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Pregnancy Guidelines for Federal Law Enforcement

1. PURPOSE: This policy is intended to provide guidance to the appropriate deciding official concerning work-related assignments involving pregnant law enforcement officers. The goal of these guidelines is to provide options for a pregnant law enforcement officer to remain working in a full-time capacity performing full-duty assignments or alternative duty assignments, for as long as reasonably practical. These guidelines seek to establish a reasonable balance between women's right to work and to protect the property interest she has in her job while guarding against the risks inherent in the performance of her duties. It is also intended to formulate standardized guidelines among the various federal agencies for sworn pregnant women.

2. SCOPE: Law enforcement agencies recognize that their diverse workforce is a valuable asset and that trained and experienced female law enforcement officers are a critical resource. Pregnancy is a temporary physical condition unique to women, which may or may not affect the employee's ability to perform many of the usual duties of the position. These guidelines establish procedures to modify full duty assignments and, when needed, provide temporary alternative duty assignments to eligible pregnant employees.

3. AUTHORITIES: The federal Pregnancy Discrimination Act of 1978 (PDA) requires employers to treat women affected by pregnancy, childbirth, or a medical condition related to pregnancy or childbirth, the same as other persons not so affected but similar in their ability or inability to work. The PDA was intended to "guarantee women the basic right to participate fully and equally in the workforce, without denying them the fundamental right to full participation in family life."

Please refer to the Office of Personnel Management (OPM) for all federal leave policies regarding pregnancy/childbirth, sick leave, annual leave, advanced sick and annual leave, leave without pay, and other programs available for pregnant federal employees.

3a. CURRENTLY: If an employee is temporarily unable to perform her job because of her pregnancy, according to the PDA, the Agency must treat the pregnant employee the same as any other temporarily disabled employee. For instance, if an Agency allows temporarily disabled employees to modify tasks, perform alternative assignments or take disability leave or leave without pay, the Agency must also allow an employee who is temporarily disabled because of pregnancy to do the same. Agencies that have no modification assignment for a temporarily disabled employee may justify a position that therefore a pregnant employee is being treated the same by not allowing any temporary job modification. It is recommended that those agencies review such policies to improve the Agency's position on pregnancy and family.

3b. CONSIDERATIONS: The PDA does not require accommodations for pregnant employees, just equal treatment. To achieve real gender equality in the workplace employers should consider changes and implement certain policies and be flexible enough to accommodate the “celebrated” differences between men and women – *U.S. v. Virginia*, 518 U.S. 515 (1996).

4. ATTACHMENTS: This section intentionally left blank.

5. RESPONSIBILITIES: This guidance is provided to outline the responsibilities of a pregnant law enforcement officer receiving Administratively Uncontrolled Overtime (AUO) or Law Enforcement Availability Pay (LEAP) and the responsibilities of supervisors dealing with pregnant law enforcement employees.

6. DEFINITIONS:

1. Law Enforcement Officer: is (1) "an employee of a governmental Agency;" (2) "authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law"; (3) have "statutory powers of arrest"; (4) "authorized by the Agency to carry a firearm"; (5) "not the subject of any disciplinary action by the Agency" requiring termination; (6) "meets standards, if any, established by the Agency which require the employee to regularly qualify in the use of a firearm"; and (7) "not prohibited by Federal law from receiving a firearm."

2. Administratively Uncontrollable Overtime (AUO) refers to work in a job that unpredictably requires substantial amounts of irregular or occasional overtime, and in which the employees generally are responsible for recognizing, without supervision, circumstances that require them to remain on duty. GS employees, other than certain criminal investigators, may be granted AUO premium pay on an annual basis if their jobs require substantial amounts of irregular or occasional overtime work that cannot be controlled administratively. AUO premium payments are set as a percentage of an employee's basic pay, but cannot be less than 10 percent or more than 25 percent. Employees who are receiving AUO pay are not eligible for any other kinds of premium pay for irregular or occasional overtime work.

3. Law Enforcement Availability Pay (LEAP) is premium pay rate granted to certain law enforcement personnel who have criminal investigation responsibilities, replacing the use of administratively uncontrollable overtime (AUO) pay for employees in this category. Qualified criminal investigators are entitled to availability pay, which is fixed at 25 percent of basic pay (including locality pay). Eligible categories include employees in the GS-1811 and GS-1812 series, certain pilots employed in customs enforcement, and special agents in the Diplomatic Security Service. Higher graded law enforcement officers may be entitled to a lesser amount if their availability pay causes them to exceed the maximum earnings limitation for law enforcement officers.

Availability pay must be paid to qualified criminal investigators who meet the legal definition of a “law enforcement officer.” An annual certification must be made by both the criminal investigator and an appropriate supervisory official. The annual certification must stipulate that the investigator works, or is available to work, an annual average of two hours of “unscheduled duty” per regular workday as requested by the employing Agency.

4. **Maternity Duty:** During a pregnancy, upon written recommendation of a physician, an employee may request a temporary reassignment to an alternative duty. This assignment is referred to as Maternity Duty and does not adversely affect the LEAP or AUO of a pregnant officer.

7. GUIDANCE:

A. General Guidelines:

1. These guidelines apply to all female law enforcement officers in good standing who have successfully met entry-level probation requirements.
2. These guidelines are not intended to interfere with or diminish any rights or privileges to which an employee may be entitled under federal, state or local law, departmental policy, collective bargaining agreement or any other right or privilege.
3. If an employee is unable to work in any capacity due to medical complications, standardized leave policies apply.

B. Full Duty Option:

1. During a pregnancy, a law enforcement officer may be able to continue to perform in her usual, full-duty full range of assignments up to the time she and her doctor make a determination it is no longer an option. Employees must confer with their personal physician(s) and provide him/her with the Agency’s job description that delineates the essential job functions of a law enforcement officer.
2. Both the physician and the employee are expected to consider the risks and benefits of remaining in a full-duty status performing a wide range of assignments. Absent medical necessity the Agency will not require an officer to accept an alternative-duty assignment at this stage or to take leave except upon the advice of her physician or a compelling public safety reason. The Agency assumes no special responsibility for any medical risks associated with the pregnancy, whether or not they relate to duty assignment.
3. The Agency will make every reasonable effort to avoid assigning pregnant employees to units in which the work involves the likelihood of encountering toxic chemicals, such as raids on clandestine drug labs, intensive traffic enforcement or exposure to infectious disease. In addition, assignments of pregnant employees to units in which the work

involves a high likelihood of suffering trauma, such as high-risk entries, special tactical operations and riot control, should be avoided.

4. During the officer's pregnancy, the Agency may consider granting a temporary exemption from firearms qualification requirements. If a variance or an exemption is not available, the Agency should arrange for alternative firearms qualification, such as providing non-toxic, lead-free ammunition, reducing exposure to noise and to toxic cleaning solvents. But, reasonably available simulation training and testing may be considered as a preferred alternative to live fire qualification as it involves the safest method for the pregnant officer. This guidance is not meant to supersede any agency firearms policy. The goal is to ensure that the pregnant employee retains her firearm during her pregnancy.

5. The need for uniform and equipment modifications during the pregnancy may be considered and accommodations may be made as the need arises. Cost associated with this expense should be consistent with Agency policy concerning employee uniform expenses while assigned temporary assignments.

6. During the pregnancy, it may become necessary for the Agency to evaluate the employee's continuing ability to safely and effectively perform the essential functions of her position. In such case, the Agency may consider whether the pregnancy creates an undue safety risk to the employee, co-workers and/or the public. The Agency may consult with the Agency physician and/or the employee's physician in making this evaluation. If the Agency determines that the employee's condition unreasonably interferes with her ability to perform the full range of an Agency's requirements for a law enforcement officer due to safety issues affecting the officer or the public, she may be reassigned to Maternity Duty. Absent unusual circumstances, the employee will not be required to take leave.

However, an Agency may not single out pregnancy-related conditions for special procedures to determine an employee's ability to work. If an Agency requires its employees to submit a doctor's statement concerning their inability to work before granting leave or paying sick benefits, the Agency may require employees affected by pregnancy-related conditions to submit such statements.

C. Maternity Duty:

1. Maternity Duty should not include work that involves the likelihood of encountering toxic chemicals, such as raids on clandestine drug labs, intensive traffic enforcement, or work that involves a high likelihood of suffering trauma including high-risk entries, special tactical operations, extensive air travel, riot control, stationary posts for extended periods of time, or exposure to infectious diseases. Other duties may be identified by the Agency.

2. Absent specific medical considerations, employees working Maternity Duty should continue in a full-time working status. Consideration should be given to allowing for

part-time assignments to those whose medical condition may warrant such accommodation if requested by the employee and recommended by her physician. Otherwise pregnant employees will continue to serve in a full duty status performing a wide range of duties except those duties previously outlined. Telework may be an option on a temporary basis for some agencies to consider and as outlined in the Telework Improvement Act of 2010. Maternity Duty will not affect the AUO or LEAP status of the pregnant employee.

3. The need for uniform and equipment modifications during Maternity Duty will be considered and accommodations are recommended as the need arises.

4. Maternity Duty assignments should include those assignments normally available to other persons not so affected but similar in their ability or inability to perform full duty assignments. The following are some examples but the Agency may identify other areas as appropriate:

- a.** Response to non-hazardous calls for service;
- b.** Writing police reports;
- c.** Operating a police radio;
- d.** Interviewing persons;
- e.** Clerical investigative functions;
- f.** Dispatch (radio room);
- g.** Intelligence Unit;
- h.** Vehicle Control Officer;
- i.** Prosecutions Officer;
- j.** Recruitment Officer
- k.** Electronic crimes
- l.** Public Information Office;
- m.** Training;
- n.** Post Academy;
- o.** Supervision over field work not required to engage in hazardous duties; or
- p.** Managerial or Executive office work/meetings (headquarters or division assignments).
- q.** Other assignments may be identified by the Agency.

It should be recognized that some pregnant law enforcement officers already assigned to Agency headquarters, field divisions or other administrative jobs occupied by law enforcement officers not requiring a field presence may remain in those occupations with no special modification.

Maternity Duty assignments may consider avoidance of the following examples (Other examples are likely to be identified by the Agency.):

- a.** Alternating shift work;
- b.** Defensive tactics or defensive tactics training;
- c.** Firearms training, except simulated training or lead free;

- d. Patrol duties;
- e. Intensive traffic control/toll plaza/tunnel duty;
- f. Standing for more than 30 minute intervals;
- g. Lifting of more than 25 pounds;
- h. Exposure to high concentrations of toxins, chemical or infectious agents or controlled dangerous substances;
- i. Air travel beyond the employee's physician recommendation
- j. Security details/protective details

5. Temporary reassignment of eligible pregnant members to Maternity Duty will be made consistent with the operational needs of the Agency. The Agency will consider any specific restrictions identified by the employee's physician.

6. If an employee becomes unable to perform the functions of her Maternity Duty assignment, the Agency may require her to take leave, in compliance with the Family and Medical Leave Act and other applicable law or Agency policy. The employee may elect to take such leave if medically warranted and in conformance with applicable employer regulations and procedures.

8. PROCEDURES:

A. Notification Procedures

Employee:

1. For public safety and management planning purposes a law enforcement officer shall, upon immediate confirmation and the decision to continue a pregnancy, notify the chief law enforcement executive or supervisor or his/her authorized designee within the first trimester.
2. Notification should be in the form of written documentation from a medical practitioner and, if possible, include an anticipated due date.

Employer:

1. The chief law enforcement executive or supervisor shall maintain this information as confidential, to the extent permitted and/or required by law, but may forward it through the chain of command to appropriate authorities as necessary.
2. These authorities shall adhere to minimum use and disclosure guidelines in order to continue to maintain the employee's privacy, but may provide the information to the chief medical officer of the Agency or other appropriate official.

B. Return to Work After Maternity Leave

Employee: When an employee who has been on an extended absence of 90 calendar days or longer due to pregnancy plans to return to work, she should:

Request to meet with her supervisor immediately upon returning to work;

1. Provide medical documentation of medical fitness for duty, subject to review if required by the Agency's medical advisor;
2. Assist her supervisor in identifying her individual needs, which may or may not include accommodations needed for lactation; and,
3. Accomplish all reintegration tasks as directed by her supervisor.

Employer: When an employee returns to duty after an extended absence of 90 calendar days or more:

1. The employee's supervisor shall meet with the employee and conduct a reintegration interview.
2. From that interview, a reorientation program shall be developed for the individual employee, if necessary, which takes into consideration the unique circumstances of the particular employee. For example, an officer returning from maternity leave may have been exempt from firearms qualification for approximately one year. In such cases, the officer's reintegration program should include firearms training/qualification prior to being assigned to the field or position she occupied before leave.
3. The Employer should provide the instructions to the returning employee regarding lactation at the office or other government facility. At a bare minimum, all that is required is a secure area, with an outlet, refrigerator and chair that can be used as a pumping station.

Authority for Nursing Accommodations:

Consistent with the requirements of section 4207 of the Patient Protection and Affordable Care Act, Pub. L. 111-148, which added a new subsection (r) in section 7 of the Fair Labor Standards Act (FLSA) (codified in 29 U.S.C. 207(r)): "The entitlement to nursing mother breaks was established in section 7(r) of the FLSA. Section 7(r) applies only to employees who are not exempt from the requirements of section 7 of the FLSA, which includes the FLSA's overtime pay requirements. In accordance with the authority delegated to the U.S. Office of Personnel Management (OPM) by the President on December 20, 2010, and in order to ensure consistent treatment of all civilian employees who are nursing mothers within the Federal workforce, agencies should **apply the same benefits to executive branch employees who are exempt from the requirements of section 7 of the FLSA.**" (OPM Director Berry Memorandum to Heads of Executive Departments and Agencies, 12/22/10)

EFFECTIVE: This guidance is offered and effective May 1, 2011.

APPROVAL:

WIFLE Foundation, Inc.

ACKNOWLEDGEMENTS:

The Women in Federal Law Enforcement (WIFLE) Foundation wishes to thank the International Association of Chiefs of Police's (IACP) Executive Director Daniel Rosenblatt and Deputy Executive Director James W. McMahon for the outstanding support and leadership shown to the IACP Diversity Coordinating Committee, which produced a Pregnancy Policy for State and Local Officers in 2010. WIFLE was part of this committee.

Spearheading this policy was the chair of the Diversity Coordinating Committee, Deputy Superintendent Deborah J. Campbell, New York State Police along with Karen J. Kruger, Attorney at Funk and Bolton, P.A., Baltimore, Maryland. The contributions of these two women to other women in law enforcement will always be admired.

WIFLE retooled the IACP policy along with a group of women in federal law enforcement from the various federal agencies and formulated pregnancy guidelines for the federal sector. WIFLE thanks those women for their work on the WIFLE Pregnancy Committee.

WIFLE recognizes that these guidelines may not meet the needs of every federal agency nor every pregnant woman. The unique environment that law enforcement agencies operate under today may allow for the incorporation of some of these guidelines into official policy, but not in all cases. Agency resources may impact some of the guidelines and other considerations may have to be taken in account before a consistent policy is implemented.