

State of North Carolina

ROY COOPER
GOVERNOR

December 6, 2018

EXECUTIVE ORDER NO. 82

PROMOTING HEALTH AND WELLNESS BY CLARIFYING PROTECTIONS AFFORDED TO PREGNANT STATE EMPLOYEES

WHEREAS, North Carolina state government is made stronger by the talent, diligence, experience, and integrity of its workforce; and

WHEREAS, North Carolina state government strives to retain its existing workforce and recruit new employees that can best provide services to North Carolinians; and

WHEREAS, initiatives that seek to improve employee wellness and health are vital to recruitment and retention efforts; and

WHEREAS, research suggests that workplace adjustments for pregnant workers promote physical and mental health; reduce the risk of poor birth outcomes; and increase workplace productivity, retention, and morale; and

WHEREAS, the North Carolina Office of State Human Resources (“OSHR”) issues and implements policies and procedures that protect pregnant state employees (collectively “OSHR Policies”); and

WHEREAS, the undersigned is committed to promoting policies that support pregnant workers to ensure their safety and prevent discrimination, harassment, and retaliation in state government employment.

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of North Carolina, **IT IS ORDERED**:

Section 1. Purpose

It shall be the policy of the Office of the Governor and State Agencies, as defined herein, to extend workplace protections and modifications to pregnant, State Agency employees upon request, unless doing so would impose significant burdens or costs.

Section 2. Definitions

- a. “State Agency”: Any North Carolina department, agency, board, commission, or committee for which the Governor has oversight responsibility.
- b. “Contractor”: An individual or group of individuals, however organized, that provides goods and services pursuant to a contract with a State Agency.
- c. “Subcontractor”: An individual or group of individuals, however organized, that contracts with a Contractor as defined in Section 2.b of this Executive Order.
- d. “Pregnant”: Concerning pregnancy, childbirth, or a related medical condition.

- e. “Eligible State Employee”: A State Agency employee who is pregnant.
- f. “Workplace Adjustments”: Changes in the work environment or in the way things are customarily done that enable pregnant employees to perform their jobs’ essential functions or enjoy equal benefits and privileges of employment. Workplace Adjustments may include, but are not limited to, the following temporary accommodations: (i) a change in workstation and seating equipment, and/or relocation of workplace materials and equipment to make them more accessible; (ii) more frequent and/or longer breaks; (iii) periodic rest; (iv) assistance with manual labor; (v) modified work schedules, including the option to work from home; (vi) modified work assignments; (vii) adjustment of uniforms or dress codes; (viii) provision of properly sized safety gear; (ix) temporary transfer; (x) reasonable break time and access to appropriate, non-bathroom lactation accommodations for rest and/or to express breast milk; (xi) access to food and drink and permitting meals and beverages at workstations; (xii) changes in lighting and noise levels; and (xiii) closer parking and/or access to mobile assistance devices.

Notwithstanding Section 2.g of this Executive Order, it is the undersigned’s intent to ensure that Eligible State Employees are provided the widest range of pregnancy protections, including Workplace Adjustments, upon compliance with Section 5 of this Executive Order.

- g. “Undue Hardship”: A significant difficulty or expense imposed upon an employer as a result of offering or providing Workplace Adjustments. When determining whether a difficulty or expense constitutes an Undue Hardship, an employer may consider the following factors: (i) the nature and cost of the Workplace Adjustments; (ii) overall financial resources; (iii) the number of employees and the number, type, and location of facilities; and (iv) the impact of Workplace Adjustments on the employer’s expenses, resources, or operation(s).

Section 3. OSHR Responsibility

- a. OSHR shall work with State Agencies to ensure Eligible State Employees and all relevant State Agency management and staff receive information about and understand the obligations and protections established by the OSHR Policies and this Executive Order.
- b. OSHR shall prepare and distribute updated equal employment opportunity plan guidelines (“the Guidelines”) to State Agencies. The Guidelines will set forth what information State Agencies will be required to collect regarding their efforts to educate management and staff of their obligations and employee rights under the OSHR Policies and this Executive Order. The Guidelines will also require that the information collected be included in State Agencies’ equal employment opportunity plans (“EEO Plans”). The Guidelines will be disseminated as soon as practicable to ensure the collection and reporting of meaningful data in the EEO Plans due March 1, 2019, and every year thereafter. OSHR shall compile this data and provide it to the Governor’s Office for review.
- c. Consistent with existing state law, OSHR shall take any additional steps necessary to prevent and stop discrimination, retaliation, and harassment against Eligible State Employees, including, where necessary, amending OSHR Policies in accordance with this Executive Order and providing Eligible State Employees a means of challenging adverse Workplace Adjustment determinations.

Section 4. State Agencies’ Responsibility

- a. Absent an Undue Hardship, State Agencies shall provide Workplace Adjustments to Eligible State Employees upon request.
- b. Notwithstanding Section 4.a of this Executive Order, a State Agency may require documentation from an Eligible State Employee’s health care provider certifying the necessity of Workplace Adjustments.
- c. State Agencies must post written notice of the rights afforded to Eligible State Employees under the OSHR Policies and this Executive Order. This notice must be physically displayed in a conspicuous area in each office maintained by a State Agency.
- d. A State Agency may not force an Eligible State Employee to accept Workplace Adjustments.

- e. State Agencies shall collect and compile information regarding their efforts to educate their management and staff of their obligations and employee rights under the OSHR Policies and this Executive Order. This information will be provided to OSHR in the EEO Plans due March 1, 2019, and every year thereafter, and shall include, at minimum, the following: (i) the number of notices in each of the State Agency's offices that educate management and staff of their obligations and employee rights under the OSHR Policies and this Executive Order; (ii) the content of those notices; and (iii) information regarding any additional education initiative(s) carried out by the State Agency, specifically the nature of the initiative (form and/or medium), the information conveyed, and the estimated number of management and staff who were able to obtain information from or otherwise had access to the initiative(s).
- f. State Agencies shall take any additional steps necessary to prevent discrimination, retaliation, and harassment against Eligible State Employees.
- g. Consistent with existing state law, State Agencies shall take any additional actions necessary to foster Contractor and Subcontractor compliance with OSHR Policies and this Executive Order, including, but not limited to, adopting measures that would identify whether and under what circumstances Contractors and Subcontractors may be barred from consideration from future State Agency contracts and subcontracts for failing to adopt policies consistent with this Executive Order.

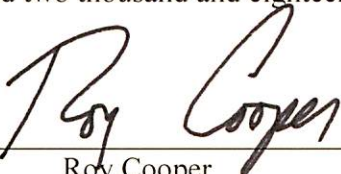
Section 5. Eligible State Employees' Responsibility

Eligible State Employees shall notify their supervisors if Workplace Adjustments are needed and may be required to provide certification from a health care provider.

Section 6. Miscellaneous

- a. Notwithstanding Section 4.g of this Executive Order, this Executive Order does not apply to counties, municipalities, political subdivisions, local government agencies, or private entities.
- b. State entities not subject to the undersigned's oversight are encouraged but not required to comply with Sections 3 and 4 of this Executive Order.
- c. Unless otherwise provided, this Executive Order supersedes and rescinds any previous Executive Order to the extent that they conflict.
- d. This Executive Order does not abrogate the workplace and contracting protections set forth in *Policies Prohibiting Discrimination, Harassment, and Retaliation in State Employment, Services, and Contracts under the Jurisdiction of the Office of the Governor*, Exec. Order No. 24, 32 N.C. Reg. 958-62 (Oct. 18, 2017).
- e. This Executive Order is effective immediately and shall remain in effect until amended or rescinded by future Executive Order of the Governor.

IN WITNESS WHEREOF, I have hereunto signed my name and affixed the Great Seal of the State of North Carolina at the Capitol in the City of Raleigh, this 6th day of December in the year of our Lord two thousand and eighteen.



Roy Cooper
Governor

ATTEST:



Elaine F. Marshall
Secretary of State

