

Pregnancy Discrimination and Leave

YOUR LEGAL RIGHTS

1. Am I protected against pregnancy discrimination at my job?

Under federal law, it is illegal for employers to discriminate against (meaning treat differently or unfairly) employees or job applicants because they are pregnant. Employers may not fire or refuse to hire or promote a woman based on her pregnancy.

California state law also prohibits discrimination in employment due to pregnancy, childbirth, or related medical conditions. Under the state law, it is illegal for an employer to discriminate on the basis of pregnancy with respect to hiring, firing, training, compensation, or virtually any other aspect of employment.

2. Do laws prohibiting pregnancy discrimination apply to all employers?

No. Pregnancy discrimination laws apply only to workplaces with a certain number of employees. The federal law applies only to workplaces with 15 or more employees, as well as all employment agencies, apprenticeship or training programs, and labor organizations. The California law applies only to workplaces with 5 or more employees, as well as all employment agencies, labor organizations, state licensing boards, and state and local governments. The number of employees in your workplace determines whether one or both of these laws apply to you and your legal rights with respect to disability leaves, returning to work, and benefits relating to pregnancy, childbirth and related conditions.

Certain employees have additional leave and return rights for reasons of health or child bonding under the Family Medical Leave Act and the California Family Rights Act, which are briefly described in Section 8.

3. If I'm pregnant, can my employer treat me differently than other employees who are temporarily disabled for other reasons?

Under federal law, an employer must treat a pregnant employee who is temporarily unable to perform the functions of her job due to pregnancy the same as other temporarily disabled employees. For example, if a pregnant employee's job requires heavy lifting and if other employees temporarily unable to lift (such as employees with back injuries) are relieved of that duty, pregnant employees who are unable to lift must also be temporarily relieved of that duty.

Employers may have a range of practices for handling temporary disabilities, from providing modified tasks or alternative assignments to requiring disability leave or leave without pay. Under California law, pregnant women may be entitled to a transfer to a less strenuous or hazardous position upon request. Many employers are willing to provide accommodation short of a transfer if they can do so reasonably.

4. Do I have the right to take a leave of absence due to my pregnancy?

Federal law requires that pregnant employees have the same leave rights as employees who are allowed a leave from work for other temporary disabilities. An employee's rights with respect to pregnancy leave are therefore determined, under federal law, by the employer's general disability leave policy and the Family and Medical Leave Act, if applicable. (See the Fact Sheet titled “**Paid Family Leave**” for more information.)

If you are disabled (unable to perform your essential job functions) due to pregnancy, childbirth or a related medical condition, leave is permitted under the California law. Such leave is normally limited to the time you are medically disabled (based on the opinion of your physician or other licensed care practitioner) and is not to exceed four months. If, however, other employees at your job receive more than four months of leave for other types of temporary disability, the same amount of leave must be made available to you for more than four months. Note: Even for a normal pregnancy, childbirth or related medical conditions, your employer is still required by law to provide a leave of at least six weeks.

Although the leave required by law is an unpaid leave, if your employer provides paid leave for other temporarily disabled employees, the same amount of paid leave must be made available to you. Also, pregnant women are entitled to short-term disability insurance (SDI) paid by the State of California. Contact your local Employment Development Department office for more information regarding entitlement to SDI.

5. Can my employer force me to take mandatory time off during my pregnancy?

An employer cannot force a pregnant employee to take a mandatory leave if she can still perform the essential job functions. Furthermore, if an employee has been absent from work for a pregnancy-related condition and recovers, her employer cannot require her to remain on leave until after the baby is born. An employee must be permitted to work at all times during pregnancy when she is able to perform her job.

6. Does a pregnancy disability leave have to be taken all at once?

No. Your pregnancy disability leave may be taken before or after the child is born, in brief increments (for morning sickness, for example), and at any time you are physically unable to work because of pregnancy, childbirth, or a related medical condition.

7. What protections do I have when I return from pregnancy leave?

Federal law requires employers to provide the same rights to employees who return from pregnancy leave as it provides to employees who return from other non-pregnancy-related absences. California law requires that if an employee returns to work at the end of the four-month pregnancy leave, she is entitled to the same position or a position which is similar in terms of pay, location, content and promotional opportunities.

If your disability leave lasts longer than four months, your employer is not required to hold the job for you. However, you are entitled to the same rights given to other employees who may have taken non-pregnancy-related leaves of over four months.

8. Do I have a right to leave when my child is born, adopted or ill?

Under the Family and Medical Leave Act of 1993 (a federal law known as the FMLA) and the California Family Rights Act (CFRA), both male and female employees are entitled to take up to 12 weeks of unpaid leave for the birth or adoption of a child, to care for a sick child, spouse or parent, or because of the employee's own serious health condition. These laws require that an employee who takes a leave for one of these reasons be restored to the same or a similar position upon return. Both of these laws, however, apply only to workplaces where there are 50 or more employees within a 75-mile radius of the worksite. (See the Fact Sheets titled “**Leave from Work to Care for a Family Member**,” “**Leave from Work: Pregnancy/Prenatal Care/Bonding with a New Child**” and “**Leave from Work for Your Own Health Condition**” for more information.)

9. What benefits am I entitled to while I am pregnant?

Under federal law, employers with 15 or more employees are required to provide health insurance coverage for pregnancy on the same terms as it is provided for other types of medical conditions or disabilities. An employer must also provide the same benefits for absences due to pregnancy-related conditions as it provides for absences due to other temporary disabilities under any health insurance, disability insurance or sick leave plan, including the amount of leave, extensions to leave, and reinstatement.

When calculating vacation time, seniority and pay increases, your employer may not treat time spent on pregnancy leave differently than time spent on leave for other reasons. You may also request the use of your accrued vacation or sick leave during the disability period.

10. Are employers required to cover costs of pregnancy and childbirth?

California law provides that pregnant women receive the same benefits or privileges of employment provided to other employees with temporary disabilities. However, employers are not required by law to provide pregnant employees with health care coverage for the medical costs of pregnancy, childbirth, or related medical conditions.

11. Is harassment relating to pregnancy the same thing as sex harassment?

Harassing or unwelcome conduct relating to pregnancy, childbirth or related conditions is sexual harassment when the conduct creates a hostile, intimidating or offensive work environment, or when it interferes with your performance at work. Your employer is responsible for the harassment by its supervisory employees regardless of whether the employer knew of the harassing conduct. Your employer is responsible for harassment between fellow (non-supervisory) employees if the employer knew or should have known about the conduct, unless the employer shows it took immediate and appropriate steps to correct it. This law prohibiting sexual harassment applies even to employers with only one employee.

12. What steps should I take if I believe I have been discriminated against because of pregnancy or childbirth?

- Maintain a detailed record of all acts of discrimination with the names of all witnesses.
- File a complaint with the Department of Fair Employment and Housing (no later than one year after the earliest discriminatory act) and/or file a complaint with the Equal Employment Opportunity Commission (no later than 300 days after the earliest discriminatory act).
- Be sure to name as defendants all responsible parties. For example: the company, the harassing parties, your supervisor(s), etc.
- Contact an attorney or the Employment Law Center (415.864.8208) to discuss the strength of your case and your legal options.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

For further information about your employment rights, please call:

The Work & Family Project
(800) 880-8047 or (415) 593-0033

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