



MEMORANDUM

TO: Mayor & Council Members
FROM: Mark Washington, Director, Human Resources and Civil Service
DATE: April 20, 2015
SUBJECT: City of Austin Best Practices for Pregnant Employees

The purpose of this memorandum is to provide an update related to actions taken by the Human Resources Department regarding Resolution 20141211-132. This resolution approved by Council on December 11, 2014, directed staff to examine personnel policies workforce practices in other cities regarding pregnant employees and to develop recommendations for implementation to Council by May 1st, 2015. The resolution was precipitated by a highly publicized lawsuit initiated by a pregnant employee against United Parcel Service (UPS). The lawsuit alleged UPS failed to extend the option of "light duty" during her pregnancy, which is an option available to other employees with a temporary restriction.

Benchmarking was conducted with eight (8) cities: San Antonio, El Paso, Fort Worth, Houston, and Dallas, Texas; San Francisco, California; Chicago, Illinois; and Portland, Oregon, to better understand and evaluate City of Austin compliance with legal requirements and best managed employer practices.

Summary:

Relative to the benchmarked cities, the City is progressive in its policies and programs which impact pregnant employees. Current city policy and programs meet and exceed existing federal and state compliance requirements, and are already compliant with the anticipated requirements of federal and state proposed legislation. Of particular note, policies and programs that distinguish the City of Austin from benchmarked comparators include: the Paid Parental Leave Program implemented in August 2013 and the Leave Bank program implemented in October 2013. The City also provides a Healthy Pregnancy program free to employees and their dependents enrolled in the City's medical plan. This program provides educational resources during pregnancy and access to nurses for high-risk pregnancies.

Contrary to the case involving UPS, the administration of current City policy and programs treat a temporary restriction and light duty request due to pregnancy the same as a request arising from a restriction not related to pregnancy.

Compliance:

The City consistently complies with the requirements of the Pregnancy Discrimination Act of 1978 ("PDA") and with Texas Local Government Code 180.004, which requires municipalities

to accommodate employees who are determined to be partially physically restricted by a pregnancy and unable to perform the duties of a permanent position if a temporary work assignment is available in the same office. This is also the law implicated in the upcoming Supreme Court ruling involving United Parcel Service. A ruling in that case is anticipated later this summer.

The City affirmatively expresses its commitment to pregnant employees within Title 5, Chapter 5-3, §5-3-1 of the City of Austin Code of Ordinances, which prohibits sex discrimination, and the clarifying definition of sex discrimination under §5-3-2, which includes “discrimination on the basis of gender, or any associated condition, including pregnancy, childbirth or related medical conditions.” *1992 Code Section 7-3-1; Ord. 031106-12; Ord. 031211-11; Ord. 040610-7*

Additionally, the City routinely accommodates requests by pregnant workers for limited duty and flexible working arrangements. These accommodations are administered through the City’s Reasonable Accommodation and Return to Work policies. There is no information to suggest that any request from a City employee for accommodation related to pregnancy or its complications has been denied, or that any adverse employment action has resulted.

Pending Legislation:

Although Congress has not yet enacted the proposed federal Pregnant Workers Fairness Act (“PWFA”), the Texas Legislature recently introduced HB 1281, which essentially replicated the PWFA and would require reasonable workplace accommodation for persons with limitations related to pregnancy, childbirth, or a related medical condition. Current City of Austin policy, programs and practices are already fully compliant and consistent with Texas HB 1281.

Planned Actions:

Although fully compliant with all current and anticipated legal requirements, the following recommendations would further clarify City policy/procedure to reinforce support of pregnant employees with minimal fiscal impact:

- Enhance the promotion of the Healthy Pregnancy program currently in place to underscore the City’s support of pregnant workers and healthy pregnancies.
- Improve our support of pregnant workers by implementing the “Maternity Support Program” effective January 1, 2016 which provides members with a nurse offering personal guidance through all stages of pregnancy and delivery. This program will be offered to all expectant parents at no cost to the employee.
- Reinforce our commitment to all employees by updating the Reasonable Accommodation procedure effective June 1, 2015, to specifically and expressly reinforce the City of Austin commitment to pregnant employees.

cc: Marc A. Ott, City Manager
Anthony Snipes, Assistant City Manager