



WORKPLACE JUSTICE

PREGNANT AT WORK? KNOW YOUR RIGHTS

No one should have to choose between a job and a healthy pregnancy. Federal law and the laws in many states and some cities protect employees from discrimination when they are pregnant.

This factsheet discusses different laws. Here is a quick set of definitions to use while you read:

- **Pregnancy Discrimination Act (PDA):** Federal law that protects pregnant workers from discrimination. It applies to employers with 15 or more employees.
- **Family Medical Leave Act (FMLA):** Federal Law that gives employees the right to take unpaid leave for a serious health condition, or to care for a family member, including a new baby. It covers employees who work for an employer with fifty or more employees and have done so for at least twelve months and at least 1,250 hours in the last twelve months.
- **Americans with Disabilities Act (ADA):** Federal law that protects workers with disabilities from discrimination and requires employers to make reasonable accommodations for disabilities. It applies to employers with 15 or more employees. Disability is defined as a physical or mental impairment that substantially limits one or more major life activities. In 2008, the ADA Amendment Act expanded the ADA's definition of disability to include "temporary impairments" like gestational diabetes.
- **State and Local Laws:** Many states and some cities have passed laws that give pregnant workers additional protections, including, in some locations, the explicit right to reasonable workplace accommodations. Check out this website for an overview: <https://www.dol.gov/wb/maps/> but be sure to check with a local attorney to ensure you have the most updated information.

If you believe that you are being discriminated against at work because you are pregnant, you can contact the Legal Network for Gender Equity here: <https://nwlc.org/legal-assistance/> to be connected to a lawyer for a free conversation to help you figure out next steps.

Common Questions

1. What is pregnancy discrimination?

Pregnancy discrimination is a form of sex discrimination. It happens when an employer discriminates against an employee because of pregnancy, childbirth or a related medical condition. For example, if an employer refuses to hire you, pays you less, gives you a less desirable job assignment, fires you or denies you benefits just because you are pregnant, that is discrimination.

Discrimination against pregnant workers became illegal when the Pregnancy Discrimination Act (PDA) passed in 1978. Among other things, it says that a pregnant person, or a person affected by pregnancy or related medical conditions must be treated the same way as other applicants or employees who are "similar in their ability or inability to work." This means that if you are pregnant, your employer needs to treat you the same way it treats other employees who are hurt, have a disability, or need changes to their job for some other reason.

If you need a temporary accommodation—a change to your job because you are pregnant or dealing with related medical conditions—the PDA generally requires your employer to treat you as well as it treat employees who need accommodations for reasons not related to pregnancy. *To learn more about pregnancy accommodations, see question 9.*



2. What is pregnancy harassment?

Pregnancy harassment happens when a pregnant person gets harassed *because* they are pregnant. Harassment because of pregnancy or any related medical conditions is unlawful sex discrimination. Harassment can take many forms. It can be verbal acts, like name-calling; images and graphics; written statements; or other actions that may be physically threatening, harmful, or humiliating. For example, if a supervisor repeatedly made statements about how pregnant women did not belong at work, that could be harassment, as could harassment focused on the sexual attractiveness or unattractiveness of pregnant women.

3. Do I have to tell my employer I'm pregnant?

There is no law that says you must tell your employer that you are pregnant. Even so, you may want to tell your employer, so your supervisor and coworkers can prepare for any time you may spend away from work to keep yourself healthy during your pregnancy or after giving birth. In addition, if you plan to take leave using the FMLA you should let your employer know at least 30 days before you plan to take leave. (This requirement does not apply if you need to take FMLA leave for an emergency or some other medical or family need of which you have less than 30 days' notice.)

4. I'm worried about telling my employer I am pregnant, what can I do?

Telling your employer you are pregnant may be stressful. Before you go in to the meeting, have a plan for what you will say and how you will say it. If you plan to return to work after giving birth, make sure you state that clearly in the meeting.

In the meeting, you should ask your employer for a copy of any workplace policies that may affect you as a pregnant worker. That could include a maternity policy, a paid leave policy, a disability policy, or some other policy. Don't forget to take notes about what your employer said and the kinds of questions they asked in the meeting. If your employer asks you to sign any paperwork, be sure to read it carefully and make sure you fully understand what it says before signing it. Always ask for a copy of anything you sign.

If you are worried that your boss will discriminate against you for being pregnant, watch closely in the weeks and months after you tell them you are pregnant for signs of retaliation and write down dates, times, and descriptions of anything that could be retaliation. Retaliation can look different for different people. *For more about retaliation, see question 12.*

5. Can my employer fire me for being pregnant?

If your employer is covered by the PDA or local or state laws that protect pregnant workers from discrimination, it cannot fire you or discriminate against you in any other way, like cutting your hours, because you are pregnant. Depending on the circumstances of your pregnancy, you may also have legal protections on the job through the FMLA or the ADA.

For a list of employment protections in each state for workers who are pregnant or nursing, check this website: <https://www.dol.gov/wb/maps/> and make sure you speak with an attorney in your area to find the most up-to-date information.

6. What if I need time off from work during pregnancy for doctors' appointments?

Federal laws such as the PDA or FMLA may protect you. Under the PDA, if your employer provides sick leave or otherwise allows employees time off to go to doctors' appointments for injuries or disabilities, it needs to treat you the same way and let you have time off for your doctor's appointment.

If you are covered by the FMLA, you can take leave on an "intermittent" basis for prenatal appointments or because you are experiencing pregnancy symptoms such as severe morning sickness. An intermittent basis means on an occasional basis.

7. Can my employer fire me for having an abortion?

There are several laws that may protect you from being fired or discriminated against just for having an abortion, or contemplating having an abortion. For example, if your employer is covered by the PDA it cannot fire you or discriminate against you in any other way, like cutting your hours, for having an abortion or even considering having an abortion. Some state or local laws may also provide additional protections to workers who have had an abortion or contemplate having an abortion. In some circumstances, you may also have legal protections on the job through the FMLA if you need time off for or following your abortion.

For a list of employment protections in each state for workers who are pregnant or nursing, check this website: <https://www.dol.gov/wb/maps/> and make sure you speak with an attorney in your area to find the most up-to-date information.

8. Can my employer fire me if I have a miscarriage?

There are several laws that may protect you from being fired for having a miscarriage. If your employer is covered by the PDA or local or state laws that protect



pregnant workers from discrimination, it cannot fire you or discriminate against you in any other way, like cutting your hours, for having a miscarriage. Depending on the circumstances of your miscarriage, you may also have legal protections through the FMLA or the ADA.

For a list of protections in each state, check this website: <https://www.dol.gov/wb/maps/> and make sure you speak with an attorney in your area to find the most up-to-date information.

9. What if I need changes on the job (aka “accommodations”) to help me work because of the pregnancy or related medical conditions?

Many women can work through their pregnancies without any changes in their jobs. But some job activities like lifting, bending, or standing for long periods might be hard at some point during some pregnancies. If so, you may have a medical need for temporary adjustments to your job so that you can continue to work safely and support your family. Those temporary adjustments are called accommodations. A few different laws may give you the right to a reasonable accommodation.

Accommodations from the PDA

If your employer is covered by the PDA, they need to treat pregnant workers the same way that they treat other workers who need changes to their jobs because of an illness, injury, or a disability.

- *Kai and Amy work in the deli at a grocery store where they are both required to go get 40 lb boxes of frozen bread out of the freezer. Kai throws out his back and cannot lift the heavy boxes. He asks to be re-assigned as a cashier until his back heals. The boss says okay. Amy is pregnant, and her doctor tells her she shouldn't lift more than 25 lbs in her third trimester. She asks her boss if she, like Kai, can be temporarily re-assigned as a cashier during the remainder of her pregnancy. The position is available, just as it was available when Kai hurt his back.*

The PDA says employers must treat employees the same in their ability or inability to work. Because the employer let Kai work as a cashier, the employer must give Amy the same treatment.

Accommodations from the ADA

Pregnancy itself is not a disability—but some pregnancy symptoms and complications can qualify as a disability if they substantially limit a major life activity. If you have a pregnancy-related issue that falls under the definition of a disability under the ADA, like hypertension, severe nausea,

sciatica, or gestational diabetes, then your employer must make “reasonable accommodations” for you, if it can do so without “undue hardship” for the employer. So, what does that mean? Relevant considerations for figuring out whether an accommodation is reasonable are: how much an accommodation might cost an employer or how much of a burden the accommodation might put on an employer. To get some ideas for accommodations to suggest to your employer, check this website: <https://askjan.org/index.cfm>

- *Adele works as a greeter at a grocery store. She is on her feet and walking most of the day. In her sixth month of her pregnancy, she develops sciatica, which is extremely painful and often leaves her unable to stand or walk.*

Adele has a disability under the ADA because she has a pregnancy-related issue that “substantially limits” her major life activities and is eligible for a reasonable accommodation, such as a stool or a reassignment to an available position for which she is qualified.

- *Mary is employed as a cashier at a clothing store. After she became pregnant, she developed recurring, severe urinary tract infections because of not drinking enough water and not going to the bathroom frequently enough. Her doctor warned her that urinary tract infections are very important to avoid because they can lead to kidney infections, which in turn can lead to pre-term labor and low birth weight. She always needs to keep water with her and stay hydrated.*

Mary has a disability under the ADA because she has a pregnancy-related issue that “substantially limits” her major life activities. Mary is eligible for a reasonable accommodation, such as additional breaks to drink water and use the restroom.

Accommodations from State and Local Law

Your state, city or local area might also have laws that require your employer to provide accommodations to a worker who is limited in her ability to work because of pregnancy, childbirth, or related medical conditions, unless the accommodation would be an undue burden on the employer. Although the details of the laws vary from state to state, they share a core principle: a pregnant worker with a medical need for accommodation should not be pushed out of work when she can be reasonably accommodated without imposing an undue hardship on the employer. Check if your state or municipality has passed a pregnancy accommodations bill: <https://nwlc.org/resources/pregnancy-accommodations-states/>.



10. If I need an accommodation and my employer says I can't have it, can I be forced to go on unpaid leave?

Sometimes an employer forces a pregnant worker who seeks a temporary accommodation to go on unpaid leave instead, even when she wants to keep working. This can lead to the pregnant worker using all her available leave before her baby is born and then either losing her job or being forced to return to work immediately after giving birth.

Before you agree to go on unpaid leave, have a conversation with your doctor to ensure any workplace limitations the doctor recommended are tailored for you. For instance, do you need a limit on how much you can lift because you have a high-risk pregnancy? Or does your doctor give the same note to everyone? Explain to your doctor that you want to have a safe and healthy pregnancy, but also want to avoid unnecessary limitations.

Factors to consider when figuring out whether an employer can require you to go on leave rather than making an accommodation that would allow you to continue to work include; whether you need the accommodation because of a pregnancy-related disability, what protections the law in your state provides, whether the accommodation that you need is reasonable and would allow you to successfully perform your job, and (if you don't have a pregnancy-related disability) how your employer treats those who need similar accommodations for reasons not related to pregnancy. If your employer is forcing you to take leave rather than making an accommodation that allows you continue to work, it may be a good idea to consult with an attorney to discuss whether this is unlawful discrimination. If your employer is forcing you to use your FMLA leave, this could also be unlawful.

Some state laws explicitly provide that an employer cannot force you onto leave if another reasonable accommodation is available that would allow you to continue working. Check your state laws here: <https://nwlc.org/resources/pregnancy-accommodations-states/>.

11. If I don't need an accommodation, can my employer make me go on unpaid leave?

Sometimes an employer forces a pregnant worker to go on unpaid leave, even when she wants to keep working and does not need an accommodation in order to do her job. If you can perform your job (and the employer is covered by the PDA) it is unlawful for your employer to force you to take unpaid leave. Even if your employer is claiming it is acting in your best interest, if your employer is forcing you to take leave based on sexist stereotypes about your ability to do your job while pregnant, this is unlawful discrimination. If your employer is forcing you to use your FMLA leave, this could also be unlawful.

12. Can my employer punish me for asking for a reasonable accommodation or reporting pregnancy discrimination?

No—this is retaliation. Retaliation is illegal, and it may look different in different workplaces. You may have been retaliated against if you have experienced discipline or threats; cut hours or fewer responsibilities; increased scrutiny or lower performance evaluations; transfer to a less desirable position; verbal or physical abuse; being reported or threats to be reported to immigration authorities or police; false rumors; more difficult work assignments.

13. I think I am being discriminated against, what should I do?

Document everything. Write down what happened to you. Keep notes and a timeline.

Check to see if your employer has an anti-discrimination policy. This may be on the employer's website or in an employee handbook. You can also ask a supervisor or someone in Human Resources (if your employer has an HR department) whether there is an anti-discrimination policy. Ask for a copy.

If there is a policy, follow the steps in the policy to report the discrimination.

If there is no policy, talk with a supervisor or someone else in a position of power at the organization who you trust who may be able to help. Explain what is happening ask for that person's help in getting the behavior to stop.

If your employer has no policy and there is no one at your organization who you can talk with without being retaliated against (for instance, you work at a company with 15 employees and the person harassing you is the CEO), you can go directly to the EEOC. But be aware, the EEOC normally requires you to use internal processes before filing a charge.

14. How do I start the legal process?

Lawsuits can be time consuming, expensive, and often emotionally difficult. But if you are not able to stop the discrimination yourself, or through your employer's internal policies, taking legal action may be your best bet

The first step in bringing a legal complaint of pregnancy discrimination under federal law is to file a charge of discrimination with a federal agency called the Equal Employment Opportunity Commission (EEOC) which has offices throughout the country. There are also state and local "Fair Employment Practices Agencies" in some areas where you can file a charge using state anti-discrimination laws.



Normally, you must file a charge of discrimination within 180 days of the discrimination. Because of some state laws, in some areas you may have up to 300 days to file, but it is best not to wait to file a charge. The agency you file the charge with will investigate and then you can and obtain a “right to sue” letter from the agency which will allow you to file a lawsuit in court. Once you receive the “right to sue” letter, you only have 90 days to start a lawsuit in court.

- To contact the nearest EEOC office in your area by phone, call 1-866-408-8075. The system will automatically recognize your area code and connect you to the office that corresponds with the area code associated with your phone number.
- To find your nearest EEOC office online, visit <https://www.eeoc.gov/field/index.cfm>. You can ask your local EEOC office how to contact any state or local agencies in your area.

If you are an employee of a federal government agency, you must first contact the agency’s Equal Employment Opportunity (EEO) counselor within 45 days of the date the discrimination occurred. The EEO counselor will try to resolve the issue and if it fails to do so will give you notice about how to file a formal complaint. If you decide to file a formal complaint, you must do so with the agency’s EEO office within 15 days from the day you receive notice. When the agency completes its investigation, it will issue a notice allowing you to either request a hearing before an EEOC Administrative Judge, or to request that the agency decide about whether discrimination occurred. If the agency finds no discrimination occurred, or if you disagree with the decision, you can appeal the decision to the EEOC or file a lawsuit in federal court.

15. How long do I have to file a charge?

There are important time limits that apply to pregnancy discrimination claims. If you are relying on the federal PDA, you have 180 days, or six months from the date you were discriminated against to file a complaint with the EEOC or your state agency. In some states, the time limit is 300 days. Using internal company procedures does not extend the time limit under federal law, although it may under some state

laws. (Note the separate time limits that apply to federal employees, described above.) You should contact your local EEOC office right away to find out the correct time limit that applies to you. To contact the nearest EEOC office in your area by phone call 1-866-408-8075. The system will automatically recognize your area code and connect you to the office that corresponds with the area code associated with your phone number. To find your nearest EEOC office online, visit <https://www.eeoc.gov/field/index.cfm>.

16. Do I need a lawyer?

You do not need a lawyer to file a charge with the EEOC, however, it is always a good idea to consult with a lawyer before you file your charge.

If you decide to sue your employer in court after you go through the EEOC process, you could represent yourself in court without a lawyer, or “pro se.” However, we do not recommend this. It is extremely helpful to have someone who understands the process to represent you and ensure you present the strongest possible case.

17. How can I find a lawyer?

You can contact the Legal Network for Gender Equity and we will send you the names of three lawyers in the Legal Network for Gender Equity who practice in your area. Lawyers in the Legal Network agree to do a free initial meeting with people coming to them through the Legal Network. Some of these lawyers also offer lower rates or free assistance, but others require payment after the first meeting.

To contact the Legal Network for Gender Equity, fill out an online intake form here: <https://nwlc.org/legal-assistance/> or call us at: 202-319-3053.

You can also check the National Employment Lawyers Association attorney database here: <http://exchange.nela.org/memberdirectory/findalawyer>.

You may also find legal help through the American Bar Association Directory: https://www.americanbar.org/groups/legal_services/flh-home/flh-bar-directories-and-lawyer-finders/.

Disclaimer: This factsheet does not constitute legal advice; individuals and organizations considering legal action should consult with their own legal counsel before deciding on a course of action.

The National Women’s Law Center works to help women and girls achieve their potential throughout their lives—at school, at work, at home, and in their communities. To find out more about our work, visit us at <https://nwlc.org/>.

