



What You Need To Know About the Federal Law & Pregnant, Post-Partum & Breastfeeding Workers

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This FAQ provides an overview of federal laws protecting pregnant, post-partum, and breastfeeding women. The applicability of these laws depends on the size of your workplace and nature of your work. Because your state or local government may provide additional protections, you should also check the laws where you work. You can also consult an [overview of your rights](#) when pregnant or breastfeeding on the job.

PREGNANCY DISCRIMINATION ACT (PDA) OF 1978

What is it?

The PDA made clear that Title VII of the Civil Rights Act, which prohibits employment discrimination on the basis of sex, also prohibits discrimination on the basis of pregnancy. The law requires that women affected by pregnancy, childbirth, or related medical conditions be treated the same for all employment-related purposes, including job benefits, as other workers who are similar in their ability or inability to work.

What does it do?

The PDA applies to hiring, promotion, benefits, firing, and all other terms and conditions of employment. The PDA's pregnancy-related protections include:

- Freedom from discrimination or harassment on the basis of pregnancy or related condition (including conditions such as miscarriage, pregnancy termination, recovery from childbirth, and lactation);
- Freedom from discrimination motivated – even just in part – by your pregnancy condition, such as being fired for being pregnant and unmarried;
- Equal access to job modifications—like light duty—as other temporarily disabled employees;
- Freedom from being "pushed out" of the workplace or required to take early leave because of pregnancy, childbirth, or lactation;
- Health insurance coverage for pregnancy-related conditions, as long as the employer provides coverage for other medical conditions;
- The right to the same treatment as other employees, including temporarily disabled employees, who are similarly able (or unable) to perform their jobs for all purposes, including accrual and crediting of seniority, vacation calculation, pay increases, and temporary disability benefits.

Whom does it cover?

Title VII, and thus the PDA, covers employers with 15 or more employees—including federal, state, and local governments. Title VII also applies to employment agencies and labor organizations.

THE NURSING MOTHERS PROVISION OF THE FAIR LABOR STANDARDS ACT (FLSA)

What is it?

The Patient Protection and Affordable Care Act (ACA or Obamacare) modified the Fair Labor Standards Act (a law that establishes basic job protections like minimum wage and overtime pay) to require that covered employers provide eligible employees with the right to pump breast milk on the job.

What does it do?

Under the Nursing Mothers Provision, covered employers must grant eligible employees:

1. Reasonable break time to express breast milk for a nursing child for one year after the child's birth; and
2. A place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used to express breast milk.

The law also protects workers from retaliation (like reassignment to a less desirable job, taking away job duties or benefits, or firing) for asserting their rights or filing a complaint about these issues, if they seek to assert these rights on the job.

Whom does it cover?

This provision applies to employers who are involved in interstate commerce and whose gross revenue is at least \$500,000/year. Employers with fewer than 50 employees may seek exemption from the break time requirement if compliance with the provision would impose an undue hardship [1]. Only non-exempt (generally hourly) employees are covered under the Nursing Mothers Provision.

FAMILY MEDICAL LEAVE ACT (FMLA)

What is it?

The FMLA requires covered employers to provide eligible employees with 12 weeks of unpaid, job-protected leave for certain family and medical reasons.

What does it do?

- The FMLA permits covered employees to take leave for the following pregnancy and parenting-related reasons (as well as other reasons not listed here):
 - The birth of a child;
 - The care of a newborn within one year of birth;
 - The care of an adopted or foster care child within one year of placement;
 - The care of a child with a serious health condition;
 - A serious health condition (including pregnancy) that makes an employee unable to perform the essential function of his or her job.
- The law requires continuation of health insurance coverage on the same terms as before the leave.
- Covered employers are prohibited from discriminating against employees who take FMLA leave, and must treat FMLA leave the same as other comparable types of leave for purposes of accruing seniority and benefits.
- After the leave is over, employees have the right to reinstatement to the same job they held prior to taking the leave, or one of similar pay and level.

Whom does it cover?

The FMLA generally covers public [2] and private employers with at least 50 employees in a 75-mile radius. To qualify for FMLA coverage, an employee must work for a covered employer at a location where the employer has 50 or more employees within 75 miles; have worked for the employer for at least 12 months (need not be consecutive); and have worked 1,250 hours during the 12 months before the start of leave.

AMERICANS WITH DISABILITIES ACT (ADA)

What is it?

The ADA makes it unlawful for an employer to discriminate against or harass a qualified employee because of his or her disability. The ADA also requires employers to provide reasonable accommodations to employees with disabilities, unless those accommodations would constitute an undue hardship for the employer.

What does it do?

Although courts do not consider pregnancy alone to be a disability, the ADA provides protection for workers with pregnancy-related impairments [3], such as gestational diabetes or preeclampsia (a condition characterized by pregnancy-induced high blood pressure). Thus, an employer may have to provide a reasonable accommodation—such as leave or modifications that enable an employee to perform her job—for a disability related to pregnancy, absent undue hardship such as significant difficulty or expense.

Whom does it cover?

The ADA's employment provisions apply to private employers, state and local governments, employment agencies, and labor unions. Employers with 15 or more employees are covered.

[1] Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in

comparison to the size, financial resources, nature, and structure of the employer's business.

[2] However, the FMLA's self-care provision may not be enforced through a private lawsuit against a state employer.

[3] The ADA Amendments Act of 2008 makes it easier to show that a medical condition is a covered disability. For example, temporary impairments, like most of those associated with pregnancy, are now covered. For more information about the ADA, see <http://www.eeoc.gov/laws/types/disability.cfm>. For information about the ADA Amendments Act, see http://www.eeoc.gov/laws/types/disability_regulations.cfm.

ADDITIONAL RESOURCES

- [ACLU Comments to Dept of Labor on Break Time for Nursing Mothers \(2011 resource\)](#)
- [ACLU Comments to the Equal Employment Opportunity Commission on Pregnancy and Caregiver Discrimination](#)

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