOYEES:

ONLY AS REASONABLE & ONLY MINIMUM SUFFICIENT

CANNOT REQUEST DOCUMENTATION IF:

- Need is obvious
- Carrying water and drinking as needed
- Restroom breaks
- Sitting or standing
- Breaks to eat and drink
- Limits on lifting more than 20lbs (MA law)
- Lactation space
- When the modification is available to other employees for other reasons without submitting supporting documentation

LACTATION SPACES FOR STUDENTS AND EMPLOYEES

- Not a bathroom
- Clean
- Shielded from view
- Free from intrusion by others
- Accessible to students and employees (can have separate lactation spaces for students and employees)





QUESTIONS?

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