

A BETTER BALANCE
WORKERS
WITH FAMILY
RESPONSIBILITIES

A Guide to Your Rights at Work

A BETTER BALANCE

A Better Balance is a dynamic legal team fighting to help American workers get the time and flexibility they need to care for their families. We strive to reshape laws and workplace practices to fit the needs of today's labor force and ensure that families are prioritized—not punished—at work.

**“Workers With Family Responsibilities:
A Guide to Your Rights at Work”
by Phoebe Taubman**

Equal Justice Works Fellow and Project
Attorney with A Better Balance

©2009

WORKERS WITH FAMILY RESPONSIBILITIES

A GUIDE TO YOUR RIGHTS AT WORK

Do you feel caught between the demands of your job and the needs of your family? Have you ever been docked pay or disciplined at work because you had to leave early to pick up a sick child at school or take an ailing parent to the doctor? You are not alone. Millions of New Yorkers struggle every day to balance work with their family responsibilities, especially working parents and other caregivers who have little flexibility or control over their work hours and limited access to paid time off.

This guide is here to help. In the pages that follow, we aim to answer common questions you may have about your rights when it comes to managing work and family responsibilities. We encourage you to review the chart at the end of this booklet, which summarizes the relevant laws, how they are enforced, and tells you how to learn more about them. Finally, because this guide is not comprehensive, and is not a substitute for legal advice, we have included a resource list of legal organizations whom you can contact for further assistance.

What kinds of rights do I have to help me balance work and family?

In general, there are two kinds of laws that exist to help working families. The first set of laws grants you a benefit, like a certain amount of time off or a certain amount of money to replace your wages if you have to take a leave of absence to care for a family member. One example of such a law is the Family and Medical Leave Act (FMLA), which guarantees up to 12 weeks of unpaid, job-protected time off for eligible employees to care for a seriously ill family member, a new child, or to recover from their own serious health condition (including pregnancy). The FMLA covers employees who work for employers with 50 or more employees, and who have worked at least a year for their employers (and 1250 hours in the most recent year).

The second set of laws guarantees you the right to be free from certain actions by others. These laws protect you from discrimination at the workplace based on your family and caregiving responsibilities. The Pregnancy Discrimination Act (PDA) falls into this category: it prohibits an employer from treating someone unfairly because of pregnancy and requires that pregnant women, and those affected by childbirth or related medical conditions, be treated the same as other applicants or employees with similar abilities or limitations.

In addition to the rights guaranteed by law, you may be entitled to additional benefits and/or protections under your employer's policies or under a collective bargaining agreement negotiated between your employer and your union. Be sure to check with your union, if you have one, or with your company's personnel office.

I am pregnant/considering having a baby. Do I have a right to maternity leave?

It depends. The United States lags behind the rest of the world when it comes to maternity leave. U.S. law does not guarantee paid time off if you are unable to work because of pregnancy, childbirth and recovery from childbirth, which means that your rights in terms of maternity leave will vary depending on where you work.

Check your employer's policies. If you don't have an employee handbook, check with your company's human resources department. Even if your employer doesn't have a written policy for maternity leave, it may provide other types of paid or unpaid leave, which, according to the Pregnancy Discrimination Act, must be applied equally to both pregnant employees and employees with other temporarily disabling conditions. This means that if your employer provides paid sick days, you must be allowed to use them during pregnancy leave. In this case, you may want to plan ahead and save up as many sick days as you can, along with any other paid vacation or personal days, for use during your maternity leave. However, keep in mind that your employer may restrict how many paid days you can carry over from year to year.

What is the Family and Medical Leave Act?

Family and Medical Leave Act (FMLA) is a federal law designed to help working parents and other caregivers balance work and family. Under the FMLA you may be eligible to take up to 12 weeks of unpaid leave to care for a newborn or newly adopted child. In order to be eligible, you must work for an employer who has at least 50 employees working within a 75 mile radius of each other and you must have worked for this employer for at least one year and you must have worked at least 1250 hours in the 12 months before taking leave. You may take part of your leave on a reduced schedule to care for a newborn or newly

adopted child, with your employer's approval. For example, you might be able to take 6 weeks of unpaid leave and then return to work half-time for 12 more weeks. Although you would be using leave time for part of 18 weeks, your total time off work would be within the legal limits.

How do I apply for FMLA leave?

If you know in advance that you will need FMLA leave, you must ask your employer for leave at least 30 days before you expect to need it. If your need for leave is unforeseen, you must alert your employer of your need for leave as soon as possible. Under the FMLA, your employer must allow you to return to your job, or an equivalent one, upon your return from maternity leave and must continue any health insurance benefits you receive while you are on leave. Also, depending on your employer's leave policies, you may be able to use accrued paid time off during some or all of your FMLA leave, to cover your expenses while you are out of work. Even if you are not covered by the FMLA (e.g. you work for an employer with fewer than 50 employees) you may still be entitled to return to your job if your employer allows other employees with non-pregnancy related disabilities to do so.

Can I get paid while on leave?

Yes. As a resident of New York State, you are also eligible for Temporary Disability Insurance (TDI), which provides some wage replacement while you are unable to work because of disability caused by or in connection with a pregnancy. Pregnancy-related disability can occur at any time during your pregnancy. In order to show that you are disabled, your doctor or certified nurse midwife must certify that you are unable to work. As long as you have worked at least 4 consecutive weeks for your employer (or 25 days of regular part-time employment), you

will be eligible for a cash benefit of 50% of your average weekly wage, up to \$170 per week, while you are on maternity leave. You may collect disability benefits starting on the eighth consecutive day on which you are disabled, and may receive the benefits for up to 26 weeks, depending on the length of your pregnancy-related disability. The usual period of disability post pregnancy is 6 weeks.

How do I apply for temporary disability insurance benefits?

Talk to your employer about filing a claim for disability benefits. If you have been unemployed more than four weeks from the date of your disability, you will need to file a claim with the New York State Disability Benefits Bureau and you may be eligible for benefits from the Special Fund for Disability Benefits. Either way, you must file your claim within 30 days after you become disabled. If you become disabled more than 4-6 weeks before your due date, or remain disabled more than 4-6 weeks after giving birth, you may be required to provide more detailed information about your disability.

Can my employer prevent me from working while I'm pregnant or require me to take a certain amount of leave?

No. It is illegal under New York law for your employer to force you to take a leave of absence because you are pregnant, unless, because of your pregnancy, you are unable to perform the required activities of your job. If you are unable to perform some of your job duties because of your pregnancy, your employer has to treat you the same as other employees whose job performance is similarly restricted because of disabilities unrelated to pregnancy.

My doctor says I should not be lifting more than 20 pounds during my pregnancy but my job involves such physical activity. Am I entitled to an accommodation or “light duty”?

Maybe. It depends on your employer’s written or unwritten policies. If other employees, who are similarly unable to work due to disability, are allowed light duty work while they are disabled, then you must be treated the same way. Unfortunately, some employers allow light duty only for workers who have been disabled on the job, and not for those who have become disabled outside of work. Some courts have found that this distinction does not necessarily violate the Pregnancy Discrimination Act.¹

Can my employer fire me because I’m pregnant?

No. Your employer is prohibited under the PDA, and under state and local law, from discriminating against you because you are pregnant. This means that an employer can’t fire you or refuse to hire you because you are expecting a baby.

The PDA does not generally protect you from discrimination after childbirth. Other laws prohibiting gender and sex discrimination may protect you in these circumstances. However, recent court cases suggest that you may be protected by the PDA from discrimination on the basis of pregnancy or childbirth even if you are not currently pregnant or suffering from any related medical condition.² For example, it is illegal for your employer to fire you after you return from maternity leave, if he/she does so based on the fact that you may get pregnant again and take additional time off.

When I return to work after giving birth, can I breastfeed my child or pump breast milk on the job?

Yes. All employers in New York, no matter what their size or the nature of their business, are required to provide break time for nursing mothers to express breast milk at work. Employers are required to make reasonable efforts to provide a clean room for new mothers to express milk in private. The New

York State Nursing Mothers in the Workplace Act also makes clear that employers shall not discriminate in any way against employees who choose to express breast milk in the workplace.

**What if my child gets sick?
Can I take time from work to
care for him/her?**

It depends on where you work. U.S. law does not require employers to provide sick days to their workers, but some employers choose to do so. If employers do provide sick days, some states require that employees be able to use those days to care for a child who is home sick from school. New York does not have such a law. The cities of San Francisco, Washington, D.C. and Milwaukee, Wisconsin recently passed laws to guarantee a minimum number of paid sick days for all workers and although a movement is underway to pass a similar law in New York City, it has not happened yet.

In the meantime, you should check your employee handbook and/or talk with your employer's human resources manager to find out the policy at your workplace. If your employer does guarantee time off for sickness, you must be able to use that time off for pregnancy-related sickness. Your employer does not have to let you use your sick time to care for an ill child. However, if your child has a serious health condition, you may be able to take up to 12 weeks of family leave to care for him/her under the FMLA. If you are eligible for such leave, you don't have to take it in the form of 12 straight weeks. Instead, you can take the time off as you need it in smaller blocks of time (i.e. a few hours or days at a time) or on a reduced/part-time schedule.

**Do I have the right to
change my schedule so I can
take care of my kids?**

Generally no. You are not guaranteed the right to a flexible work arrangement. That being said, if you are providing care for a new child or an ailing relative and are eligible for FMLA leave you may take that time off

in smaller increments of time than the full 12 weeks in a row. This may mean that you end up with a reduced-hour day or other flexible schedule to help you attend to your caregiving responsibilities.

Do I have the right to take time off to care for an ailing and/or elderly relative?

It depends. If you are eligible for leave under the FMLA you may use that time off to care for a seriously ill immediate family member, including a spouse, child or parent. You do not need to take all of this time at once, and can use it for short-term illnesses or family emergencies that involve serious health conditions. For example, you might be able to take 6 weeks of unpaid leave and then return to work half-time for 12 more weeks. Although you would be on some form of FMLA leave for 18 weeks, your total time off work would be within the legal limits. Depending on your employer's policies you may be able to use saved-up sick or other paid time off while you care for your ailing relative.

In order to take FMLA leave, you must (if possible) provide advance notice to your employer 30 days before you need to leave work. Obviously, in the case of a family emergency, you need only notify your employer as soon as you can about your need for leave, usually within a few days. Your employer may require that you provide a medical certification form from a health care provider, stating that your family member is suffering from a serious health condition, in order to verify that you qualify for leave.

In addition to guaranteeing the right to take time off, the FMLA protects you from discrimination based on your decision to take family or medical leave. This means that your employer cannot interfere with or deny your right to take time off under the law. Your employer also cannot fire you for taking leave or punish you in some other way for standing up for your rights.

I think my employer is unfairly punishing me because I am a mother with small children. Is that illegal?

It may be. Although no law exists explicitly to protect parents from unfair treatment at work, lawyers are learning ways to apply existing law to protect mothers. For example, both federal and state law prohibit discrimination because of sex, and unfair treatment based on sex-role stereotypes--i.e. assumptions about how mothers will and/or should perform on the job--is prohibited as a form of sex discrimination. So, if your employer reduces your responsibilities at work because he/she assumes that you will not be committed to the job while raising young children, you may have a claim of sex discrimination. Sex discrimination may also apply if you, as a mother, are treated less favorably than your male co-workers who have children.

Parents and other family members who are unfairly penalized at work because of their caregiving responsibilities may be victims of something called Family Responsibilities Discrimination (FRD). FRD encompasses different types of illegal unfair treatment, including discrimination based on sex, marital status, and association with a disabled person. Such unfair treatment can come in many forms, including being fired or not hired, being passed over for promotion, getting underpaid, having your work hours and responsibilities reduced or being denied benefits. Harassment is also a form of discrimination, if it is severe enough and extensive enough to create a hostile work environment. All of these situations are considered "adverse actions" by an employer, and are illegal when motivated by prohibited bias.

Do fathers have the same rights?

For the most part, yes. Fathers, like mothers, are protected from discrimination based on their sex. This means that an employer may not deny a man's request for leave for

childcare purposes while granting a female employee's similar request. Also, just as an employer may not treat a mother unfairly based on sex-role stereotypes, an employer may not treat a father unfairly based on sex-role stereotypes about the role of men as "bread winners," not caregivers.

Fathers, like mothers, are also entitled to up to 12 weeks of FMLA leave to care for and bond with a new child. However, because fathers do not get pregnant and suffer no disability upon the arrival of a new child, they are not entitled to Temporary Disability Insurance benefits during their period of childcare leave.

I think my employer is treating me unfairly because I take care of my disabled parent. Is that illegal?

Yes. Federal and city law protect you from discrimination because of your relationship or association with a disabled person. An employer cannot treat you less favorably than other workers based on his/her assumptions about your ability to do your job while also providing care to a relative. For example, if your boss starts holding you to a stricter schedule than your co-workers and takes away your good shift after she learns that you are caring for a disabled family member, you may have a claim against your employer under the Americans with Disabilities Act (ADA) and under the New York City Human Rights Law. The law also protects you from discrimination based on your relationship or association with a disabled person who is not family, including a disabled friend or partner for whom you provide care.

I was asked about my family during a job interview—is that illegal?

Yes. Although New York law does not prohibit discrimination based on parenthood, it does protect workers from unfair treatment based on their sex and marital status. Together these protections mean that an employer may not ask you the following questions before you are hired:

- Questions about children, including whether you have any and how many you have, and questions about your family planning;
- Questions about your marital status, including whether you are married, divorced or single, and questions about your marital plans—this includes questions that try to uncover your status, such as, “Shall I call you Mrs. or Miss Jones?”
- Questions about your spouse/partner and any child-care or living arrangements.

An employer may ask a question about your sex or marital status if the question is clearly related to the job. For example, if an employer is hiring a bathroom attendant, he may ask the sex of the applicant because sex, in that case, is relevant to the job. Because there are few cases where sex or marital status is considered a relevant qualification for a job, you should feel free to ask the employer to justify such an inquiry if the job-relatedness of the question is not clear to you.

What should I do if I am asked an illegal question during an interview?

There is no easy answer. Although you certainly don't have to answer illegal questions in your interview, failure to do so might raise questions in your interviewer's mind. If you answer truthfully, you run the risk that the interviewer will decide not to hire you. And if you lie in order to get hired, your employer may later fire you for misrepresentation.

When an employer asks questions about your family, he/she may be trying to determine your potential dedication to the job, based on an illegal assumption that people with family responsibilities cannot be committed and effective workers. The best way to respond may be to address the underlying concern up front by highlighting your enthusiasm for and commitment to the position for which you

are applying. This should ease the employer's concern while also signaling to the interviewer that you do not think the question is relevant.

I think I am being paid less than my male co-workers. What can I do?

Wage discrimination based on sex is prohibited by law under the Equal Pay Act (EPA), as sex discrimination under Title VII of the Civil Rights Act of 1964, and under state and local law. If you suspect that you are being paid different wages for performing the same work as your male co-workers, you may have a claim of discrimination. Under the EPA, wages also include fringe benefits such as health insurance, so unequal provision of those benefits based on sex is also unlawful.

Different time limits for filing a claim apply under each law. However, because both the EPA and Title VII may apply to your situation, the Equal Employment Opportunity Commission (EEOC) (the federal government agency that enforces the law) recommends filing a charge under both laws within the shorter time limit (i.e. within 300 days). In addition, Title VII was recently amended to make sure you don't lose your right to challenge unfair pay based on a discriminatory decision that happened more than 300 days before you became aware of it.³ That means that each time you receive an unfair paycheck resulting from a discriminatory decision by your employer, your 300-day clock for filing a charge resets.

Can I be disciplined or fired for complaining about discrimination?

No. Federal, state and local laws all prohibit retaliation for complaining about discrimination. Your employer may not fire, demote, harass or otherwise punish you for opposing unlawful behavior in the workplace. Such punishment includes anything that would be likely to deter you from speaking up, for example, changing your work schedule to prevent you from being able to pick up your child at school.

To show retaliation you must be able to show that what you did is protected by the law, that your employer was aware of your action, that she took some negative employment action against you and that there was a cause and effect relationship between your protected activity and the negative action by your employer. Some examples of protected activity include: filing a charge of discrimination with the EEOC, speaking to your human resources manager about your concern that you or a co-worker are being targeted for unfair treatment, or reporting unlawful behavior as part of an investigation by your employer into a complaint by a co-worker.⁴

What if I am not a U.S. citizen? Am I still protected by anti-discrimination laws?

Yes. Federal equal employment laws prohibit discrimination against both U.S. citizens and non-citizens, including undocumented workers. However, you may be somewhat limited in the damages you can recover (i.e. money for lost wages, etc.) depending on your immigration status.

What should I do if I suspect discrimination?

Keep written records of the dates and times of any incidents of unfair treatment, as well as of the name, address, and phone number of any participants and witnesses. Remember to make any notes during your break time to avoid violating any of your employer's policies or practices that prohibit employees from working on personal matters during work hours. Keep a file of any relevant documents you have exchanged with your employer, including printed copies of emails you have sent/received. It is wise to keep these records at home. Also, if your employer keeps written records of your job performance and your record is strong, immediately send yourself a sealed copy of your records and do not open the postmarked envelope. This may be useful

evidence to counter any argument by your employer that you were fired or demoted because of performance issues.

If you feel comfortable doing so, you may want to try resolving the situation by speaking directly with your supervisor, union and/or personnel office. Check your employee handbook or with the personnel office to find out if your employer has an internal policy or process for handling discrimination claims. In most cases you are required to follow that procedure before filing a formal complaint with an agency or in court, especially if you feel you have been harassed because of your sex and/or caregiving responsibilities. Also, if you are a member of a union, you may have to follow a grievance process before filing a complaint.

Whatever you decide, be sure to keep track of how many days have passed since you first became aware of being treated unfairly because state and federal laws have time limits for filing a complaint. The federal agency that handles employment discrimination claims (the EEOC) requires that you file a complaint within 300 days of when you first became aware of the discrimination. If you work for an employer with fewer than 15 employees, you will need to file your complaint with the New York State Division of Human Rights or the New York City Commission on Human Rights, both of which require you to file within 1 year of the last act of discrimination you experienced. All three agencies are designed for you to access their help without a lawyer. You need not pay any fee to file with them, and they will investigate your charge of discrimination. Each agency will also cross-file your claim with the others, if your case is covered under federal and state and/or local law, so you need only file at one of the three.

NAME OF LAW

Title VII of the Civil Rights Act of 1964²

EMPLOYERS COVERED

Employers with 15 or more employees
Labor unions
Employment agencies

ELIGIBLE EMPLOYEES

Individuals are protected from discrimination based on their race, color, religion, sex or national origin.

WHAT THE LAW PROVIDES

Title VII prohibits employment discrimination based on sex, including discrimination that is intentional and that which disparately impacts employees based on their sex (e.g. a seemingly neutral policy that consistently harms women more than men).

Title VII prohibits sex-based harassment, which means that employers may not subject employees to a hostile work environment because of their sex or pregnancy.

Title VII bans discrimination based on sex-role stereotypes. Failure to train or promote women who are mothers based on assumptions about their availability and performance is unlawful.

Title VII prohibits sex discrimination in compensation and pay.

WHAT TO DO

If you think you have been discriminated against because of your sex, you must file a complaint with the Employment Opportunity Commission (EEOC) which enforces the law. The New York office is located at 33 Whitehall Street, 5th Floor, and you can reach them by phone at 1-800-669-4000 for information and pre-screening by an intake representative.

You must file your complaint within 300 days of the date of the alleged violation. In the case of pay discrimination, the clock starts running anew after each pay check you receive that reflects a lower pay-rate due to unlawful sex discrimination.

For more information, visit: http://www.eeoc.gov/charge/overview_charge_filing.html

NAME OF LAW

Pregnancy
Discrimination
Act of 1978
(PDA)⁵

EMPLOYERS COVERED

Employers with
15 or more
employees

Labor unions

Employment
agencies

ELIGIBLE EMPLOYEES

Pregnant women
and new mothers
who qualify
as temporarily
disabled

WHAT THE LAW PROVIDES

Title VII prohibits sex discrimination “because of or on the basis of pregnancy, childbirth, or related medical conditions.”

An employer may not fire or refuse to hire, or otherwise penalize a woman because she is or may become pregnant.

Employers must treat “women affected by pregnancy, childbirth, or related medical conditions . . . the same [as other similarly disabled employees] for all employment-related purposes.” Thus, if an employer provides leave for employees with disabilities, it must also provide leave for pregnant employees.

WHAT TO DO

You must file a complaint with the EEOC.
(See above)

NAME OF LAW

Equal Pay Act of 1963 (EPA)⁷

EMPLOYERS COVERED

Virtually all but the smallest employers are covered.⁸

ELIGIBLE EMPLOYEES

Both men and women are protected equally from pay discrimination.

State and local government employees are covered unless specifically exempted.

Federal employees

WHAT THE LAW PROVIDES

The EPA requires employers to pay men and women at the same establishment equal wages for “substantially equal” work. Unequal pay can only be justified if the employer can show that it is due to a factor other than sex, like a bona fide seniority or merit system.

Wages include fringe benefits, such as health insurance.

WHAT TO DO

You must file a claim within 2 years of the discriminatory act (or within 3 years if the violation was willful). Although you need not file a charge with the EEOC in order to have the right to go to court, your equal pay claim might overlap with a sex discrimination claim, which does require filing with the EEOC, so it’s best to file charges under both laws at the same time.

NAME OF LAW

Americans with Disabilities Act (ADA)⁹

EMPLOYERS COVERED

Employers with 15 or more employees

Public employers and agencies below the state level (i.e. county and local government agencies)

ELIGIBLE EMPLOYEES

Employees who have a known relationship or association with a person who has a known disability

WHAT THE LAW PROVIDES

No employer shall discriminate against a qualified individual because of his or her disability, including refusing to make a reasonable accommodation to the individual's limitations.

An individual with a disability is a person who

- has a physical or mental impairment that substantially limits one or more major life activities
- has a record of such impairment, or
- is regarded as having such an impairment.

No employer shall exclude or otherwise deny equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association. This means that you cannot be fired or demoted because you have an autistic child or another relative who is disabled.

The law does not require an employer to accommodate an employee who has a relationship or association with a disabled person. This means that the parent of a disabled child is not entitled to accommodation under the ADA (such as a flexible schedule) in order to help her take care of that child.

WHAT TO DO

You must file a complaint with the EEOC or the New York City Commission on Human Rights. (New York State law does not cover individuals who have a relationship or association with a disabled person).

NAME OF LAW

Family and Medical Leave Act of 1993 (FMLA)¹⁰

EMPLOYERS COVERED

Employers with 50 or more employees within a 75 mile radius of each other

Government agencies

ELIGIBLE EMPLOYEES

Employees who have been employed by employer for at least 12 months

AND

have worked at least 1,250 hours in the last 12 months

WHAT THE LAW PROVIDES

12 weeks of unpaid time off to care for a seriously ill family member, a new child, or to recover from your own serious health condition (including pregnancy). Leave can be taken intermittently or on a reduced schedule.

Job protection; you must be restored to your original job or a position equivalent in terms of pay, benefits and other terms. Your employer is not required to give you your job back if you would have been laid off anyway during the period when you were on leave (for example, because of a general downsizing).

WHAT TO DO

The FMLA is administered and enforced by the Wage and Hour Division of the U.S. Department of Labor. You can file a complaint with the agency, which investigates complaints and violations.

New York City District Office

US Dept. of Labor
ESA Wage & Hour Division
26 Federal Plaza, Room 3700
New York, NY 10278
(212) 264-8185
1-866-4-USWAGE (487-9243)

Brooklyn Area Office

US Dept. of Labor
ESA Wage & Hour Division
625 Fulton Street, 7th Floor
Brooklyn, NY 11201
(718) 254-9410
1-866-4-USWAGE (487-9243)

You may also bring a private claim in court against your employer for violating the FMLA, and you need not file first with the Wage and Hour Division.

NAME OF LAW	EMPLOYERS COVERED	ELIGIBLE EMPLOYEES	WHAT THE LAW PROVIDES	WHAT TO DO
New York State Human Rights Law ¹¹	<p>Employers with 4 or more employees</p> <p>State and local government employers</p> <p>Labor unions</p> <p>Employment agencies</p> <p>Any person or agency who aids or abets an employer in discrimination</p>	<p>Individuals are protected from discrimination based on their age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status or status as a victim of domestic violence.</p> <p>NOT those employed by their parents, spouse or children</p> <p>NOT domestic employees</p>	<p>Employers shall not refuse to hire or employ, or bar or discharge from employment, or discriminate against in compensation, terms, conditions or privileges of employment because of an individual's sex (including pregnancy), marital status, or other protected classification.</p> <p>Employers shall not compel employees who are pregnant to take a leave of absence.</p>	<p>If you think you have been the victim of discrimination, you may file a complaint with New York State Division of Human Rights, which enforces the law. The Division has multiple offices in New York City:</p> <p>Brooklyn (serving Brooklyn and Queens) 55 Hanson Place, Room 304 Brooklyn, New York 11217 Telephone No. (718) 722-2856 InfoBrooklyn@dhr.state.ny.us</p> <p>Manhattan (Lower—serving below 42nd Street and Staten Island) 20 Exchange Place, 2nd Floor New York, New York 10005 Telephone No. (212) 480-2522 InfoLowerManhattan@dhr.state.ny.us</p> <p>Manhattan (Upper—serving 42nd Street and above, and the Bronx) Adam Clayton Powell State Office Building 163 West 125th Street, 4th Floor New York, New York 10027 Telephone No. (212) 961-8650 InfoUpperManhattan@dhr.state.ny.us</p> <p>You must file your complaint within 1 year of the alleged discriminatory action. For more information on how to file a complaint, you can visit: http://www.dhr.state.ny.us/how_to_file_a_complaint.html</p>

NAME OF LAW

New York State
"Nursing Mothers
in the Workplace
Act"¹²

EMPLOYERS COVERED

All employers in
New York State,
regardless of their
size or the nature
of their business

ELIGIBLE EMPLOYEES

Mothers who are
nursing and/or
expressing milk
for their infants
up to three years
after childbirth

Employees
wishing to take
advantage of this
benefit must give
their employers
advance notice,
preferably before
they return from
maternity leave.

WHAT THE LAW PROVIDES

Employers are required to provide reasonable
unpaid break time or allow employees to use
paid break time to express milk.

Employers must make reasonable efforts to
provide a private space for expressing milk.

Employers must NOT discriminate against
employees who choose to express milk at
work. This includes creating or encouraging
a work environment that is hostile to women
who take time to express breast milk.¹³

WHAT TO DO

If you are being denied the right to
breastfeed or express milk at work, you
should call the New York State Department
of Labor at 1-800-447-3992, and ask
to speak with one of the department
investigators.

For more information, visit: <http://www.labor.state.ny.us/index.htm>

NAME OF LAW

New York State
Temporary
Disability
Insurance (TDI)¹⁴

EMPLOYERS COVERED

Employers who
employ 1 or more
employees for at
least 30 days a
year

ELIGIBLE EMPLOYEES

Employees
who have
worked at least
4 consecutive
weeks for
a covered
employer

Domestic
or personal
employees who
work 40 or more
hours per week
for the same
employer

WHAT THE LAW PROVIDES

Covered employers are required to provide for payment of disability benefits to all eligible employees for injuries or illnesses they develop off the job.

Pregnancy-related disability is covered.

Benefits are 50% of your average weekly wage up to the maximum amount of \$170 per week.

Limit of 26 weeks of benefits during a period of 52 weeks.

WHAT TO DO

Talk with your employer about filing a claim for benefits. You should file your claim when you become disabled and must file within 30 days of your disability.

For more information, visit: <http://www3.nysif.com/DisabilityBenefits/ClaimantServices/ClaimsFAQs.aspx>

NAME OF LAW

New York City Human Rights Law¹⁵

EMPLOYERS COVERED

Employers with 4 or more employees

ELIGIBLE EMPLOYEES

Employees are protected from unfair treatment based on their actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, sexual orientation or alienage (i.e. lack of U.S. citizenship) or citizenship.

Independent contractors who are not themselves employers

Employees who have a known relationship or association with a person who is disabled or perceived to be disabled

WHAT THE LAW PROVIDES

Employers shall not refuse to hire or employ, or bar or discharge from employment, or discriminate against in compensation, terms, conditions or privileges of employment because of an individual's sex, marital status, partnership status or other protected classification.

WHAT TO DO

If you believe you have been the victim of discrimination in New York City you may file a complaint with the Law Enforcement Bureau of the New York City Commission on Human Rights, located at 40 Rector Street, 9th Floor.

You must file your complaint within 1 year of the alleged act of discrimination. You must also make an appointment for an intake interview at the NYC Commission. To schedule an appointment, call (212) 306-7450.

For more information, visit: <http://www.nyc.gov/html/cchr/home.html>

RESOURCE LIST

A Better Balance: The Work and Family Legal Center

80 Maiden Lane, Suite 606
New York, NY 10038
Phone: 212.430.5982
Email: info@abetterbalance.org

Legal Aid Society of New York Employment Law Project Hotline

Phone: 888.218.6974
Web: www.legal-aid.org

Legal Momentum

Legal Momentum takes cases in the area of sex discrimination and harassment in traditionally male jobs.

395 Hudson Street
New York, NY 10014
Phone: 212.925.6635
Web: www.legalmomentum.org/legal-assistance/form.html

MFY Legal Services

Workplace Justice Project, Monday & Tuesday 2:00pm-5:00pm
Phone: 212.417.3838

National Employment Lawyers Association (NY) Referral Service

3 Park Ave, 29th Floor
New York, NY 10016
Phone: 212.819.9450
Email: NELARS@NELANY.com

National Organization for Women, NYC Employment Discrimination Legal Clinic

Third Wednesday of every month, registration is required
Phone: 212.627.9895

New York City Bar Association

Legal Hotline: Monday-Friday 9:00am to 1:00pm and Tuesday & Thursday
from 4:00pm to 7:00pm.
Phone: 212.626.7383

Monday Night Law Clinic (October through July)
Schedule an appointment through the LRS hotline:
212.626.7373 (English)
212.636.7374 (Spanish)

New York Civil Liberties Union

Phone: 212-607-3300 on Tuesdays and Thursdays from 11 a.m. to 1 p.m.

Fax: 212-607-3329

Post: New York Civil Liberties Union

125 Broad Street, 19th Floor

New York, NY 10004

Attention: Legal Intake Committee

Web: www.nyclu.org/intake/mainoffice

NOTES

1. See *e.g.*, *Reeves v. Swift Transp. Co.*, 446 F.3d 637 (6th Cir. 2006)(holding that policy of granting light-duty assignments only to workers who sustained job-related injuries was legitimate and pregnancy-blind). But see *Lochren v. County of Suffolk*, No. 01 Civ. 3925 (LDW) (E.D.N.Y. June 14, 2006) (jury verdict that police department policy denying pregnant employees light-duty assignments while allowing such assignments for employees with occupational injuries was discriminatory).
2. "There is simply no requirement that discrimination because of pregnancy or related medical conditions occur while the woman is still experiencing those states of being." *Infante v. Ambac Financial Group*, No. 03 CV 8880,2006 WL 44172 at *5 (S.D.N.Y. Jan. 5, 2006) (interpreting the Pregnancy Discrimination Act and citing *Kocak v. Community Health Partners of Ohio, Inc.*, 400 F.3d 466 (6th Cir. 2005)).
3. Lily Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, § 1, 123 Stat. 5.
4. See *Crawford v. Metropolitan Government of Nashville*, 129 S.Ct. 846 (2009)(holding that Title VII's prohibition of retaliation extends to employees who speak out about discrimination not by their own initiative but in answering questions during their employers' internal investigations).
5. 42 U.S.C. § 2000e (2009).
6. 43 U.S.C. § 2000e(k) (2009).
7. 29 U.S.C. § 206(d) (2009).
8. New York State law also prohibits wage discrimination based on sex. N.Y. LAB. LAW § 194 (2009). The state law applies to all employers, except governmental agencies. N.Y. LAB. LAW § 190(3) (2009).
9. 42 U.S.C. § 12101, et seq. (2009).
10. 29 U.S.C. § 2601-2654 (2009).
11. N.Y. EXEC. LAW § 296 (2009).
12. N.Y. LAB. LAW § 206-c (2009).
13. Guidelines Regarding the Rights of Nursing Mothers to Express Breast Milk in the Work Place, LS 702 § V (N.Y. State Dep't of Labor May 7, 2008), available at <http://www.labor.state.ny.us/formsdocs/wp/LS702.pdf#page=4>. The guidelines also include suggested activities that employees may consider implementing in connection with the needs of employees who are breast-feeding children, including "allowing flexible work hours, job sharing, and/or part-time scheduling to accommodate employees with children of nursing age," and "including protection for pregnant and breastfeeding mothers in the company's sexual harassment policy." § VI Suggested Employer Activities.
14. N.Y. WORKERS' COMP. § 200, et seq. (2009).
15. NYCHRL § 8-107 (2009).

Other publications by A Better Balance:

The Work Family Dilemma:
A Better Balance Policy Solutions
for All New Yorkers
2007

A Working Balance:
Supporting New York City's Families
Through Paid Leave
*With Manhattan Borough President
Scott Stringer*
2008

Seeking a Just Balance:
Law Students Weigh in on Work and Family
June 2008

Made possible with the help of an anonymous donor.

For more information, contact:

A Better Balance:
The Work and Family Legal Center
80 Maiden Lane, Suite 606
New York, NY 10038
Phone: 212.430.5982
Fax: 212.430.5983
Web: www.abetterbalance.org