

9



Pregnancy, Childbirth & Breastfeeding

It is unlawful for an employer to treat you less favorably in the workplace on the basis of pregnancy, childbirth, or a related medical condition. This type of treatment is a form of sex discrimination. An employer is also prohibited from discriminating against workers for pumping breast milk at work and you have the right to take breaks to do so. Depending on your situation, you may have the right to additional workplace protections to adjust your working conditions or to take paid or unpaid leave if needed.



Employers routinely fire pregnant workers, refuse to hire them, strip them of seniority rights, and deny them sick leave and medical benefits given other workers. Such policies have a lifetime impact on women's careers... discrimination against women workers cannot be eradicated unless the root discrimination, based on pregnancy and childbirth, is also eliminated."

— Susan Deller Ross,
Lawyer and Professor of Law, on behalf of the
Coalition to End Discrimination Against Pregnant
Workers in her 1977 hearing testimony advocating in
favor of enacting the Pregnancy Discrimination Act.

The Workplace and Pregnancy, Childbirth, and Breastfeeding

Women who are working while pregnant, recovering from childbirth, or breastfeeding, may encounter various obstacles in the workplace, including discrimination or the unlawful denial of critical legal protections. Discriminatory or unlawful conduct by an employer is often subtle, but can have a profound impact on a woman's job, career, or financial stability.

Many employers are unaware of their legal obligations and still operate under old-fashioned ideas about pregnant or parenting women in the workplace. Thus, it is critical that you know how to identify discrimination on these grounds and are aware that you have rights you can assert to protect yourself.

Some examples of discriminatory or unlawful conduct include:

- Your employer fires you shortly after learning you are pregnant or starts issuing you negative employment evaluations.
- Your employer forces you to go on leave or work fewer hours

because you are pregnant, even though you are still able to fulfill your regular duties.

- You are pregnant and your employer denies you a promotion and tells you to try again after you have your baby.
- Your employer allows people to take paid leave for various injuries that occur outside the workplace but refuses to allow you to take paid leave to recover from complications from childbirth.
- You apply for a job and the employer asks you if you are pregnant or planning to have a child during the interview.
- You ask for a private location to pump milk at work and you are told to pump in the bathroom.
- You ask for breaks to pump milk at work and you are told that is not an option given the nature of your work. You are then disciplined every time you take a break to pump.

What are My Legal Rights?

NON-DISCRIMINATION: Under federal law, which applies to employers with **15 or more employees**, or under New York State law, which applies to employers with **4 or more employees**, an employer is prohibited from treating you less favorably on the basis of pregnancy, childbirth, or a related medical condition.¹⁶⁹ Discrimination on these grounds is a form of sex discrimination. In New York, it may also constitute familial status discrimination.

This means that it is unlawful for an employer to pass you over for a job or promotion, fire you, pay you less, or deny you workplace opportunities or benefits because you are pregnant. Your employer cannot force you to take a leave of absence upon learning of your pregnancy or related medical condition, unless you are prevented from performing your duties in a reasonable manner.

If you are temporarily unable to perform your job functions due to a medical condition related to pregnancy or childbirth, your employer must treat you the same way it treats other employees who need changes on the job because of injury or illness, who may be temporarily disabled employees. You should be eligible for the same benefits or accommodations as other temporarily disabled workers, and you cannot be forced to comply with stricter procedures to verify eligibility.

REASONABLE ACCOMMODATIONS: If you are pregnant and working, you may need to request certain adjustments to your work conditions in order to fulfill your duties while pregnant. This is called a reasonable accommodation.

Examples of Reasonable Accommodation Requests:

- A request for additional bathroom breaks.
- A request to use of a chair or to take periodic rest if you stand for long periods of time.
- A request to be transferred to a job with lighter duty if you have to do lifting above the limit specified by your doctor.
- A request to take leave for a condition arising from pregnancy or childbirth.
- A request to work from home or to change your work schedule.
- A request for a fan based on workplace conditions and impact on your pregnancy.
- A request to work at an alternative site if you work in a very hot location.

Under the federal Pregnancy Discrimination Act (PDA), your employer must treat pregnant workers the same way it treats workers with an illness, injury, or a disability who need a workplace adjustment. That means that if your employer provides a reasonable accommodation to one of your colleagues who was suffering from a medical condition based on a car accident, your employer is responsible for also providing you a reasonable accommodation if you are suffering from a medical condition based on your pregnancy or due to childbirth.

Pregnancy itself is not a disability, however, you may also be entitled to a reasonable accommodation under federal and

state disability laws, if you have medical condition as a result of pregnancy or childbirth that qualifies as a disability,¹⁷⁰ such as hypertension, severe nausea, sciatica, or gestational diabetes. Your employer must work with you to find a reasonable accommodation that works for you so long as it does not create an undue hardship for the employer or prevent you from completing your essential work functions.

NOTE: Under federal law, a person with a disability is defined as a person who has a physical or mental impairment that substantially limits one or more major life activities, a person who has a history or record of such an impairment, or a person who is perceived by others as having such an impairment. Under New York State law, a disability is defined as a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques.¹⁷¹

Under New York State law, if you work for an employer with **4 or more employees**, you are entitled to a reasonable accommodation if you have a pregnancy-related medical condition, unless the employer can show that it would be very difficult or costly for your employer to comply.¹⁷² Your employer's refusal to do so may constitute unlawful discrimination. You are required to provide medical documentation to verify the condition if your employer requests it.


NOTE: If you are able to perform your work functions, it is unlawful for your employer to force you to take unpaid leave and must let you keep working. If you can no longer perform your essential work functions and your employer legitimately cannot provide a workable accommodation or refuses to provide one because it is not legally required to do so, your employer may give you the option to go on unpaid leave. This can create a host of problems. If you are placed in this position, speak with your employer and your doctor to see if there are any workable solutions that would allow you to keep your job.

NYC: Protections are stronger if you work in New York City (NYC), where any employer with **4 or more employees** must provide a reasonable accommodation for pregnancy, childbirth, and related medical conditions (e.g., post-partum depression, miscarriage, and abortion) to help you perform the essential functions of your job.¹⁷³ You do not need to have a pregnancy-related condition. Your employer can still deny the request if it would be too difficult or costly to comply or if the request prevents you from performing the basic requirements of your job. Employers in NYC also have an obligation to provide notice to new and existing employees about their rights under this provision.

TIME OFF: Under your employer policy or handbook, you may be able to use available vacation, sick, or personal time off to address your needs. Note, that your employer may be engaging in unlawful discrimination if it denies your request but has approved requests from your coworkers on other comparable grounds such as for personal needs, doctor's appointments, and family emergencies. Be sure to inform your employer in advance and as early as possible and comply with your workplace policy for requesting and taking personal time off. As discussed above, you may also be able to request time off as a reasonable accommodation.

Under the federal Family and Medical Leave Act (FMLA) you may be eligible for 12 weeks of unpaid, job-protected leave to recover from a serious health condition, which can include health conditions that arise from pregnancy or childbirth. To be eligible, you must work for a private employer with more than 50 employees or a public employer, regardless of the number of employees. You must also have worked for your employer for at least 12 months for at least 1,250 hours over the past 12 months.

SHORT-TERM DISABILITY BENEFITS: Under New York State Law, employers must provide temporary disability benefits for pregnancy and child-birth related disabilities.¹⁷⁴ The typical period of pregnancy-related disability is four to six weeks prior to a woman's due date and four to six weeks after delivery. Eligible workers can receive 50% of the employee's average weekly wage capped at the maximum benefit allowed.

 **FARMWORKERS:** Farmworkers who meet program requirements are now eligible to receive disability benefits in New York State.¹⁷⁵

HARASSMENT: It is unlawful for an employer, supervisor, co-worker, or client to harass a woman at work due to pregnancy, childbirth, or a related medical condition. For example, it is unlawful for your boss or co-workers to make negative comments about your pregnancy and then question your ability to do your job. However, to be legally actionable, the harassment has to result in a negative employment action, such as termination, demotion, reduction in hours, or be so severe or frequent that it creates a hostile or offensive work environment.

BREASTFEEDING/LACTATION: Your employer, regardless of size, is prohibited from discriminating against you or penalizing you for pumping breast milk at work.¹⁷⁶ Additionally, New York State law now makes clear that lactation is a pregnancy-related condition, which means that covered employers must provide reasonable accommodations for lactation needs. All employers must provide a reasonable unpaid break or allow you to use paid break time or meal time to pump breast milk for up to 3 years after your child's birth.¹⁷⁷ Your employer must provide a room or location close to your work area to pump in private (shielded from view and intrusion).¹⁷⁸ This should not be a bathroom. In NYC, additional

protections and requirements apply regarding lactation rooms and your employer must have a written lactation accommodation policy in place.¹⁷⁹ If you know that you plan to pump, you should notify your employer in advance so that necessary arrangements can be made.

RETALIATION: It is unlawful for your employer to engage in “retaliation” (punish you) if you address or challenge discrimination on the basis of pregnancy, childbirth, or a related medical condition or for requesting a reasonable accommodation on these grounds. This means that your employer is violating the law if it fires you, demotes you,

suspends you, cuts your pay or work hours, assigns you more difficult work duties, or starts issuing poor performance evaluations to punish you for asserting your rights.

Note that while retaliation is illegal, there are always risks to reporting and your employer may still penalize you for taking action. If that happens, remember that retaliation is a separate violation of the law. This means that, in some cases, even if an employer is found not to have discriminated against you, they may still be held accountable for retaliating against you and may be required to pay damages.



What Can I Do to Assert My Rights?

If you have concerns or believe that your rights have been violated, there are various actions you can take to advocate for yourself. In addition to the general guidance in Section 1, consider the following:

NOTIFY YOUR EMPLOYER ABOUT THE LAW:

Many employers are not well-informed about their legal obligations, especially since there have been recent changes to the law. If you think that your employer is not complying with the legal requirements above or is improperly denying you a benefit to which you are entitled, consider speaking with your employer and notifying them about the legal requirements. You can speak with a legal services organization or advocate like Legal Momentum, to get more guidance on whether you are covered and how to speak with your employer.

REVIEW YOUR WORKPLACE POLICY, EMPLOYMENT CONTRACT, AND/OR UNION CONTRACT:

Your workplace policy or union contract may include stronger protections, so you should review them to see if you are entitled to more than what the law requires.

FILE AN ADMINISTRATIVE COMPLAINT: If your employer did not appropriately address your discrimination complaint, you can contact or file a formal administrative complaint. Depending on the type of benefit you are seeking, the agency may vary. To file a discrimination complaint or to challenge the denial of a reasonable accommodation request, you can file with your local equal employment agency, the New York State Division of Human Rights (<https://dhr.ny.gov/contact-us>), or the EEOC (<https://www.eeoc.gov/field/newyork/charge.cfm>).