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PREGNANCY LOSS AND WORKPLACE RIGHTS

Various federal, state, and local laws give workers who experience, or are at risk of, pregnancy loss the right to take time off, receive reasonable accommodations, and be free from discrimination. This fact sheet will help you navigate your workplace rights if you have had, or are at risk of, pregnancy loss.

Contact A Better Balance’s free and confidential legal helpline (1-833-633-3222 or online [here](#)) if you have questions.

What is pregnancy loss?

- A miscarriage is the loss of a pregnancy before 20 weeks’ gestation. Miscarriages are very common, occurring in about 25 percent of pregnancies.
- The loss of a fetus after 20 weeks’ gestation is medically considered a stillbirth.¹ While advances in prenatal care have generally decreased stillbirths, stillbirth disproportionately affects Black women and low-income pregnant people.
- The symptoms of pregnancy loss may include severe pelvic or back pain, painful contractions, and bleeding with or without pain. Caring for pregnancy loss often requires medical treatment to remove the tissue from the body. This treatment can be by medication or by surgery. Physical recovery may be a few days to more than six weeks.² Some people may also experience mental health needs or conditions related to pregnancy loss.
- Both stillbirth and miscarriage are considered pregnancy loss. Those who lose a fetus at any stage of pregnancy, or who are at risk of pregnancy loss, are entitled to the legal protections outlined in this fact sheet.

Do I have the right to take leave while experiencing or recovering from pregnancy loss, under nationwide laws?

- The nationwide **Family and Medical Leave Act** (“FMLA”) gives eligible workers the right to take unpaid leave to care for their own serious health conditions, among other purposes. Pregnancy loss is considered a “serious health condition” under the FMLA.³ You may be entitled to job-protected leave to physically recover from a lost pregnancy, as well as to treat any mental health conditions arising from your pregnancy loss. Learn more [here](#).

¹ *Facts About Stillbirth*, Centers for Disease Control and Prevention (October 2, 2017), <https://www.cdc.gov/ncbddd/stillbirth/facts.html>.

² *Health Matters Fact Sheet—Miscarriage*, Association of Reproductive Health Professionals (February 2009), <http://www.arhp.org/Publications-and-Resources/Patient-Resources/Fact-Sheets/Miscarriage>; Marygrace Taylor, *Postpartum Recovery After a Pregnancy Loss*, What to Expect (June 24, 2022), <https://www.whattoexpect.com/pregnancy/pregnancy-loss/postpartum-recovery-symptoms-after-miscarriage/>.

³ H. Rep. No. 103-8, at 40 (1991); S. Rep. No. 103-3, at 29 (1993).

- *Am I covered?* You are covered if you work for an employer with 50 or more employees within a 75-mile radius of your worksite, you have worked for your employer for at least one year, and you have worked at least 1,250 hours in the 12 months preceding your pregnancy loss.
- *How much unpaid leave can I take?* You can take up to 12 weeks of FMLA leave per year.
- Under the nationwide **Pregnant Workers Fairness Act** (“PWFA”), you may also have the right to job-protected, unpaid leave as a reasonable accommodation, unless providing such leave would create an undue hardship for your employer.⁴ Learn more [here](#).
 - *Am I covered?* You are likely covered if you work for an employer with 15 or more employees.

► What additional rights to leave might I have under state and local laws?

- **Paid sick leave:** If your state or locality has a paid sick leave law, and you are eligible under that law, you may be entitled to paid sick time while experiencing or recovering from pregnancy loss. Learn more [here](#).
- **Medical leave or temporary disability insurance:** If your state or locality has a pregnancy-leave law, paid or unpaid medical leave law, or short-term disability law, you may be entitled to job-protected leave and/or partial wage replacement if you miss work due to pregnancy loss. Such leave is usually a longer-term leave lasting anywhere from a week up to a few months, although it can sometimes be used in shorter increments.⁵ Learn more [here](#).
- **Other laws:** You may have additional rights to time off, such as if your state or locality has a bereavement leave law.

Do I have the right to an accommodation at work following pregnancy loss, under nationwide laws?

- Under the nationwide **Pregnant Workers Fairness Act** (“PWFA”), you may have the right to reasonable accommodations for health needs related to pregnancy, childbirth, or related medical conditions.⁶
 - *Am I covered?* You are likely covered if your employer has at least 15 employees.
 - *What kinds of accommodations might I be entitled to?* The PWFA requires employers to provide reasonable accommodations so long as they do not cause “undue hardship.”⁷ Reasonable accommodations can include:
 - Time off to recover or attend health care appointments;
 - Extra bathroom breaks, assistance with lifting or operating machinery;
 - Rest breaks;

⁴ Regulations to Implement the Pregnant Workers Fairness Act, 88 Fed. Reg. 54714, 54767 (proposed Aug. 11, 2023) (to be codified at 29 C.F.R. pt. 1636) [hereinafter PWFA Proposed Rule] (explaining that workers have a right to reasonable accommodations for a variety of conditions, including “termination of pregnancy, including via miscarriage, stillbirth, or abortion”).

⁵ Under some temporary disability insurance programs, workers are not eligible for benefit payments until after one week of becoming disabled.

⁶ *Id.*

⁷ “Undue hardship” means more than mere expense or inconvenience. Rather, your employer must show that accommodating your request would be significantly expensive or significantly difficult.

- A flexible or modified work schedule;
- Temporary reassignment to light duty;
- Remote work;
- And more.
- The PWFA also requires an interactive process, meaning your employer must work with you to determine what accommodations meet your health needs related to pregnancy loss. Learn more [here](#).⁸

▶ **What additional rights to accommodation might I have under state and local laws?**

- **State/local pregnant workers fairness laws:** In addition to the federal PWFA, many states and localities have passed similar laws giving workers an affirmative right to accommodations for pregnancy, childbirth, and related medical conditions. Under these laws, you may have the right to a reasonable accommodation at work for pregnancy loss, even if you work for an employer with fewer than 15 employees. Learn more [here](#).

Do I have the right to not be discriminated against by my employer because I have experienced pregnancy loss, under nationwide laws?

- Under the **Pregnancy Discrimination Act** (“PDA”), employers cannot treat employees affected by pregnancy or related conditions differently from other employees similar in their ability or inability to work. Pregnancy loss is a pregnancy-related medical condition under the PDA. Your employer cannot fire you, demote you, cut your hours, harass you, or penalize you in any way for having a miscarriage.
 - *Am I covered?* You are covered if you work for an employer with 15 or more employees.
- Under the **Pregnant Workers Fairness Act** (“PWFA”), employers cannot punish you or otherwise treat you less well (e.g., demote or fire you) because you needed, requested, or used a reasonable accommodation for pregnancy loss. Learn more [here](#).

▶ **What additional rights do I have to be free from discrimination, under state and local laws?**

- **State/local antidiscrimination laws:** Many states and localities have general antidiscrimination laws that prohibit discrimination (i.e., treating someone less well) on the basis of pregnancy, sex, familial status, and/or caregiver status. Discrimination due to pregnancy loss may be protected under these laws, even if you work for an employer with fewer than 15 employees. Learn more [here](#).

⁸ You may have additional rights under other nationwide laws, such as the Americans with Disabilities Act (“ADA”) or the Pregnancy Discrimination Act (“PDA”). Contact A Better Balance’s free and confidential legal helpline to learn more.

What are my rights at work if I am at risk of pregnancy loss?

- Many of the same protections discussed above apply if you are *at risk* of pregnancy loss.
- In other words, if you have a pregnancy-related need that puts your health or the health of your pregnancy at risk, you may have access to similar rights to accommodations, job-protected time off, and nondiscrimination, including:
 - Accommodations:
 - Under the **Pregnant Workers Fairness Act** (“PWFA”), you have a right to reasonable accommodations for health needs related to pregnancy, childbirth, and related medical conditions, including if your pregnancy is at risk (absent undue hardship to your employer).⁹ Learn more about the PWFA and eligibility requirements [here](#).¹⁰
 - You may have additional rights to reasonable accommodations if your state or locality has a pregnant workers fairness law. Learn more [here](#).
 - Leave:
 - If you have a serious health condition that puts you at risk of pregnancy loss, and you are covered under the **Family and Medical Leave Act** (“FMLA”), you may have the right to take 12 weeks of unpaid, job-protected leave to care for your health.
 - You may have additional rights to job-protected leave and/or wage replacement while you are at risk of pregnancy loss if your state or locality has a paid sick leave, medical leave, or temporary disability insurance law.
 - For more about these laws, see above.

Where can I go for more information about my legal rights and options?

- If you have questions, contact **A Better Balance’s free and confidential legal helpline at 1-833-NEED-ABB (1-833-633-3222) or [here](#)**.
- For more information about the laws where you work, visit A Better Balance’s Workplace Rights Hub [here](#).

The information provided in this fact sheet does not constitute legal advice. It is always advisable to consult an attorney about your individual circumstances.

⁹ PWFA Proposed Rule, 88 Fed. Reg. at 54767, 54773 (explaining that workers have a right to reasonable accommodation for “a need or a problem related to maintaining their health or the health of the pregnancy” including “when the worker is seeking health care related to pregnancy, childbirth, or a related condition” or when an accommodation is needed in order to “avoid more serious consequences” from developing).

¹⁰ You may have additional rights to reasonable accommodations under other laws, such as the Americans with Disabilities Act (“ADA”) and the Pregnancy Discrimination Act (“PDA”).