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TO: All Law Enforcement Chief Executives and County Prosecutors

FROM: Matthew J. Platkin, Acting Attorney General

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SUBJECT: **Protocols Regarding Pregnant Officers**

In 2020, Governor Murphy signed new legislation designed to ensure that every law enforcement agency in New Jersey is “comprised of law enforcement officers who reflect the diversity of the population of the community the agency is charged with protecting.” N.J.S.A. 52:17B-4.10 (the “Act”). Pursuant to the Act, in 2021, the Attorney General’s Office issued guidelines (“2021 Guidelines”), concerning diversity in recruiting and the collection of data on officer and applicant demographics.

Under the 2021 Guidelines, agencies submitted demographics of current officers to the Attorney General. That data collection showed an underrepresentation of women law enforcement officers. In 2021, women officers comprised ten percent of officers statewide, similar to national proportions. By rough comparison, over half of all New Jersey’s residents are women.

Increasing the representation of women in law enforcement requires a sustained focus on improving working conditions for women who choose to enter this profession. These supplemental Guidelines on providing reasonable accommodations to pregnant officers are an initial step in that effort. Pregnancy and breastfeeding can create unique professional challenges for workers across industries, and those challenges are exacerbated by the demands of a career in law enforcement. As a result, providing guidance to law enforcement agencies regarding appropriate protocols concerning pregnant officers will ease professional burdens, help recruit diverse officers, and remove obstacles to promotion and professional success.

The procedures laid out below apply various federal and state laws concerning treatment of pregnant employees to the law enforcement context. These Guidelines are intended to promote the Act’s goal of improving diversity among our law enforcement officers, including gender diversity, and are issued pursuant to the Act’s mandate. N.J.S.A. 52:17B-4.12.¹

¹ The terms “law enforcement agency” and “law enforcement officer” are defined as in the Act.



I. General principles

- A. ***Equal treatment.*** Under federal and state law, officers affected by pregnancy or breastfeeding must be treated the same for all employment-related purposes as other officers not so affected but similar in their ability to work. Agencies must provide reasonable accommodations when requested by pregnant or breastfeeding officers, unless doing so would pose an undue hardship to the agency under applicable law.²
- B. ***Accommodation requests generally.*** Pregnant officers should make accommodation requests through established state Law Against Discrimination (LAD) and federal Americans with Disabilities Act (ADA) processes with the agency's human resources unit. Agency and officer should then engage in an interactive process regarding the accommodation request.
1. The interactive process refers to the dialogue between agency and officer to determine if the officer requires a reasonable accommodation, and if so, what accommodation is appropriate under the circumstances. Communication with the officer is integral to the process.
 2. Per the LAD, N.J.S.A. 10:5-12(s), officers who become pregnant and request an accommodation based on a physician's advice have a right to reasonable accommodation, which may include breaks for bathroom use or increased water intake, periodic rest, assistance with manual labor, job restructuring or modified work schedules, and temporary transfers to less strenuous or hazardous work.
- C. ***Response to notification of pregnancy.*** Consistent with applicable law, after the agency is notified of an officer's pregnancy, the agency shall not reassign the officer to a modified duty status³ nor require the officer to take leave unless (i) requested by the officer or (ii) the officer is unable to perform the essential functions of the job (particular to their duty status) with reasonable accommodation and a temporary waiver of the essential functions would pose an undue hardship on agency operations.⁴
- D. ***No performance evaluation impact or penalties.*** Any reasonable accommodation, such as avoiding assigning a pregnant officer to certain tasks, measures concerning firearms qualification or firearms generally, or otherwise accommodating the officer, shall not have a negative impact on the pregnant officer's performance evaluation, nor shall the officer be penalized for requesting or using an accommodation.

² The terms "pregnancy or breastfeeding" are defined as in N.J.S.A. 10:5-12(s). References in these Guidelines to pregnant officers also include breastfeeding officers, where applicable.

³ The term "modified duty" refers to a temporary status performing work or tasks less than those of full duty. Examples of modified duty assignments at law enforcement agencies include clerical functions and interviewing persons (see Section V.C for additional examples).

⁴ See Delanoy v. Township of Ocean, 245 N.J. 384, 407-9 (2021). Under the LAD, an officer's inability to perform an essential function of the job does not, in and of itself, cause an accommodation for a pregnancy-related condition to pose an undue hardship on the agency. Id.

II. Continuing with full duty

- A. ***Conferring with health care provider.*** When deciding whether to continue in a full-duty assignment, the pregnant officer may confer with their health care provider and provide them materials from the agency's human resources, including, but not limited to: (1) these Guidelines and (2) the "pregnancy" chapter of the American College of Occupational and Environmental Medicine's guidance for treating law enforcement officers.
- B. ***Full-duty accommodations.*** If the pregnant officer makes a request to the agency's human resources unit or LAD/ADA coordinator to remain on full duty but avoid assignment to units in which the work may involve substances or situations that may pose a risk to the health of the officer or the pregnancy, the agency and officer should engage in an interactive process and the agency should communicate with the officer to determine whether a reasonable accommodation(s) is available under applicable law. This may involve a temporary transfer of units.

III. Uniform modifications

- A. ***Generally.*** Upon request by the pregnant officer to the agency's human resources unit, or LAD/ADA coordinator, the agency shall consider the need for uniform and equipment modifications during pregnancy, including uniform color, and the agency and officer should engage in an interactive process and communicate to determine whether a reasonable accommodation(s) is available under applicable law.
- B. ***Full duty.*** A pregnant officer on full duty may request modification of the officer's uniform to accommodate the pregnancy, including by purchasing pregnancy trousers and shirts through the agency's uniform supplier, and the agency and officer should engage in an interactive process and communicate to determine whether a reasonable accommodation(s) is available under applicable law. Any cost associated with that purchase shall be paid for in the same manner as any other uniform purchase.
- C. ***Modified duty.*** If a pregnant officer on modified duty requests an accommodation from wearing a uniform, including pregnancy trousers and shirts, the agency and officer should engage in an interactive process and communicate to determine whether a reasonable accommodation(s) is available under applicable law, which may include allowing the officer to wear plain clothes.
 - 1. If a pregnant officer on modified duty requests an exemption from wearing body armor or from wearing the officer's regulation duty belt, the agency and officer should engage in an interactive process and communicate to determine whether a reasonable accommodation(s) is available under applicable law.

IV. Firearms qualification

- A. ***Accommodations.*** A pregnant officer may choose to request an accommodation regarding

firearms qualification, including to not participate in a firearms qualification program until the officer is cleared for full-duty status post-pregnancy. Pregnant officers who fail to complete a firearms qualification test during the mandatory firearms qualification period shall be treated the same as any other officer who has not qualified. If a pregnant officer requests an accommodation regarding wearing their firearm, the agency and officer should engage in an interactive process and communicate to determine whether a reasonable accommodation(s) is available under applicable law. Agencies may not revoke firearms privileges solely because an officer becomes pregnant.

- B. ***Re-certification.*** Upon being cleared for full-duty post-pregnancy, an officer who has fallen beyond the firearms qualification period shall be scheduled for a qualification as soon as practicable.

V. **Modified-duty accommodation**

- A. ***Interactive process.*** Upon request by the pregnant officer, the agency shall consider transferring the officer to a modified duty assignment, if such transfer would not pose an undue hardship on agency operations. The agency and officer should engage in an interactive process and communicate to determine whether a reasonable accommodation(s) is available under applicable law, which may include the agency's request for medical documentation from the officer.

- 1. Regardless of whether modified or light duty status is generally offered by the agency, the LAD (N.J.S.A. 10:5-12(s)) requires agencies to consider any specific restrictions identified by a pregnant officer's health care provider, such as "temporary transfers to less strenuous or hazardous work," in providing a reasonable accommodation, unless it would pose an undue hardship on operations.

- B. ***Modified duty status hours.*** Absent the need for reduced hours as a reasonable accommodation, officers working modified duty shall maintain full-time hours.

- C. ***Examples of modified duty.*** Such modified duty may consist of, but is not limited to:

- 1. Writing police reports
- 2. Operating police radio
- 3. Interviewing persons
- 4. Clerical functions
- 5. Community and education outreach
- 6. Public information officer
- 7. Body-worn camera footage review, maintenance, and related functions
- 8. Computer operations

- D. ***Examples of assignments that could be subject to accommodation.*** Modified duty status may avoid the following tasks at the request of the pregnant officer, so long as it does not cause an undue hardship to the agency. This list is not meant to be exhaustive.

1. Alternating shift work
 2. Defensive tactics or defensive tactics training
 3. Firearms training, except simulated training
 4. Patrol duties
 5. Extensive exposure to automobile exhaust fumes such as may be experienced with intensive control/toll plaza/tunnel duty
 6. Standing for more than a certain duration
 7. Lifting more than a certain weight
 8. Exposure to high concentrations of toxins, chemical or infectious agents, or controlled dangerous substances
 9. Detainee contact
- E. ***Medical clearance for duty.*** If, after applying generally applicable medical clearance for duty requirements, including any physician opinion, a pregnant officer is determined unable to perform the essential functions of full duty status with reasonable accommodation and a temporary waiver of the essential functions would pose an undue hardship, the officer may be reassigned to a modified duty assignment. Pregnancy-related conditions may not be singled out for more rigorous procedures to determine ability to work.

VI. **Taking leave**

- A. ***Leave not initially required.*** Pregnant officers shall be permitted to continue working in either a full or modified duty status as long as they are able to with reasonable accommodation under applicable law. If a pregnant officer becomes unable to perform the essential functions of a full or modified duty status even with reasonable accommodation, and temporary waiver of the essential function(s) would pose an undue hardship, the officer will be permitted to take leave according to agency policies and applicable law.
- B. ***Temporary leave.*** Temporary leave, with a return to full or modified duty status upon medical clearance, may be a reasonable accommodation. For example, an officer who is medically cleared to return from temporary leave shall not be required to remain on leave and may return to full or modified duty status during the pregnancy or following pregnancy.
- C. ***Officer may seek leave.*** A pregnant officer may request to take leave during pregnancy and following pregnancy in conformance with applicable law and policies. The pregnant officer shall be treated the same as employees voluntarily seeking leave and/or sick pay because of a temporary disability.

VII. **Return to work**

- A. ***Medical clearance for return to duty.*** An officer returning to work after a pregnancy shall provide written documentation from the officer's health care provider indicating medical clearance for duty, consistent with the agency's general clearance for duty policy.

- B. ***Established return to work protocols.*** If the agency has established a general protocol for an officer's return to work after extended absence, that protocol should be followed for an officer returning to work after pregnancy or parental leave.
1. If no such policy has been established, and if requested by the officer, when an officer returns from an extended absence due to pregnancy or parental leave, the agency's human resources unit, or LAD/ADA coordinator, may meet with the officer to develop a reorientation program, to take into consideration the officer's circumstances. During that meeting, the officer should assist in identifying their individual needs, which may include accommodations requested for lactation (such as a private room and use of a refrigerator), limiting exposure to hazardous substances, uniform modifications, or a transition period back to full duty (e.g., to complete missed trainings).
- C. ***Lactation breaks.*** Per the LAD (N.J.S.A. 10:5-12(s)), reasonable break times shall be permitted for officers after pregnancy to express milk, unless the agency demonstrates the accommodation would pose an undue hardship.
1. Approved breaks should not be interrupted except in emergent circumstances.
 2. Per the LAD, agencies shall make available a suitable private room or other private location for lactation, other than a toilet stall, in close proximity to the work area.
- D. ***Bereavement leave.*** Agencies offering bereavement leave should consider making it available for pregnancy loss, consistent with applicable law and policies.

VIII. **Other provisions**

- A. ***Establishment of policy.*** Agencies without existing protocols relating to pregnant and breastfeeding officers should consider adopting agency-specific policies and practices consistent with these Guidelines, either by rule, regulation, or standard operating procedure.
- B. ***Rights preserved.*** These Guidelines are not intended to interfere with or diminish or enlarge any rights or privileges to which a law enforcement officer—whether covered by this policy or not—may be legally entitled under federal, state, or local law and any other agency policy or collective negotiations agreement.
- C. ***Non-enforceability by third parties.*** Nothing in these Guidelines shall be construed in any way to create any substantive right that may be enforced by any third party.
- D. ***Questions.*** These Guidelines provide a general framework for law enforcement agencies to implement the various federal and state laws that apply to the treatment of pregnant officers. Any questions regarding a specific application of those legal mandates should be directed to the agency's counsel that regularly provides labor and employment advice.