

FACT SHEET:

PREGNANCY DISCRIMINATION

Federal law prohibits discrimination at work against women because of their pregnancy, childbirth or a related medical condition. The law looks at pregnancy like a temporary disability, and requires that pregnant women be treated in the same manner as other applicants or employees with similar abilities or limitations.

I am pregnant but afraid to tell my employer. Can they fire me?

Your employerⁱ cannot fire you, demote you or penalize you in any other way because you are pregnant or may become pregnant. Here are a few examples:

- *Your employer cannot move you into a back office position because its customers might disapprove of or feel uncomfortable with a pregnant salesperson;*
- *If you are otherwise able to perform your job, your employer cannot force you to take a leave of absence because you are pregnant.*

Your employer also may not make judgments about how you will behave, just because you are pregnant.

- *You may not be denied a promotion because your employer assumes that you will work fewer hours when you are pregnant.*

When should I tell my employer that I am pregnant?

If you are eligible for leave during your pregnancy or after childbirth under the Family and Medical Leave Act,ⁱⁱ you must tell your employer at least 30 days before you intend to take leave. You are not obligated to tell your employer about your pregnancy before then, but with a risky pregnancy, or a job that has safety hazards, telling your employer earlier can help you avoid health risks.

Letting your employer know that you intend to resume work after your baby is born can also help you and your employer plan for your time off and for your return. (This may include expressing breast milk for your baby when you return to work).ⁱⁱⁱ

I am looking for work but recently found out I am pregnant. Do I have to tell my interviewer?

An employer cannot ask you questions about whether you are pregnant or intend to become pregnant and cannot refuse to hire you on one of these bases.

If an employer does ask you questions about your family, he/she may be trying to get at your potential dedication to the job, based on an illegal assumption that people with kids cannot be committed and



the work and family legal center

80 Maiden Lane, Suite 606, New York, NY 10038 | t: 212.430.5982 | f: 212.430.5983 | info@abetterbalance.org | abetterbalance.org

effective workers. Try to address the underlying concern up front by highlighting your enthusiasm for and commitment to the position. This should ease the employer's concern while also signaling to him/her that you don't think the question is appropriate.

What if I have to miss work because of morning sickness or a pre-natal appointment with my doctor?

The law requires that your employer treat you just as it would other employees with temporary health disabilities. If you have to miss work because of your pregnancy, you must be treated the same as a co-worker who misses work for a broken ankle or other medical condition. If your employer provides sick days, you must be allowed to use them for pregnancy-related absences. However, if your employer does not provide sick time or disability leave at all, it is not required to provide them to you for your pregnancy.

If you are eligible for leave under the Family and Medical Leave Act you may use that time off during your pregnancy for illness related to your pregnancy and for prenatal medical care. You need not be under the care of a doctor to qualify for time off for pregnancy-related sickness and you can take leave in smaller increments, as needed. Like all FMLA leave, however, you must give notice to your employer of your need for time off. Any FMLA leave taken during your pregnancy counts toward your total allotment of 12 weeks, and may reduce the amount of time you can take to bond with your baby once she is born.

What if I cannot perform certain parts of my job because of my pregnancy?

Again, your employer must treat you the same as it would another employee who is temporarily unable to perform parts of his job. If your employer allows an employee who is recovering from heart surgery to modify tasks, perform alternative assignments, or take disability leave or leave without pay, you must be allowed to do the same.

If you suffer from a pregnancy-related condition that disables you, even temporarily, you may be entitled to some modifications of your work. The Americans with Disabilities Act covers certain pregnancy-related complications, such as gestational diabetes,^{iv} and guarantees the right to seek a "reasonable accommodation" from your employer, e.g. some change to your workplace or work schedule that allows you to continue working despite your disability, such as letting you work from home. Such accommodations are required unless they impose an "undue hardship" on your employer's business.

What if I have a miscarriage or decide to terminate my pregnancy?

Your employer cannot discriminate against you because of your pregnancy or related medical conditions including miscarriage or abortion. However, in order for you to have a legal claim, you must be able to show that your employer knew you were pregnant and took negative action against you because of your pregnancy, miscarriage or decision to terminate your pregnancy. The law does not require your employer to provide health insurance for expenses arising from abortion, except when your life is in danger.



the work and family legal center

80 Maiden Lane, Suite 606, New York, NY 10038 | t: 212.430.5982 | f: 212.430.5983 | info@abetterbalance.org | abetterbalance.org

What should I do if I suspect I have been the victim of pregnancy discrimination?

- Compare your treatment to that of your co-workers. Are other pregnant women being treated poorly too? How are men treated?
- Try to get everything in writing and keep detailed notes (but not on your work computer!)
- Continue to perform your job well. Your employer can fire you or take other action against you while you are pregnant for reasons unrelated to your pregnancy.
- Review your employee handbook, union contract or any other employment manual to make sure you understand the policies of your workplace, including whether you must follow an internal complaint process.
- If you suspect you were not hired (or your job offer was revoked) because of your pregnancy, try to find out whether the position for which you applied is still open.
- Consult with an attorney or a government anti-discrimination agency as soon as possible, as you may have as little as 180 days from the date you suspect discrimination to file a complaint.
 - Call the Equal Employment Opportunity Commission (the federal agency that enforces the law) at 1-800-669-4000 or visit them online at www.eeoc.gov/employees to find out where your closest field office is located.
 - If you need to find an employment attorney to represent you, visit the National Employment Lawyers Association at www.nela.org.
 - If you are in New York, you can contact the Families @ Work Legal Clinic by calling (212) 430-5982 or sending an email to info@abetterbalance.org.

ⁱ Your employer must have at least 15 employees to be covered by federal law banning pregnancy discrimination. If you work for a smaller employer, check with your state or local government to see if you are protected by their anti-discrimination laws.

ⁱⁱ See our fact sheet on the Family and Medical Leave Act at www.abetterbalance.org

ⁱⁱⁱ For more about your rights to breastfeed or pump milk at work, please see our fact sheet about Workplace Rights for Nursing Mothers at www.abetterbetterbalance.org.

^{iv} See U.S. Equal Employment Opportunity Commission, *Questions and Answers on the Final Rule Implementing the ADA Amendments Act of 2008*, available at http://www.eeoc.gov/laws/regulations/ada_qa_final_rule.cfm.