



Policy Title: Americans with Disabilities Act (ADA) and Pregnant Workers Fairness Act (PWFA)

Policy Number: BU-PP 415

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Responsible Executive: Vice President & Chief Human Resources Officer

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Responsible Office: Human Resources

Americans with Disabilities Act (ADA) and Pregnant Workers Fairness Act (PWFA) BU-PP 415

Policy Statement

The Americans with Disabilities Act of 1990, as amended, (ADA) and Baylor University (the “University”) policy: 1) prohibits workplace discrimination (including harassment) against persons with disabilities, persons associated with individuals with disabilities, and persons “regarded as” having a disability; (2) protects privacy and restricts medical inquiries at the various stages of the employment relationship; and (3) makes reasonable accommodations for qualified applicants and employees with known disabilities.

The Pregnant Workers Fairness Act (PWFA) applies only to accommodations of a qualified individual for her own pregnancy, childbirth, or related medical (to include mental health) conditions. As such, the PWFA and University policy: 1) makes reasonable accommodations for a qualified individual (applicant or employee) for known limitations related to her pregnancy, etc. regardless of coverage of the conditions under the ADA; 2) prohibits requiring a qualified individual from taking leave, whether paid or unpaid, if another reasonable accommodation can be provided to her for the known limitations related to the pregnancy, childbirth, or related medical (to include mental health) conditions; and 3) prohibits adverse employment actions by Baylor on account of the qualified individual requesting or using a reasonable accommodation for her pregnancy, childbirth, or related medical (to include mental health) conditions.

This Policy is designed to comply with the University’s obligations toward its employees under all relevant federal, state, and local laws and to be interpreted in a manner consistent with applicable law and Baylor’s religious liberties.

Reason for the Policy

The University recognizes that there may be times where an applicant or employee may need an adjustment to the job hiring process, or their job or work environment based on a qualified disability under the ADA or based on pregnancy, childbirth, or related medical

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conditions under the PWFA. In compliance with the ADA and PWFA, this policy establishes guidelines and procedures to provide qualified individuals with reasonable accommodations.

Individuals/Entities Affected by this Policy

Any qualified job applicant or faculty, staff, or student-employee who may have a disability, or known limitations related to the individual's pregnancy, childbirth, or related medical conditions, as defined and protected under applicable law, and requires a reasonable accommodation in connection with their application or employment to perform the essential functions of the job for which the employee is applying or for which he or she holds.

Individuals who are known to have a relationship or close associate (e.g., familial) with a person with a qualifying disability are also protected.

Exclusions

All students seeking accommodations for academic matters will follow procedures through the Office of Access and Learning (OALA).

The ADA states that an accommodation is not required for an individual who poses a "direct threat" as defined below, or who is not otherwise qualified for the position.

The ADA and PWFA do not require modifications that would fundamentally alter the nature of the services provided by the job or University.

The ADA and courts also exclude certain conditions or practices from the definition of disability. Baylor follows these exclusions. These include, without limitation, environmental, cultural, and economic disadvantages, substance abuse disorders and gambling disorders.

Matters outside the scope of the PWFA such as pregnancy by students not in an employee capacity.

Individuals who are not qualified applicants or employees.

The University was founded by the Texas Baptist Education Society, is controlled by a predominantly Baptist Board of Regents, and is operated within the Christian-oriented aims and ideals of Baptists. Baylor is also affiliated with the Baptist General Convention of Texas, a cooperative association of autonomous Texas Baptist churches, and other Baptist organizations. As a religiously controlled institution of higher education, Baylor is exempt from compliance with select provisions of certain civil rights laws, and Baylor is also exempt from prohibitions against discrimination based on religion. As such, the University prescribes standards of personal conduct that are consistent with its religious mission and values and lawfully considers a person's religion in the employment context.

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Baylor’s commitment to equal opportunity and respect of others does not undermine the validity and effect of these legal exemptions, including without limitation the laws identified in this Policy and the Free Exercise Clause of the First Amendment to the United States Constitution.

Related Policies, Documents and Forms

University Policies and Documents

- [Accommodation Request Form](#)
- [Alternate Work Location Policy](#)
- [Civil Rights Policy and Procedures](#)
- [Family and Medical Leave Act \(FMLA\)](#)
- [Group Long-Term Disability](#)
- [Medical Information Form](#)
- [Non-Compensated Leaves of Absence](#)
- [Sick Time](#)
- [Return to Work / Fitness for Duty](#)
- [Workers’ Compensation Insurance](#)
- [Whistleblower Policy](#)

External Documents

- Americans with Disabilities Act
- Pregnant Workers Fairness Act
- The Americans with Disabilities Act Amendments Act of 2008
- The Rehabilitation Act of 1973
- Pregnancy Discrimination Act

Definitions

These definitions apply to terms as they are used in this Policy.

Direct Threat	An individual with a disability is not “qualified” for a specific employment position if he or she poses a “direct threat” to his or her own health and safety or to others. A <i>direct threat</i> is a situation presenting a significant risk of substantial harm to the health or safety of the employee or others that cannot be eliminated or reduced by a reasonable accommodation. The risk must be current, not speculative or remote. An assessment of a direct threat will be strictly based on valid medical analysis and/or other objective evidence. Factors to be considered are: 1. the duration of the risk; 2.the nature and severity of the potential harm; 3.the likelihood that the potential harm will occur; and 4.the imminence of the potential harm.
Disability	The term “disability” means, with respect to an individual – (A) A physical or mental impairment that substantially limits one or more major life activities of such individual (actual impairment); (B) A record of such an impairment (record of); or (C) Being regarded as having such an impairment (regarded as).
Essential Functions of the Job	The <i>essential functions of a job</i> are the fundamental job duties of the employment position which the employee must be able to perform, with or without reasonable accommodation.

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	Baylor's job descriptions are broad and general and are not exhaustive in defining the essential functions of a job. All jobs require, without limitation, predictable and regular attendance, the ability to work cooperatively with others, to deal politely with others, to juggle several tasks at once, to arrive at work on time, to work in-person at the assigned work location, regular and predictable job attendance, the ability to exercise sound, independent judgment, and the ability to comply with University policies. Additional essential functions are position dependent. For example, for faculty, the essential functions include teaching during the assigned semester and may include research.
Health Care Provider	A Doctor of Medicine or osteopathy, dentist, podiatrist, psychiatrist, clinical psychologist, optometrist, nurse practitioner, nurse-midwife, or a licensed clinical social worker that is authorized to practice in the State of Texas or any other person determined by the Secretary of Labor to be capable of providing health care services.
Known Limitation	For the PWFA, this means physical or mental condition related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions that the employee or employee's representative has communicated to the employer whether or not such condition meets the definition of disability specified in the ADA.
Major Life Activities	Major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Additionally, a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. A restriction from working overtime is a substantial limitation on an individual's ability to work. Yet, the inability to work overtime may also render an individual unqualified (<i>i.e.</i> , unable to perform the essential functions) if working overtime is an essential function of the job.
Qualified Individual	To be protected by the ADA, a person must not only have a disability, but also must be <i>qualified</i> for the position in question. A <i>qualified individual</i> with a disability is a person who has the skill, experience, education, and other job-related requirements of the position and who, with or without reasonable accommodation, can perform the essential functions of the position. To be protected by the PWFA, a qualified individual is an applicant or employee who has a known limitation about which Baylor is aware, and has the skill, experience, education, and other job-related requirements of the position and who, with or without reasonable accommodation, can perform the essential functions of the position except that the person shall be considered qualified if: <ul style="list-style-type: none"> (A) Any inability to perform an essential function is for a temporary period; (B) The essential function could be preformed in the near future; (C) The inability to perform the essential function can be reasonably accommodated.
Reasonable Accommodation	For both the ADA and PWFA, a reasonable accommodation is any change or adjustment to a job or work environment that does not cause an undue hardship on the operation of the University and which permits a qualified applicant or employee with a known disability to participate in the job application process, to perform the essential functions of a job, or to enjoy benefits and privileges of employment equal to those enjoyed by employees without disabilities. Accommodations are designed to meet the specific circumstances of the individual. Workplace modifications associated with Occupational Injuries or

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	Disease will be in accordance with those associated laws. Employees may see the Baylor policy on Workers Compensation for more details.
Record of Impairment	Individuals with a <i>record of an impairment</i> have a history of, or have been misclassified as having, a physical or mental impairment that substantially limits one or more major life activities. Persons with a record of an impairment may be entitled to reasonable accommodations (most commonly, time off for periodic medical appointments)
Regarded As	Individuals <i>regard as</i> disabled need not have a substantial limitation on a major life activity but, rather, that they were regarded by the employer as having a disability; and because of that, they were subject to an adverse employment action. Baylor’s decision to reasonably accommodate an individual does not mean that Baylor regards the individual as having a disability under the ADA. There is no interactive-process duty with respect to these persons.
Temporary Impairment	The ADA covers individuals with a disability that is episodic or in remission so long as the impairment would substantially limit a major life activity when active. Temporary, nonchronic impairments with little or no long-term impact, such as broken limbs, sprained joints, concussions, appendicitis, pneumonia, and influenza usually are not viewed as disabilities.
Undue Hardship	An <i>undue hardship</i> to the employer is an accommodation that is “excessively costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business.” Employers need not lower standards of production, as to either quantity or quality, to accommodate individuals with a disability. The undue hardship is considered in the context of the organization’s overall operations rather than in one particular department. There may be consideration for operations at alternate campus locations. In determining undue hardship, Baylor will consider factors such as nature and cost of accommodation, the overall financial resources of the facility or facilities involved, the number of persons employed at the facility, and the effect on expenses and resources; the number, type, and location of its facilities; the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce, and the geographic separateness and administrative or fiscal relationship of the facility or facilities to the covered entity; and the impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the facility’s ability to conduct business.

Contacts

Subject	Contact	Telephone	Office email/web site
Policy Questions	Human Resources	254-710-2000	https://www.baylor.edu/hr/askHR@baylor.edu

Responsibilities

Employees	<ul style="list-style-type: none"> • All faculty, staff, and student-employees will respect the rights of privacy associated with actual or suspected medical conditions, to include pregnancy and pregnancy related conditions, of all other employees. • Employees will not discriminate against individuals with disabilities, or who are associated with a person with a disability, nor may they retaliate against a person for requesting a disability accommodation. • Employees will notify Human Resources when they request a workplace accommodation in accordance with this policy.
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	<ul style="list-style-type: none"> • Employees who believe they need an accommodation must specify, preferably in writing, what barriers or limitations, or pregnancy, childbirth, or related medical (to include mental health) conditions prompted the request. • Employees are required to cooperate with the process in this policy by providing all necessary documentation supporting the need for accommodation, and by being willing to consider alternative accommodations when applicable. • An employee must only come to work if fit for duty and then, must perform the essential functions of the job, with or without a reasonable accommodation, in a safe, secure, productive, and effective manner during the entire time working. • Employees are responsible for notifying Human Resources when they are not fit for duty in accordance the University’s Sick Leave, FMLA, and Workers’ Compensation policies. • Those with an Occupational Injury or Disease must comply with the University’s Workers Compensation Policy as it relates to providing notice of a workplace injury or illness and returning to work following such an injury or illness.
<p>Supervisors / Department Chairs</p>	<ul style="list-style-type: none"> • If an employee indicates to a supervisor / Chair the need for a workplace alteration due to a medical or mental health reason, or information about their own pregnancy, childbirth, or related medical (to include mental health) conditions, the supervisor shall promptly refer the employee to Human Resources and then consult with Human Resources. • When a supervisor or Chair suspects an employee has a need for an accommodation based on a medical or mental health reason, pregnancy, childbirth, or related medical conditions, the leader must consult with Human Resources without diagnosing the individual or otherwise taking action against the employee. (Do not ‘regard’ someone as disabled) • Supervisors will not take adverse employment actions (or otherwise retaliate) on account of a qualified individual requesting or using a reasonable accommodation. • Supervisors must work with Human Resources to work with the faculty, staff member, or student-employee to determine and apply any reasonable accommodations, to include those that are intermittent. • Supervisors will treat all medical information as personal and confidential and not maintain medical information on employees, rather providing any information to Human Resources.
<p>Human Resources (HR)</p>	<ul style="list-style-type: none"> • Human Resources will oversee the administration and documentation of the University’s policy. • HR will work with the employee and the supervisor to ensure all correct and required restrictions and accommodations are put in place prior to employee’s return to work if required. • HR will maintain cohesive appropriate records. • HR will use discretion in sharing information with supervisors about pregnancy and pregnancy related conditions when an individual self-discloses but is not asking for a reasonable accommodation.

Principles

All faculty and staff must be physically and psychologically capable of performing all of the essential functions of their jobs, with or without reasonable accommodation.

Employees with protections under the PWFA shall be considered qualified if any inability to perform an essential function is for a temporary period; the essential function could be performed in the near future; and the inability to perform the essential function can be reasonably accommodated.

The University retains the right to send an employee home or deny them access to Campus if they are not fit for duty or otherwise may pose a risk to the campus community in the sole discretion of Baylor, for example, displaying symptoms of a communicable disease.

Baylor may ask questions and/or require a medical examination if it has reason to question whether an employee's ability to perform essential job functions will be impaired by a medical condition or whether the employee can perform the job without posing a direct threat of harm. Medical and mental health inquiries will be job-related and consistent with business necessity as supported by objective evidence and such inquiries must be made only in consultation with Human Resources.

Medical information will be held in confidence and not disclosed, except when required by law or in accordance with the ADA.

It is the policy of Baylor University to provide reasonable accommodations when appropriate under the law. If approved, these accommodations must be made in a timely manner and on an individualized and flexible basis.

Qualified employees are held to the same performance criteria as other employees, provided those criteria are job-related and consistent with business necessity, and the employee is afforded the opportunity to meet the employer's performance standards by reasonable accommodations.

This Policy does not alter the at-will relationship of non-contracted employees with the University, nor does it create a contractual obligation on behalf of the University toward any individual or entity, including without limitation contractors, faculty, or contracted staff.

Applicant Accommodation Request Procedures

The ADA prohibits an employer from making certain inquiries and conducting medical examinations before making an offer of employment. Likewise, Baylor personnel should not inquire about current or planned pregnancy, childbirth, or related medical conditions.

Should an applicant desire a reasonable accommodation, they should reach out to Human Resources directly.

If a search committee, hiring authority, or someone else in the hiring process learns or suspects there is a need for an accommodation by an applicant, that information should be promptly provided to Human Resources. The Baylor employee in the hiring process

may not otherwise regard someone as disabled or take or recommend any adverse action based upon suspecting or being told about a disability, current or planned pregnancy, childbirth, or related medical condition. The Baylor employee in the hiring process should not otherwise question the applicant about any known or suspected disability, current or planned pregnancy, childbirth, or related medical condition. If the applicant self-discloses a disability, current or planned pregnancy, childbirth, or related medical condition, or need for accommodation, the Baylor employee should inform the applicant that the information will be passed to Human Resources and the applicant should address any requested accommodation with HR.

Human Resources will ask any appropriate questions on the need for a reasonable accommodation, rather than the search committee or hiring authority.

As part of the pre-offer hiring process, Baylor may ask all applicants applying for a particular job to demonstrate or describe how they would perform a job-related function.

An employer may hire an applicant who does not have a disability, is not pregnant or dealing with a related medical condition to the pregnancy or childbirth, over one with a disability or who is pregnant, or dealing with a related medical condition to pregnancy or childbirth, if the former is more qualified for the job, and if the determination of superior qualifications was not based on criteria that stereotype or discriminate on the basis of a disability, pregnancy, childbirth, or related medical condition.

Employee Accommodation Request Procedures

It is generally the responsibility of individual employees to identify themselves as an individual with a disability, pregnancy, childbirth, or related medical condition when seeking a workplace or job modification. Given that the University can only seek to accommodate the known limitations of an otherwise qualified individual, it is the employee's responsibility to come forward with a need for an accommodation.

When Human Resources is notified of a reported or potential qualifying disability, pregnancy, childbirth, or related medical condition and potential or requested need for workplace or job modification, they will provide the employee with information about this policy, as appropriate.

It is the responsibility of individual employees to request any accommodation by following this policy. For those seeking a disability-based accommodation, the employee is responsible to provide documentation of their disability from their healthcare provider. The health care provider's certification will need to demonstrate there is a disability, how the disability limits their ability to complete the essential functions of their job and indicate the need for a reasonable accommodation.

For those seeking a pregnancy, childbirth, or related medical condition-based accommodation, the employee is responsible to notify Human Resources and comply with any documentation requirement.

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Human Resources will engage in the interactive process when an accommodation request is initiated. The accommodation process encourages an interactive dialogue and exchange of information between an employer and a qualified employee in connection with efforts to reasonably accommodate the employee's known limitations. The process envisions meaningful participation and timely cooperation by both parties. Unreasonable delay by the employee, or refusal to provide information, in response to Human Resources' requests for pertinent information can undermine the individual's accommodation claim.

1. To request an accommodation under the ADA, employees must complete the [Accommodation Request Form](#) and their healthcare provider should complete the [Medical Information Form](#) to submit to HR.
2. To request an accommodation under the PWFA, employees must contact Human Resources
3. Upon receipt of the [Accommodation Request Form](#) and the [Medical Information Form](#), HR will review the request. Once the request has been reviewed, HR will then contact the employee to schedule a meeting to further discuss their needs. During the initial discussion, two things will be accomplished:
 - a. HR will determine if additional documentation from a health care provider or other third party is needed to support the employee's request for accommodation.
 - b. The responsibilities of the University and the employee throughout the process will be determined based on the information collected.
4. HR will partner with the employee's supervisor to review the essential and secondary functions of the job and the reasonableness of the accommodation request in consideration of the functional limitations of the disability.
5. As needed, HR may facilitate discussions throughout the interactive process with the employee and other appropriate parties which could include the immediate supervisor or other department heads.
6. HR may seek advice from third party experts when necessary. Any documentation pertaining to this request, including medical records, shall be retained in a file separate from the personnel file, and will be kept confidential.
7. At the end of the interactive process, the University will determine if a reasonable accommodation will be granted or denied. The University is not required to grant

the requested accommodation, but a reasonable accommodation if the person is otherwise qualified.

- a. If the accommodation is granted as requested, HR will work with necessary parties to coordinate its implementation.
 - b. If the request cannot be fulfilled due to an undue hardship or a direct threat, an alternative accommodation may be considered. HR would then facilitate a discussion with the employee and other appropriate parties.
8. An Employer Response will be provided to both the employee and department communicating the accommodation request decision in writing.
 9. Supervisors / Chairs will support and implement granted reasonable accommodations. They will not engage in disability discrimination or retaliation.
 10. The employee is responsible for contacting HR if the reasonable accommodation is not implemented in an effective and timely manner. HR will then take the appropriate steps to ensure that the accommodation is fully implemented. Both the employee and HR are responsible for keeping each other informed if circumstances change relative to any approved accommodations.
 11. Baylor reserves the right to recertify the qualified disability with the employee's health care provider and/or follow-up with the employee and possibly others within the department or building regarding the accommodation. If recertification or follow-up is determined to be necessary, the employee will be notified in writing of the timing of such.
 12. Individuals wanting to file a grievance alleging their request for accommodations was not properly met can reach out to the *Equity, Civil Rights, and Title IX Office* for assistance.

Examples of Accommodations

Examples of ADA Accommodations include, but are not limited to:

- Making existing facilities used by employees readily accessible to, and usable by, an individual with a disability;
- Job restructuring. (Requiring coworkers to assume the essential job functions of an employee with a disability or expecting coworkers to assist the employee continually are outside the scope of reasonable job restructuring);
- Modified Duty as discussed in more detail in the Return to Duty / Fit for Duty policy;
- Reassignment to a vacant position for which the individual is otherwise qualified. (Positions that may be considered are equivalent to the worker's original job or a lower-level position. An employer need not create a position or transfer an

employee to a position that would not have been available for similarly situated employees without disabilities to apply for and obtain.);

- Acquiring or modifying equipment or devices;
- Adjusting or modifying examinations, training materials, or policies;
- Providing qualified reader or interpreter; and
- Temporary remote work in accordance with the Alternate Workplace Policy

Examples of reasonable accommodations under the PWFA include the ability to sit or drink water; receive closer parking; have flexible hours; receive appropriately sized uniforms and safety apparel; receive additional break time to use the bathroom, eat, and rest; take leave or time off to recover from childbirth; and be excused from strenuous activities and/or activities that involve exposure to compounds not safe for pregnancy.

Pregnant Workers Fairness Act (PWFA)

The PWFA, effective June 27, 2023, requires employers with 15 or more employees to provide reasonable accommodations to qualified employees and job applicants for known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation would cause the employer an undue hardship. The requirements of the PWFA are in addition to the requirements already set forth by the ADA.

The PWFA does not preempt any other federal, state, or local law that provides greater or equal protection than the PWFA. The ADA already applies to workers with disabilities related to pregnancy, and the PWFA expands protections to the conditions related to pregnancy and childbirth, as well as related medical conditions, that are not defined as disabilities under the ADA. The federal Pregnancy Discrimination Act already provides that people affected by pregnancy, childbirth or related medical conditions may not be discriminated against compared to similar nonpregnant people.