



County Technical Assistance Service
INSTITUTE *for* PUBLIC SERVICE

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Sex Discrimination

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

The University of Tennessee
County Technical Assistance Service
226 Anne Dallas Dudley Boulevard, Suite 400
Nashville, Tennessee 37219
615.532.3555 phone
615.532.3699 fax
www.ctas.tennessee.edu

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Sex Discrimination

Reference Number: CTAS-1054

Discrimination based on gender in any aspect of employment is prohibited. This includes sex discrimination, sexual harassment, gender-based wage discrimination, and discrimination based on pregnancy or related medical conditions.

Sexual Harassment

Reference Number: CTAS-1055

Sexual harassment is a form of sex discrimination prohibited under Title VII. According to the EEOC, unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile or offensive work environment. Sexual harassment can occur in a variety of circumstances. The victim does not have to be of the opposite sex. The victim does not have to be the person harassed but can be anyone who is affected by the offensive conduct. The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker or a non-employee.

Pregnancy Discrimination

Reference Number: CTAS-1056

The federal Pregnancy Discrimination Act (PDA) is an amendment to Title VII that declares discrimination on the basis of pregnancy, childbirth or related medical conditions to be unlawful sex discrimination under Title VII. Women affected by pregnancy or related conditions must be treated the same as other applicants or employees with similar conditions, abilities or limitations. An employer cannot refuse to hire a pregnant applicant as long as she is able to perform the major functions of the job, and the employer cannot refuse to hire the person because of the prejudices of the employer or those of clients, customers or co-workers.

Pregnancy cannot be singled out for special procedures. The pregnant employee must be treated the same as any other employee in a similar situation. For example, if the employer requires a doctor's statement prior to granting sick leave, the employer may require a pregnant employee to provide a doctor's statement if the employee requests sick leave.

If a pregnant employee is temporarily unable to perform her job, the employer must treat her the same as any other temporarily disabled employee (e.g., modified tasks, alternative assignments, disability leave, or leave without pay, if the employer provides these benefits to other workers who are temporarily disabled).

Pregnant employees must be permitted to work as long as they are able to perform their jobs. Employers cannot make pre-determined rules requiring employees to remain off work a specified period of time either before or following childbirth. Employers must hold open a job for pregnancy-related absences for as long as the employer would for employees with other kinds of temporary disabilities.

Health insurance must cover pregnancy-related conditions on the same basis as other medical conditions. No increased or additional deductible can be imposed. Also, pregnancy-related benefits cannot be limited to married employees.

The Pregnancy Discrimination Act is administered by the U. S. Equal Employment Opportunity Commission (EEOC). See EEOC Facts about Pregnancy Discrimination.

Pregnant Workers Fairness Act

State Level

Effective October 1, 2020, state law found at T.C.A. § 50-10-101 *et seq.*, the Tennessee Pregnant Workers Fairness Act, requires employers with more than 15 employees to make reasonable accommodations for medical needs arising from pregnancy, childbirth, or related medical conditions of employees or applicants for employment. "Reasonable accommodation" may include: making existing facilities used by employees readily accessible and usable; providing more frequent, longer, or flexible breaks; providing a private place, other than a bathroom stall, for the purpose of expressing milk; modifying food or drink policy;

providing modified seating or allowing the employee to sit more frequently if the job requires standing; providing assistance with manual labor and limits on lifting; authorizing a temporary transfer to a vacant position; providing job restructuring or light duty, if available; acquiring or modifying of equipment, devices, or an employee's work station; modifying work schedules; and allowing flexible scheduling for prenatal visits. The employer may request medical certification if it is required of other employees with medical conditions.

Federal Level

The Pregnant Workers Fairness Act (PWFA) went into effect on June 27, 2023. The law requires covered employers, which include counties, to provide "reasonable accommodations" to a qualified employee's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation would cause an undue hardship for the employer. While existing laws make it illegal to take an adverse action or discriminate against a person based on pregnancy, childbirth, or related medical conditions, the PWFA only applies to accommodations. Further, the PWFA does not replace federal, state, or local laws that are more protective of a qualified employee affected by pregnancy, childbirth, or related medical conditions. 42 U.S.C.A. § 2000gg – 1.

The term "qualified employee" includes an employee or applicant who, with or without reasonable accommodation, can perform the essential functions of the job, except that an employee or applicant shall be considered qualified if the following conditions are met: 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. 42 U.S.C.A. § 2000gg.

The terms "reasonable accommodation" and "undue hardship" have the same meaning as defined under section 101 of the Americans with Disabilities Act (42 U.S.C.A. § 12111).

The FWPA also prohibits covered employers from:

- Requiring a qualified employee to accept an accommodation without an interactive discussion
- Denying a qualified employee an employment opportunity based on the person's need for a reasonable accommodation.
- Requiring a qualified employee to take leave, whether paid or unpaid, if another accommodation could be made that would allow the employee to keep working; or
- Taking an adverse action against a qualified employee for requesting or using reasonable accommodation.

The Equal Employment Opportunity Commission (EEOC) is responsible for enforcing and issuing rules for the implementation of the PWFA. The rules must include examples of reasonable accommodations to address known limitations related to pregnancy, childbirth, and related medical conditions. The final rules will be available before December 29, 2023. More information and resources about the PWFA are available at EEOC/What You Should Know About the PWFA.

Gender-Based Wage Discrimination

Reference Number: CTAS-1057

The Equal Pay Act (29 U.S.C. § 206(d)) is an amendment to the federal Fair Labor Standards Act that prohibits discrimination on the basis of gender in the payment of wages or benefits, where men and women perform work of similar skill, effort and responsibility for the same employer under similar working conditions.

Note that a violation of the Equal Pay Act can be found where a different wage was paid to a person who worked in the same position before or after a person of the opposite sex.

Sexual Orientation and Gender Identity Discrimination

Reference Number: CTAS-2483

Title VII prohibits an employer from discriminating against an applicant or employee with regard to hiring, firing, or taking other adverse actions related to terms of employment based on race, color, religion, sex, and national origin. 42 U.S.C. § 2000e-2(a)(1). In *Bostock v. Clayton County, Georgia*, 140 S.Ct. 1731, the United States Supreme Court held that when an employer discriminates against a person based on their sexual orientation or gender identity, it violates Title VII. The Court reasoned that if the employer fires the male employee for no reason other than the fact he is attracted to men but does not fire a

woman who is attracted to men, the employer discriminates against him for traits or actions it tolerates in his female colleague. The Court explained that it is impossible to discriminate against a person for being homosexual or transgender without also discriminating against that individual based on sex. If changing the employee's sex would have yielded a different choice by the employer—a statutory violation of Title VII has occurred.

Under Title VII, it is unlawful to subject an employee to discrimination, harassment, or retaliation based on sexual orientation or gender identity. Examples of practices that may violate Title VII based on sexual orientation or gender identity may include, but are not limited to:

- Making offensive or derogatory remarks about someone's sexual orientation or gender Identity (e.g., being gay or straight)
- Intentionally and repeatedly using the wrong name or pronouns to refer to a transgender person
- Keeping LGBTQ+ employees out of public facing positions
- Prohibiting a transgender person from dressing or presenting consistent with the person's gender identity
- Retaliating against a person based on the person's sexual orientation or gender identity

The EEOC has also taken the position that employers may not deny employees equal access to bathrooms, showers, or locker rooms that correspond with the person's gender identity.

More information about discrimination based on sexual orientation can be found on the EEOC's website.

Source URL: <https://www.ctas.tennessee.edu/eli/sex-discrimination>