

FINAL DRAFT

0017 GAR - LABOR RELATIONS
DIV. 1 - DEPARTMENT OF LABOR

Article 3 Pregnant Workers Fairness

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§6301. Definitions – These definitions shall be used for the purposes of administering the Pregnant Workers Fairness.

(a) **Employee** means any individual employed by an employer.

(b) **Employer** means any person (including any individual, association, partnership, corporation, company, entity, or organized group of persons acting directly or indirectly in the interest of an employer in relation to an employee) who directly employs fifteen (15) or more persons to perform services for a wage or salary; or (2) the government of Guam, and any governmental entity, department, agency, commission, instrumentality, or public corporation, but excluding the United States government.

(c) **Reasonable Accommodations** means (1) making existing facilities used by employees readily accessible to and usable by individuals with any type of disability; and (2) job restructuring, part-time or modified work schedules, reassignment to vacant positions, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with any type of disability.

(d) **Known Limitation** means a physical or mental condition arising out of pregnancy or childbirth that the employee or employee's representative has communicated through a certified document provided by a healthcare provider to the employer whether or not such condition meets the definition of disability specified in Section 3 of the Americans with Disabilities Act of 1990 (ADA).

(d) **Fair Employment Practice Office** - shall mean the Fair Employment Practice Division (FEPD) of the Guam Department of Labor, commonly referred to as FEPO.

1 **§6302. Pregnant Workers Fairness** (a) An employer shall not discriminate against workers
2 whose ability to perform the functions of a job are limited by pregnancy, childbirth, or related
3 medical condition.
4

5 (1) Complaints: Persons wishing to file a complaint for a violation of the Pregnant Workers
6 Fairness may file such complaint within 90 days from the date of denial with the
7 Department of Labor Fair Employment Practice Office.
8

9 (i) Good Cause: The Department may accept a complaint after 90 days if the delay
10 in filing is due to a valid medical reason however, in no case shall a complaint
11 be filed more than 180 days from the date of denial.
12

13 (ii) Refusal of Complaint Filing: FEPD may decline to accept a potential complaint
14 for reasons including but not limited to: Untimely Filing of Complaint,
15 Complaint has been previously filed with USDOL or Incomplete Documents.
16

17 (A) Complaints and statements must be submitted on a form approved by the
18 Department. FEPD will develop a standard form which an individual may use to
19 request for reasonable accommodation.
20

21 (B) Complainant shall provide valid photo identification with their complaint.
22

23 (C) FEPD may assist complainant with obtaining information from the employer, as
24 allowed in the statute.
25

26 (D) FEPD may verify with USDOL if a complaint has been filed by the aggrieved person.
27 Should a complaint be filed, Guam DOL will suspend its' investigation.
28

29 (2) Investigations: An investigation may be initiated as a result of a complaint, fact finding
30 process from a separate case, or the result of a formal inspection.
31

32 (A) When requesting information from an employer, the Department may require that
33 such information be submitted within 15 calendar days.
34

35 (B) An employer may request an extension of this 15 day deadline. An extension must be
36 approved in writing by the Department and shall not exceed 30 calendar days after the
37 initial 15 day period.
38

39 (C) FEPD Investigators may interview employees at a jobsite and may also inspect
40 employer records at the employer's establishment. Failure to allow reasonable access to
41 FEPD investigators constitutes a violation and may subject an employer to civil penalties
42 pursuant to 22GCA§6104(b).
43

44 (D) FEPD investigators may refer a matter or coordinate with other local or federal
45 agencies when appropriate.
46

1 (3) Findings: FEPD investigators shall consider documents, statements and other pertinent
2 information during fact finding investigations and formulate a report to the Director.

3
4 (A) The report shall contain a synopsis of the situation and recommendation to the Fair
5 Employment Practice Officer on action.

6
7 (B) Findings shall take into consideration information gained during fact finding, *field*
8 *inspections, onsite visits, or by a third party.*

9
10 (C) Fair Employment Practice Officer shall approve the synopsis prior to submission to
11 the Director.

12
13 (4) Nondiscrimination with regard to Reasonable Accommodations related to Pregnancy or
14 Childbirth: *Should employment discrimination occur against a covered employee who has*
15 *been denied reasonable accommodations to known limitations based on related pregnancy*
16 *or childbirth.*

17
18 (a) It shall be unlawful for any employer to not make reasonable accommodations to
19 known limitations related to the pregnancy or childbirth of an employee, unless such
20 employer can demonstrate that the accommodations would impose an undue hardship
21 on the operations of the business of such employer.

22
23 (b) It shall be unlawful for any employer to deny employment opportunities to an
24 employee if such denial is based on the need of the employer to make reasonable
25 accommodations to the known limitations related to the pregnancy or childbirth of a
26 qualified employee

27
28 (i) If the employment denial was in writing and contained enough specificity to
29 determine that the denial was due to the need for reasonable accommodations
30 then such statement shall constitute prima facie evidence of a violation.

31
32 (ii) If the employment denial was verbal and communicated with enough
33 specificity in which a reasonable person believes the denial was due to the
34 applicant's need for reasonable accommodations, then the individual's sworn
35 statement shall constitute prima facie evidence of a violation.

36
37 (iii) Prior to the issuance of any findings by the Department, an employer shall be
38 given an opportunity to refute allegations in cases where a verbal denial has
39 occurred.

40
41 (c) It shall be unlawful for any employer to require an employee to take leave, whether
42 paid or unpaid, if another reasonable accommodation can be provided to the known
43 limitations related to the pregnancy or childbirth of an employee.

44
45 (d) It shall be unlawful for any employer to take adverse action in terms, conditions, or
46 privileges of employment against an employee on account of the employee requesting

1 or using a reasonable accommodation to the known limitations related to the
2 pregnancy or childbirth of the employ require an employee to take
3

4 (5) Certification of Medical Provider. The covered employee must provide a certification
5 from a health care provider on a form approved by the Department.
6

7 (6) Order of the Department for Relief. In cases where the aggrieved party experienced
8 denial of employment, lost wages, loss of employment or promotion as a result of an
9 unlawful practice under the act, the director may order relief including but not limited to
10 compelling employment, reinstatement or promotion; or liability for amounts deemed to
11 be wages that the aggrieved party would have earned if reasonable accommodations were
12 provided by the employer.
13

14 **§6303. Signage Posting Compliance.**

15

16 (a) All employers shall have a visible FEPD posting present in their place of business. Any
17 employer who fails to meet this requirement may be found in violation of the rules and may be
18 subject to civil penalties at 22GCA§3804(i).
19

20 (1) Posting must be in a format designed and approved by FEPD.
21

22 (2) Posting may not be smaller than an 8 ½” x 11” document.
23

24 (3) Posting must be placed in a conspicuous location where it may be viewed by a majority of
25 the company’s employees, including but not limited to, employee break-rooms, Human
26 Resource offices, jobsites, or other places where employees congregate.
27

28 **§6304. Inspections & Investigations** The staff and management personnel of the FEPD division
29 may conduct site inspections and investigations as permitted by 22GCA Chapter 1 §1108.
30

31 (a) Inspections may be unannounced and at random.
32

33 (b) Inspections may be performed for purposes of monitoring compliance with required signage
34 postings, or other fact-finding purposes.
35

36 (c) Inspections may be performed in conjunction with other divisions of the department, local
37 government and/or federal government agencies should it be determined necessary.
38

39 **§6305. Penalties.**

40

41 (a) Monetary Penalties. In the event of a violation of this section of the Rules, the employer shall
42 be served with a notice of violation, commonly referred to as a “citation”, which details the
43 violation and the level of fine to be imposed. The citation shall be signed and approved by the
44 Fair Employment Practice Officer.
45

46 (1) The “citation” shall be prepared on an official Departmental form approved by the
47 Director of Labor.

(2) Employers may be subject to a fine of not more than (\$1,000) One Thousand Dollars for the first offense; and not less than (\$1,000) but not greater than (\$2,000) for the subsequent violations.

(3) A violation of the rules may subject the employer to civil penalties. Penalties may be determined using factors such as: size of the company (total number of employees), FEPD penalty scale, and circumstances. Fines shall not exceed what is allowable pursuant to 22GCA§3804 (f)

(4) Initial Penalty Scale chart shall be approved by the Director of Labor, and may be subsequently amended as deemed necessary by the Director of Labor.

(5) Penalties enumerated on the FEPD penalty scale shall be used as a general guide to determine assessed penalty on a citation. The Department may elect to exercise discretion and may deviate on a case-by-case basis.

(b) Non-Monetary Penalties

(1) The civil penalty on a citation may be conditioned by completion of certain required trainings. An employer may be required to attend and provide proof of completion of training activities which may consist of, but are not limited to Department trainings, One-on-one employer trainings, or designated Conferences. All external costs of training activities shall be borne by the employer.

(2) Re-Training – The employer may be required to re-take previously completed trainings at the discretion of the Department.

(3) Verification of compliance – Employer must provide verifiable documentation showing that required training has been completed no later than the deadline specified on the citation.

(4) Penalties for non-compliance - If an employer does not complete required training within the specified period, then the non-monetary penalty shall be deferred and the maximum monetary penalty allowable by statute shall be immediately due.

- (i) In the event of non-compliance, the Department shall issue an order from the Director indicating the new imposed monetary penalty for non-compliance and such order shall contain notification of the employer's right to appeal the order.

(c) Unpaid Penalties – The Department may request action from licensing authorities, as authorized in statute to require that all penalties be paid in full before renewing a violators license to conduct business, subject to any due process that may be required by the licensing authority.

§6306. Appeals Hearings.

(a) The employer shall have the right to an administrative hearing conducted by the Director of Labor or his designee. The offender may either pay the fine, or appeal in writing, within fifteen

1 (15) calendar days from the receipt of the notice of violation, to the Director of Labor, requesting
2 a hearing to present facts and law in defense of the offender. The offender shall have the right to
3 representation of counsel during the hearing and the rules of evidence shall not apply.
4

5 (b) In the case of an untimely appeal, the Director shall decide whether or not to hold a hearing.
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7 (c) Upon the filing of a timely request of an appeal of a violation, the Director of Labor shall
8 hold a hearing of the facts, and shall give the employer the opportunity to be heard and to
9 provide testimony in their defense or to present rebuttal evidence. Such hearing shall take place
10 at a time and in a place to be designated by the Director of Labor.
11

12 (d) The Director may opt to convene a panel to hear testimony. However, the final decision rests
13 with the Director of Labor, or his designee, as the Hearing Officer.
14

15 **§6307. Administrative / Civil Process** 16

17 (a) Before an individual may file a civil action, the administrative process through the
18 Department must be exhausted.
19

20 (b) Should a civil action be filed in court before the Department's administrative process is
21 complete, the Department will defer to the court and halt the administrative process by
22 closing the case, however the case may be reopened if such action is required by the court.
23

24 **§6308. Petitions.** Any individual shall have the right to submit to the Director of Labor a
25 petition for the establishment or modification of rules and regulations on subjects under the
26 Authority of the Director, and shall have the right to request advisory rulings, consultations or
27 declaratory rulings in relation to existing regulations. Such petitions and requests shall be
28 submitted in writing and on a form provided by the Department of Labor, and shall be acted
29 upon within 60 days by the Director. The Director shall respond to all petitions submitted under
30 this Title in writing.
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32 **§6309. Severability.** If any part of these Regulations is for any reason declared to be invalid by
33 a court of law, the remaining regulations under this Title shall not be affected thereby, and shall
34 remain valid and enforceable.
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36 **§6310. Interpretation.** The provisions of these Regulations shall be liberally interpreted to
37 ensure the compliance of employers in Guam with the objectives and purposes of the Pregnant
38 Workers Fairness Act
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