

A woman with a raised fist, overlaid with a green and blue gradient.

THE WORKING WOMAN'S POCKET GUIDE

**A Better Balance's Guide to Knowing Your
Rights as a Working Woman in New York**

a better
balance

the work and family legal center



the work and family legal center

Knowledge is power. This step-by-step guide covers the employment rights and protections you have as a working woman in New York State. It covers both your rights at work and the rights you have when you need time away from work.

A Better Balance is also here to help. If you have any questions about your rights, you can:

- **CALL** our free, confidential legal helpline at
1 (833) NEED-ABB [1 (833) 633-3222]
- **EMAIL** info@abetterbalance.org
- **VISIT** abetterbalance.org

The laws discussed in this guide apply to you regardless of your immigration or citizenship status.

***Disclaimer:** This guide does not constitute legal advice. It is always advisable to consult with an attorney about your individual circumstances if you have questions or think your rights as a worker have been violated.*

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SEX DISCRIMINATION

If you work in New York, you are legally protected from discrimination based on your sex pursuant to federal, state, and local laws.

AM I COVERED? If you work for, or are applying to work for, an employer in New York State, then you are covered by the anti-sex discrimination law. You are also covered by the law if you are an independent contractor.*

■ What is sex discrimination?

- Sex discrimination is when your employer treats you less favorably than other employees because of your sex or gender. Sex discrimination includes pregnancy discrimination, sexual harassment, sex stereotyping, and pay and benefits discrimination.

■ What are some examples of sex discrimination at work?

- For sex discrimination to be illegal, your employer's behavior has to have some kind of negative effect on the "terms or conditions" of your employment. This can include not being hired, being demoted or fired, changes to your job role and responsibilities, changes to your schedule or job location, changes to your pay, or failure to get a promotion because of your sex.

*New York State law defines "non-employees" as contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace or who is an employee of such contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace.

- For example:
 - » It could mean your boss doesn't hire you because, despite your excellent qualifications, some company clients are more comfortable dealing with men.
 - » It could mean your employer doesn't promote you because they assume you're about to get pregnant or that a woman wouldn't want to do a particular job.
 - » It could mean your boss pays a man with similar training and work experience more than you.

Do I also have protections if I'm discriminated against based on my sexual orientation?

- Yes, you have a separate legal right not to be discriminated against based on your sexual orientation. Sexual orientation discrimination is when your employer treats you less favorably than other employees because of your actual or perceived sexual orientation.

What happens if my employer punishes me for reporting sex discrimination or opposing its discriminatory practices?

- It is illegal for your employer to punish you or retaliate against you for reporting sex discrimination (either to your employer or to a government agency) or opposing your employer's discriminatory practices. For example, your employer cannot:
 - » Fire or demote you.
 - » Cut your hours or pay.
 - » Force you to take leave.
 - » Reassign you to a different job, shift, or location.
 - » Issue a disciplinary write-up.
 - » Take away job responsibilities from you.



■ Do I have additional rights if I work in New York City?

- Yes, in New York City, there are explicit protections stating employers cannot discriminate against you based on your gender identity. This means they cannot treat you less favorably than other employees because of your actual or perceived **gender identity**.
 - » Note that **New York State** has also issued regulations making it clear that employers cannot discriminate against you based on your actual or perceived **gender identity**.

HARASSMENT

If you work in New York, you are legally protected from sexual harassment pursuant to federal, state, and local laws.

AM I COVERED? If you work for, or are applying to work for, an employer in New York State, then you are covered by anti-harassment law. You are also covered if you are an independent contractor* or domestic worker.

■ What is harassment?

- Harassment in New York State is illegal if your employer subjects you to “inferior terms or conditions of employment” because you are a member of a protected class. You do not need to show

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that the harassment was “severe or pervasive” in order for it to constitute unlawful harassment nor do you need to compare yourself to how others are treated.

What does it mean to be in a protected class?

- This means that it is unlawful for your employer or co-worker to subject you to harassment or discrimination because of your age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status.

What kinds of behavior constitute harassment, specifically sexual harassment?

- Sexual harassment can include a boss or co-worker who:
 - » Makes your advancement in the workplace (e.g. a promotion, shift change, or access to benefits or job opportunities) contingent upon your doing some kind of sexual favor in return or engages in sexual conduct that is used as a basis for hiring or other employment decisions.
 - » Makes unwanted sexual advances towards you.
 - » Makes you feel uncomfortable through words or actions directed either towards you or towards a colleague (including digital communications over email, phone etc.).
 - » Makes sexual comments or jokes.
 - » Pressures you to go on dates.
 - » Harasses you when you are pregnant (i.e. jokes about your pregnancy weight gain or makes comments about being overly sensitive or emotional because you are pregnant).
 - » Tries to intimidate you because you are a woman and interferes with your job.

- **Note:** Even if your boss or co-worker makes just one joke or one comment, this could constitute sexual harassment. The behavior does not need to be considered 'severe' or 'pervasive' in order for you to succeed on a sexual harassment claim. But the behavior must be more than 'petty slights' and 'trivial inconveniences' for your employer to be held liable.

■ Am I protected against sexual harassment as a non-employee?

- Yes, non-employees such as contractors, subcontractors, vendors, consultants or other persons providing services under a contract in the workplace are protected under the law. Anyone who is an employee of such contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace is protected as well.

■ What happens if my employer punishes me for complaining about sexual harassment or filing a sexual harassment complaint?

- It is against the law for your employer to take negative action against you for complaining about sexual harassment or filing a sexual harassment complaint. This means they cannot fire or demote you, cut your hours or pay, force you to take a leave, or re-assign you to a different shift or location. It is illegal for your employer to retaliate against you for:
 - » Complaining that another employee has experienced sexual harassment.
 - » Encouraging a colleague to report harassment.
 - » Filing a complaint internally with human resources or management of your company or with a government agency.

Does my employer have any obligations to help prevent sexual harassment in the workplace?

- Your employer must have a sexual harassment prevention policy in place.
- Your employer must conduct annual anti-sexual harassment training for employees.
- The training must:
 - » Be interactive and participatory;
 - » Provide examples of conduct which constitutes unlawful sexual harassment;
 - » Provide information explaining the laws around sexual harassment and the rights and remedies available to victims to adjudicate claims; and
 - » Provide information about the appropriate conduct of supervisors and managers.



■ Can my employer make me sign a non-disclosure agreement?

- No, it is against the law for your employer to force you to sign a non-disclosure agreement as part of a settlement relating to sexual harassment. If it is your preference to include a confidentiality clause in a settlement, you may do so but you must be given 21 days to consider the terms of the confidentiality clause. If you do choose to agree to a confidentiality clause, you have seven days after the agreement is memorialized to revoke the agreement.
- Employers are also prohibited from including broad non-disclosure provisions in settlement or separation agreements resolving any type of discrimination claim, not just sexual harassment, unless it is the worker's preference. Your employer also cannot prevent you from initiating, testifying, or complying with a subpoena related to the complaint, cooperating with an agency investigation into the claim or disclosing facts about the complaint that are necessary to get benefits such as unemployment insurance, Medicaid, or other public benefits.

■ Can my employer make me sign a mandatory arbitration agreement to resolve a harassment claim?

- New York State law also prohibits employees from requiring employees to sign mandatory arbitration to resolve claims of harassment.
- **Note:** *A court in New York has found that this law is inconsistent with federal law. As a result, this law may not be enforceable right now.*

■ Do I have any additional rights if I live in New York City?

- Yes, if your workplace has 15 or more employees and is in the private sector, your employer must conduct annual sexual harassment training.

- The training must:
 - » Take place within 90 days of the employee's hire date;
 - » Be participatory;
 - » Provide employees information about any internal complaint process and complaint process available through the Commission, State Division of Human Rights and the Equal Employment Opportunity Commission;
 - » Provide information regarding retaliation;
 - » Provide resources on intervention and engaging as a bystander; and
 - » Explain the responsibilities of supervisors and managers.
- Every employer in New York City is required to display an anti-sexual harassment rights and responsibilities poster in a conspicuous area such as break rooms and common areas in your workplace.



EQUAL PAY

Employers are not legally allowed to pay you less because of your sex pursuant to federal, state, and local laws. Unfortunately, some employers still do. New York law has some important protections to help you figure out whether you're being paid less and take action if you are.

AM I COVERED? Nearly all employees in New York State are covered by the equal pay law, with the exception of those who work for a government agency. If you are a government employee, you may have rights under certain federal or local laws.

How do I know if I'm being paid less?

- Ask a co-worker. Under New York law, your employer cannot prohibit you from openly discussing with or disclosing your salary to a co-worker or retaliate against you for sharing pay information with colleagues.
- Notice if you're missing out on a bonus or pay increase that your male colleagues receive.
- Notice if you receive fewer benefits than male colleagues.
- Notice if you're being passed over for a promotion to a male colleague who is less qualified.

What are excusable differences in pay and what are not?

- Under a new law in New York, it is illegal to pay employees with status within one or more protected classes less than an employee without status within the same protected class or classes for

equal work or “substantially similar work” based on a composite of skill, effort, and responsibility, and performed under similar working conditions.

- » For instance, an employer can't pay a Project Manager and a Project Team Lead or a janitor and a housekeeper differently if they perform “substantially similar work.”
- What is a “protected class”?
 - » “Protected class” includes age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim.
- Employees can pay employees differently only if that difference is based on:
 - » A seniority system;
 - » A merit system;
 - » A system which measures earnings by quantity or quality of production; or
 - » A bona fide factor other than status within one or more protected classes, such as education, training, or experience. Any different in pay must be job-related and consistent with business necessity and cannot be derived from a wage differential based on status within a protected class.
- Employers must affirmatively demonstrate that any pay differentials among employees who do the same or substantially similar work are based on one of the above-listed permissible reasons.

- Consider the following examples:
 - » Employee A is a Black man. Employee B is a white man. Both work at Company Y, and both do the same job. Can Company Y pay them differently?
 - *Probably not! The New York law applies to issues of pay disparity between sexes, but also to those that do not exclusively involve sex, but do involve a disparity in pay between a member of a different protected class and someone else doing the same or substantially similar work who is not a member of that protected class.*
 - » Employee A is a Black woman. Employee B is a white woman. Both work at Company Y. They have different titles, but both of them have jobs that involve data analysis, building and implementing models, and running simulations.
 - *Probably not! The New York law makes it illegal for employers to pay employees differently based on “substantially similar work,” with a few exceptions. Whether work is substantially similar is not based on job title—it’s based on a composite of skill, effort, and responsibility, and the similarity of working conditions.*

Can my employer, or potential employer, ask me questions about my salary history?

- A law which applies to all public and private employees, but does not apply to independent contractors, makes it illegal for employers to:
 - » Rely on your salary history in deciding whether to offer you a job, or in determining your compensation for a new job.
 - » Ask for or require information about your past salary— orally or in writing—as a condition to be interviewed or as a condition of continuing to be considered for a new job.

- » Ask for or require information about your current salary if you are being considered for a promotion.
 - » Seek information about your past salary from your former employer, either.
 - » Retaliate against you—including by refusing to interview, hire, promote, or otherwise employ you—based on your salary history. It is also illegal for them to retaliate against you for not providing your salary history or filing a complaint with the New York State Department of Labor alleging that they violated this law.
- Nothing in this law prevents you from sharing your salary history with your employer or potential employer if you want to do so. An employer can't prompt you to offer this information, but you can volunteer it if you wish.
 - » An employer can confirm your wage or salary history only if they have made you an offer of employment with compensation, and you respond to their offer by providing your prior wage or salary information in an effort to get the employer to offer you a higher wage or salary.

Do I have additional rights if I work in New York City?

- Yes. Pay discrimination is also illegal under the New York City Human Rights Law. You are covered under this law if you work for an employer—private or government—with four or more employees.
- In New York City, when you're interviewing for a new job, an employer cannot rely on or ask about your salary history (including on applications), unless you voluntarily, and without prompting, choose to disclose it.



PREGNANCY DISCRIMINATION

Being pregnant does not give your employer license to make assumptions about your ability to work or put your job in jeopardy. Under federal, state, and local anti-discrimination laws, employers cannot treat you unfavorably because you are pregnant, recovering from childbirth, or have a medical condition related to your pregnancy or childbirth.

AM I COVERED? If you are pregnant, recovering from childbirth, or have a related medical condition and work for, or are applying to work for, an employer in New York State, then you are covered. You are also covered by the law if you are an independent contractor.*

■ What does pregnancy discrimination look like?

- Your employer cannot:
 - » Fire you or cut your hours when they find out you're pregnant.
 - » Force you on leave during your pregnancy, unless your pregnancy prevents you from reasonably performing your job with accommodation.
 - » Treat you differently from other co-workers just because you are pregnant. For instance, if your employer provides certain

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benefits or accommodations to non-pregnant employees (such as light duty) and then refuses to provide the same or similar accommodations to pregnant workers, this could be evidence of pregnancy discrimination.

- » Deny you fringe benefits that they offer to other employees.
- If you are applying for a job, an employer cannot:
 - » Ask if you are pregnant or planning to have children.
 - » Refuse to hire you because you are pregnant.

Do I have to tell my boss I'm pregnant?

- There are no real legal deadlines for notifying your employer until late in your pregnancy, when you will need to request leave 30 days in advance of taking off for childbirth and/or bonding if you are covered by New York paid family leave or the federal Family and Medical Leave Act. See page 28 and page 33 for further information about your rights under these laws.
- If you suspect that your boss won't be happy to hear you are pregnant, don't feel pressure to tell them before you are ready. However, keep in mind that your colleagues and boss may appreciate being told as soon as you feel comfortable, so that they, and you, can plan ahead.



PREGNANCY ACCOMMODATIONS

If you are working while pregnant, or recovering from childbirth, you don't have to risk your health to stay at your job. New York State law gives you an explicit right to reasonable workplace accommodations so you can keep earning a paycheck when you need it most.

AM I COVERED? If you have a pregnancy- or childbirth-related medical need and work for, or are applying to work for, an employer in New York State, then you are covered. You are also covered by the law if you are an independent contractor.*

■ What is a reasonable workplace accommodation?

- If you have a pregnancy- or childbirth-related medical need, your employer has to make changes to your work duties or schedule if it will help you stay healthy on the job, unless it would be very difficult or expensive for them to do so. These changes are called “reasonable accommodations.”

■ What are some examples of reasonable accommodations?

- » Light duty, help with lifting, or a temporary transfer to a less physically demanding position
- » Breaks to drink water

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- » Occasional breaks to rest
- » Time off for recovery from childbirth
- » Modified work schedule
- » Break time and space to express milk

How do I ask my employer for a reasonable accommodation?

- You can request an accommodation directly from your employer. They are allowed to request a note from your healthcare provider to confirm that you need the accommodation (though you have a right for that information to be kept confidential).
- Your employer can only deny the request if it would cause an “undue hardship” for them to grant it or, if you cannot, with accommodation, perform the activities of your job in a reasonable manner.

What if my employer accommodates other workers with limitations but not me?

- Consult with an attorney. This could be evidence of pregnancy discrimination.

Do I have additional rights if I work in New York City?

- Yes. If you work in New York City and need a pregnancy accommodation, your employer cannot request or require you to bring in a doctor's note justifying the accommodation. Employers in New York City can request a doctor's note only if you request an accommodation that includes time away from work and the request does not violate any other federal, state, and city laws, such as the New York City earned sick time law.
- The City's guidance related to the New York City pregnancy accommodation law makes it clear that you are entitled to

reasonable accommodations for pumping breast milk at work as well as if you have experienced post-partum depression, a miscarriage, or terminated a pregnancy.

PUMPING AT WORK

If you're a nursing mom in New York, you are entitled to reasonable break time to pump and employers must make "reasonable efforts" to provide a private space in order for you to express breast milk. Your employer must give you the time, space, and support to pump at work.

AM I COVERED? If you are a nursing mom in New York State, you are covered, no matter the employer size and regardless of whether the employer is public or private.

■ What are my rights when it comes to pumping at work?

- Your employer must:
 - » Let you pump at work for at least three years after your child's birth.
 - » Allow you to use your paid or unpaid break time or mealtime to pump and allow you to pump every three hours, or more if needed.
 - » Give you a clean, private space where you can pump without interruption. (It cannot be a bathroom!)
 - **Note:** For some employers, if it would be incredibly difficult or expensive for your employer to provide a private space, they may not be obligated to provide the space.

What if my employer gives me a hard time because I want to pump at work?

- Your employer cannot discriminate or retaliate against you for choosing to pump at work. This can include making hostile comments to you about nursing or demoting you because you need to pump.

What should I do to prepare if I know I want to pump at work?

- Before you go back to work, you should tell your employer you plan to express milk when you return. That will give them time to plan for your return.

Do I have additional rights if I work in New York City?

- Yes, if you are a nursing worker in New York City, and work for an employer with 4 or more employees, your employer must provide you with a lactation room that meets specific requirements.
 - » The space must be sanitary and shielded from view or intrusion. It cannot be a restroom. It must also have an electrical outlet, chair, surface to place pump on and you must have access to a nearby fridge. The space for lactation must be near your work area.
- Your employer must hand out a lactation policy to all new employees upon hire.



- **Note:** If providing the space for lactation is incredibly difficult for your employer, your employer must engage in a cooperative dialogue with you. The space need not necessarily be a dedicated lactation room but it must meet the requirements and preference must be given to nursing workers to use the space.

DISABILITY DISCRIMINATION & ACCOMMODATIONS

If you are working and have a disability, you don't have to risk your health to stay at your job. Federal, state, and local laws guarantee you an explicit right to reasonable workplace accommodations so you can keep earning a paycheck when you need it most.

AM I COVERED? If you have a disabling physical or mental impairment and work for, or are applying to work for, an employer in New York State, then you are covered. You are also covered by the law if you are an independent contractor.*

■ What does disability discrimination look like?

- Your employer cannot:
 - » Fire you or cut your hours when they find out you have a disabling physical or mental impairment.

*New York State law defines "non-employees" as contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace or who is an employee of such contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace.

- » Force you to take leave because you have a disability, unless your disability actually prevents you from doing your job.
- » Treat you differently from other co-workers just because you have a disability.
- » Deny you fringe benefits that they offer to other employees.
- If you are applying for a job, an employer cannot:
 - » Ask if you have a disability.
 - » Refuse to hire you because you have a disability.

■ **What is a reasonable workplace accommodation?**

- If you have a disabling physical or mental impairment, even a temporary one, your employer has to make changes to your work duties or schedule if it will help you stay healthy on the job, unless it would be very difficult or expensive for them to do so. These changes are called “reasonable accommodations.”

■ **What are some examples of reasonable accommodations?**

- » Light duty, help with lifting, or a temporary transfer to a less physically demanding position
- » Changes to your workspace
- » Occasional breaks to rest
- » Modified work schedule
- » Job restructuring
- » Unpaid time off from work

■ **How do I ask my employer for a reasonable accommodation?**

- You can request an accommodation directly from your employer. They are allowed to request a note from your healthcare provider to confirm that you need the accommodation (though you have a right for that information to be kept confidential).



■ What if I am transgender and undergoing medical treatment to transition?

- Your employer must provide you with reasonable accommodations if you are transgender and undergoing medical treatment to transition. Moreover, your employer cannot discriminate against you for health needs related to transitioning.

WORKPLACE LEAVE: PAID FAMILY LEAVE

Everyone should be able to be with the people they love when they need them the most—without risking their economic security. In New York, you have the right to paid, job-protected time off to bond with a new child, care for a seriously ill or injured family member, or address needs due to a family member's military deployment.

AM I COVERED? If you're employed in New York State (and don't work for the government), either full-time or part-time, you're probably covered under the law, regardless of how many people work for your employer. You are also covered by the law if you are a farmworker.

■ How much paid family leave can I take?

- In 2020, you can take up to ten weeks of family leave. From 2021 onward, you will be able to take up to twelve weeks of leave. The number of weeks you are entitled to will be based on the year in which you start taking leave.

■ What can I use paid family leave for?

- You can use the time off to bond with a new child (including adopted and foster children), care for a seriously ill family member, or address certain military family needs.

■ If I'm self-employed, am I covered?

- If you're self-employed, you are not automatically covered, but you can voluntarily choose to be covered by purchasing a paid family leave insurance plan. However, if you want to opt in, you should do so *within the first 26 weeks of becoming self-employed*; if you wait, you'll need to pay for insurance for two years before you can use your benefits.

■ How much of my paycheck can I get while I am on paid family leave?

- In 2020, you will receive 60% of your average pay, up to \$840.70 per week, and in 2021 you will receive 67% of your average pay.
- **Note:** *If your pay fluctuates from week to week, you can use your average weekly earnings from the eight weeks prior to taking leave to determine your average pay amount.*

■ When can I take leave to bond with a new child?

- You have the right to take bonding leave at any point within the first 12 months following a child's birth or placement for adoption or foster care.
- If your child has two parents, **each** parent (of any gender) has the right to up to eight weeks of paid family leave.

If I'm taking leave to care for a seriously ill family member, what family members can leave be taken to care for?

- You can take paid family leave to care for your child, parent, parent-in-law, spouse (including a same-sex spouse), domestic partner, grandchild, or grandparent when that person has a serious health need. These needs can include a serious physical or mental illness, injury, or condition.

Will my job be protected when I'm on leave?

- Yes. You have the right to return either to the same job you had before leave or a comparable job (i.e. comparable in terms of pay, seniority, benefits, shift, location, etc.). If you receive healthcare coverage through your employer, you also have the right to keep your healthcare coverage under its current conditions.

When can I begin taking paid family leave?

- You are entitled to take paid family leave if you have worked for your employer for at least six months. If you work less than 20 hours per week, you may need to work for slightly longer (175 days) to qualify.

When do I need to tell my employer that I'm taking paid family leave to care for a seriously ill family member?

- You need to advise your employer at least 30 days prior to taking leave. If this is not possible like in the case of a medical emergency, you must inform your employer as soon as possible.
- You will also need to have your family member's health provider fill out the paid family leave application form (Form PFL-4) certifying that your family member has a serious health issue. Your family member will also need to sign a release form (Form PFL-3) authorizing the health provider to provide their medical information.

■ What if my employer tells me they “don’t do” paid family leave?

- It is against the law for your employer to not carry paid family leave insurance or to not self-insure. If your employer is breaking the law by not carrying insurance, you have the right to receive benefits through something called the Special Fund. To apply, you can submit relevant documentation to the Worker’s Compensation Board.
- **Note:** *The Special Fund may subject your employer to investigation and fines.*

Paid family leave interacts with a few other workplace leave laws. Below is an explanation of these laws and how they differ from, and interact with, paid family leave.

■ TEMPORARY DISABILITY INSURANCE (TDI) What is it and how is it different from paid family leave?

- TDI gives you the right to partial wage replacement while you are unable to work due to an off-the-job illness or injury, including pregnancy-related disabilities and recovery from childbirth.
- If you gave birth, you may be eligible for both TDI to recover from childbirth and paid family leave to bond with your new child. You cannot receive both benefits at the same time but if you are eligible for both TDI and paid family leave, you can choose how to combine these benefits.
 - » For example, you could take 6 weeks of TDI to recover from childbirth and then take 10 weeks of paid family leave to bond with your new child.
 - » Alternatively, you could also choose to take paid family leave immediately following childbirth.

- It is important to note that TDI does not include job protection and does not protect your healthcare coverage. However, you may still have rights under other laws such as the Family and Medical Leave Act or the pregnancy accommodation law.
- Unlike paid family leave, TDI benefits are capped at a maximum of \$170 per week.

■ **THE FAMILY AND MEDICAL LEAVE ACT (FMLA)** See page 33.

■ **EARNED SICK TIME** See page 35.



WORKPLACE LEAVE: UNPAID FAMILY & MEDICAL LEAVE

While you may have the right to paid family leave (see Paid Family Leave on page 28) you may also have a right to **unpaid**, job-protected time off to care for your own serious medical needs, bond with a new child, care for a seriously ill or injured family member, or address needs due to a family member's military deployment. You may hear this right referred to as the Family and Medical Leave Act (FMLA).

AM I COVERED? If you work at least 1,250 hours per year, for a government or private employer that has 50 or more employees within a 75-mile radius, and have worked there for at least one year, then you are covered.

■ What is the Family and Medical Leave Act (FMLA) and how much leave can I take?

- If you're covered, you can take up to 12 weeks of **unpaid** time off to bond with a new child, care for a seriously ill child, parent, or spouse, or care for your own serious health needs.

■ What can I use FMLA unpaid leave for?

- You can use the unpaid time off to care for your own serious medical needs (i.e. physical and mental illness or injury and needs related to pregnancy and recovery from childbirth), to bond with a new child, to care for a seriously ill family member, or address certain military family needs.

If I'm taking FMLA leave to care for a seriously ill family member, what family members can leave be taken to care for?

- You can take unpaid time off to care for children under the age of 18 (or an adult child unable to care for him or herself due to a physical or mental disability), a spouse, or a parent.

Will my job be protected when I'm on FMLA unpaid leave?

- Yes. You have the right to return either to the same job you had before leave or to an equivalent job (i.e. equivalent in terms of pay, seniority, benefits, shift, location, etc.). If you receive healthcare coverage through your employer, you also have the right to keep your healthcare coverage under its current conditions.

What are the key differences between FMLA unpaid leave and New York paid family leave?

- If you work for the government, you have a legal right to FMLA unpaid leave but not to New York paid family leave.
- You can use FMLA to care for your own serious health needs. You cannot use paid family leave to care for your own health needs.
- New York's paid family leave law gives you the right to be **paid** while you are on leave, while FMLA only gives you the right to **unpaid** time.
- New York paid family leave and FMLA have different eligibility requirements.
- The types of family members you can take time to care for differ under each law.

■ **Do I have to take New York paid family leave and FMLA unpaid leave at the same time?**

- If you are eligible for both the FMLA and paid family leave, your employer can require you to take time under both laws at the same time (concurrently).

WORKPLACE LEAVE: EARNED SICK TIME

Getting the flu should not spell financial disaster for your household. If you work in New York City, you can take paid time off to care for yourself or your ill or injured family members.

AM I COVERED? If you work in New York City (and don't work for the government), you are probably covered, whether you are a full-time, part-time, or temporary worker.

■ **What does it mean to “earn” sick time and how much earned sick time can I take?**

- You have the right to earn and use up to 40 hours of earned sick time per year.
- You will earn 1 hour for every 30 hours worked.
- While you begin earning sick time immediately, you can only begin using your earned sick time after being employed for 120 days.



What can I use earned sick time for?

- You can use earned sick time when you or a family member are sick, injured, or getting medical treatment, including mental health or preventive care.
- You can also use this time to:
 - » Address certain non-medical needs, including legal and housing needs when you or your family member are affected by domestic violence, sexual assault, stalking, or human trafficking.
 - » Care for chosen family (i.e. people with whom you have a relationship that is equivalent to a family relationship, whether or not you have a biological or legal relationship to them).
- You may also have a right under a separate law to receive two additional job-protected days off for the same and certain additional purposes as listed above. See the Fair Scheduling section on page 47 for more information.

How much of my paycheck can I get while I use earned sick time?

- If you work for an employer with five or more workers, your employer must pay you your full wages during the time off.
- If you work for an employer with fewer than five workers, your sick time will be unpaid, but you can't be fired or punished for taking it.

What if my employer tries to punish me for using earned sick time?

- It is illegal for your employer to punish or retaliate against you in any way for using your earned sick time or exercising any of your rights under the law. This means you can't be fired, demoted, written-up, have your hours reduced, or have any other action taken against you that punishes you for using your rights.

FAMILIAL STATUS DISCRIMINATION & CAREGIVER DISCRIMINATION

If you are a parent, your employer cannot penalize you because you have children under age 18. Under New York law, parents are entitled to the same treatment as their co-workers without children.

AM I COVERED? If you work for an employer in New York State, or are applying to work for one, then you are covered. You are also covered by the law if you are an independent contractor.*

■ What is familial status discrimination?

- It means your employer cannot discriminate against you because you have children under 18.

■ What does familial status discrimination look like?

- It can include refusing to hire or promote you, harassment, paying you less, or taking some other negative action against you just because you have children. For example:

*New York State law defines “non-employees” as contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace or who is an employee of such contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace.



- » Your boss can't fire you just because you are adopting a child and she thinks you will not be as dedicated to your work.
- » A company cannot refuse to hire you just because you are a single mother.
- » This type of discrimination might also include an employer denying you an alternate work schedule if they routinely grant such adjustments to workers without caregiving responsibilities.

Do I have additional rights if I work in New York City?

- Yes. If you work in New York City, it is illegal for employers to discriminate against you if you provide direct or ongoing care to:
 - » A child under 18 (including adopted or foster children).
 - » A parent, sibling, spouse, domestic partner, child (of any age), grandparent, or grandchild who is sick or has a disability.
 - » Anyone else with a disability who lives with you and relies on you for medical and/or daily care.

HEALTHCARE COVERAGE

Under federal law and New York State regulations, whether you get your insurance through your employer, the individual market, Medicaid, or Medicare, your insurance must cover certain preventive services without out-of-pocket costs. This includes, but is not limited to, breast and cervical cancer screening, osteoporosis screening, pregnancy related services, well woman visits, and contraception.

Which insurance plans must cover preventive services?

- All forms of insurance—including employer-sponsored plans, individual market plans, and Medicaid—must cover federally recommended preventive services without charging cost-sharing. That means you shouldn't pay anything out of your pocket for these services.

What are some examples of preventive services that apply specifically to women?

- » Well-woman visits
- » Coverage for all FDA-approved contraceptive methods
- » Pregnancy screenings and folic acid supplements
- » Breastfeeding counseling, consultation, and equipment rental
- » Interpersonal and domestic violence screening and counseling
- » Breast cancer mammography, genetic screening and counseling, and preventive medication
- » Cervical cancer pap testing and high risk HPV DNA testing
- » Osteoporosis screening

Are there any additional rights if I get my insurance through the individual market or Medicaid?

- Yes. If you get your insurance through the individual market or Medicaid, the plan must cover ten “essential health benefits,” including: ambulatory patient services; emergency services; hospitalization; maternity and newborn care; mental health and substance abuse disorder services, including behavioral health treatments; prescription drugs; rehabilitative and habilitative services and devices; laboratory services; preventive and wellness services; chronic disease management; pediatric dental and vision care.

$$\begin{aligned} 1 &= 1 \\ 2 &= 4 \\ 3 &= 9 \\ 4 &= 16 \end{aligned}$$

$$\begin{aligned} 1+1 &= 2 \\ 2+2 &= 4 \\ 3+6 &= 9 \\ 2+4 &= 6 \end{aligned}$$

DOMESTIC VIOLENCE

If you are a victim of domestic violence, New York State provides certain rights and protections to ensure that you remain safe in the workplace.

AM I COVERED? If you are a domestic violence victim and work for, or are applying to work for, an employer in New York State, then you are covered. You are also covered by the law if you are an independent contractor.*

■ What rights do I have as a domestic violence victim?

- Your employer cannot discriminate against you (i.e. treat you less favorably than other employees because you are a victim of domestic violence). Domestic violence can include harassment, stalking, menacing, and disorderly conduct.
 - » Your employer's behavior has to have some kind of negative effect on your employment. This can include not being hired or fired, changes to your job role and responsibilities, changes to your schedule or job location, changes to your pay, or failure to get a promotion because you are a victim of domestic violence.
- Your employer cannot punish you if you need to take time off to appear as a witness in a criminal case, consult with the District Attorney, or attend to other criminal legal matters related to the domestic violence you experienced.

*New York State law defines "non-employees" as contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace or who is an employee of such contractor, subcontractor, vendor, consultant or other person providing services pursuant to a contract in the workplace.

- In certain cases, if you leave your job voluntarily due to circumstances related to domestic violence, you may be eligible for unemployment insurance benefits.

Do I have additional rights if I work in New York City?

- Yes. If you work in New York City, you are legally protected from discrimination and are entitled to reasonable accommodations if you are a victim of domestic violence, sex offenses, or stalking, regardless of employer size.
- If you work in New York City, your employer must provide you with “reasonable accommodations” related to your needs as a victim of domestic violence, sex offenses, or stalking, unless it would be very difficult or expensive for them to do so.
 - » A reasonable accommodation might include your employer changing your phone number so that your abuser cannot call you at work.



OTHER IMPORTANT WORKPLACE LAWS

There are several other important laws to be aware of as a working woman in New York, including minimum wage, overtime, and benefits for off-the-job and on-the-job injuries.

MINIMUM WAGE The minimum wage is going up in New York over the next few years. Here's the breakdown:

- If you work in New York State, the minimum wage is \$11.80/hour. Beginning December 31, 2020, the minimum wage will increase from \$11.80/hour to \$12.50/hour.

MINIMUM WAGE IN NEW YORK STATE	
Date of increase	New minimum wage
December 31, 2017	\$10.40/hour
December 31, 2018	\$11.10/hour
December 31, 2019	\$11.80/hour
December 31, 2020	\$12.50/hour

- If you work in New York City, the minimum wage is \$15/hour.

MINIMUM WAGE IN NEW YORK CITY		
Date of increase	New minimum wage	
	10 or fewer employees	11 or more employees
December 31, 2017	\$12.00/hour	\$13.00/hour
December 31, 2018	\$13.50/hour	\$15.00/hour
December 31, 2019	\$15.00/hour	\$15.00/hour

- If you work in Long Island or Westchester, the minimum wage is \$13/hour. Beginning December 31, 2020, the minimum wage will increase from \$13/hour to \$14/hour.

MINIMUM WAGE IN LONG ISLAND AND WESTCHESTER	
Date of increase	New minimum wage
December 31, 2017	\$11.00/hour
December 31, 2018	\$12.00/hour
December 31, 2019	\$13.00/hour
December 31, 2020	\$14.00/hour
December 31, 2021	\$15.00/hour

- Special wage rates apply if you are a tipped worker.

OVERTIME If you are an hourly employee and you work more than 40 hours in one week, your employer must pay you at least 1.5 times your regular rate of pay for those additional hours worked. This is a federal law.

- **Note:** *You may be entitled to overtime even if you are paid a salary.*

FAIR SCHEDULING

- If you make minimum wage and your employer schedules you for a shift, and you report to work, you may still be entitled to pay even if you are no longer needed for work that day. This is a growing area of law and New York may be expanding protections around fair scheduling.
- Do I have additional protections if I work in New York City?
 - » Most employees in New York City have the right to:
 - A temporary schedule change due to a “personal event” two times a year—for up to one business day per request.

- ◆ A personal event includes the need to care for a child under 18, care for a family member or someone who lives with you who has a disability and relies on you for care, the need to attend a legal proceeding or hearing for benefits, or the need for safe or sick time. This right is separate from your right to earn up to 40 hours a year of earned sick time if you are covered under that law. (See page 35 for information on Earned Sick Time.)
- Request a change to your schedule without risking retaliation from your employer. Your employer is not required to approve your request to change your schedule but also cannot punish or discipline you for requesting it.
- » If you are a fast food worker in New York City and work for a chain that operates 30 or more restaurants, you likely have the right to advance notice of your schedule, access to your hours, and may not be required to work two shifts with fewer than 11 hours between the end of a shift and the beginning of the next one.
- » If you are a retail worker in New York City and work for an employer with 20 or more employees, you likely have the right to advance notice of your schedule and may not be scheduled for on-call shifts.

ON-THE-JOB INJURIES & ILLNESSES If you are injured on the job—no matter who is at fault—you may be eligible to receive workers' compensation benefits to cover a portion of your wages and medical needs.

OFF-THE-JOB INJURIES & ILLNESSES New York law also gives most workers the right to temporary disability insurance (TDI), sometimes known as disability benefits (DB). TDI gives you the right to partial wage replacement while you are unable to work due to an

off-the-job illness or injury, including pregnancy-related disabilities and recovery from childbirth. TDI benefits are capped at a maximum of \$170 per week.

- For more information about how TDI interacts with New York paid family leave, see page 31.

UNEMPLOYMENT INSURANCE If you lose your job and are able to continue working, you may be eligible to receive unemployment insurance benefits.

OTHER ANTI-DISCRIMINATION LAW In New York, employers cannot discriminate against you based on age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status.

- Do I have additional protections in NYC?
 - » Yes. If you work in New York City, your employer cannot discriminate against you based on:
 - Age
 - Alienage or citizenship status
 - Color
 - Disability
 - Gender (including sexual harassment)
 - Gender Identity
 - Marital status and partnership status
 - National origin
 - Pregnancy
 - Race
 - Religion/Creed
 - Sexual orientation
 - Status as a Veteran or Active Military Service Member

- » You also have additional protections in New York City based on your:
- Arrest of conviction record
 - Caregiver status
 - Credit history
 - Unemployment status
 - Salary history
 - Status as a victim of domestic violence, stalking, and sex offenses



GENERAL TIPS

- 1 Do your homework.** Before having a conversation with your employer about any of these rights, it's a good idea to do your homework and review your employer's policies, which may go beyond your rights under the law. You may also want to consult with human resources.
- 2 Take notes.** If you have an uncomfortable conversation with a co-worker or boss, take careful notes after your conversation, especially about anything that sounded strange or wrong to you. Keep a copy of your personal notes (e.g. email them to your personal email so that they are time stamped).
- 3 Speak to your union.** If you belong to a union, speak with your union representative if you think your rights have been violated. Your union representative should be able to guide you through the union grievance process. It is important to remember that even if you go through the grievance process with your union, the deadlines for filing a complaint with an agency or in court will still apply to you.
- 4 Consider attempting to resolve the issue directly with your employer.** Before filing a complaint with an administrative agency or in court, you may be able to resolve your issue internally. If your supervisor is unhelpful or is the one violating your rights, consider raising the issue with human resources or another person at the company if there is no human resources department. It is important to remember that even if you go through an internal complaint process with your employer, the deadlines for filing a complaint with an agency or in court will still apply to you.

RESOURCES

For the latest information on all of the rights listed in this guide, visit **abetterbalance.org/ny-pocketguide**

If you have questions about any of the rights discussed in this guide, we are here to help. A Better Balance's free, confidential legal helpline can help you understand your workplace rights. We offer services in English and Spanish.

Legal Helpline: 1 (833) NEED-ABB [1 (833) 633-3222]

If you wish to speak to us about a troubling incident, we encourage you to call us as soon as possible since there may be time limits on when you're able to bring a complaint with an agency or in court. A Better Balance maintains a referral network that can help connect you to attorneys.

The next pages list government agencies and the workplace laws they enforce. You can contact them directly or through a lawyer.

- **Note:** *You can file a complaint with a government agency even if you have an employment contract or an employee handbook that contains an arbitration clause.*

IF YOU WORK IN NEW YORK CITY:

New York City Commission on Human Rights

Call **311** or **1 (718) 722-3131**

- Enforces anti-discrimination law, including, but not limited to, sex discrimination, sexual harassment, pregnancy accommodations and lactation accommodations, disability discrimination, and discrimination based on caregiver status and status as a victim of domestic violence, sex offenses, or stalking.
- You can also file a complaint with the Commission alleging pay discrimination as a form of sex discrimination.
- You must file your complaint with the agency within one year of the date that the last act of discrimination took place.
- Alternatively, you may file a lawsuit in court without first filing a discrimination complaint with the New York City Commission on Human Rights. You have three years from the date of discrimination during which to file a lawsuit.

New York City Department of Consumer and Worker Protection—Office of Labor Policy and Standards

Call **311** or **(212) NEW-YORK**

- Enforces earned sick time law and fair scheduling laws.
- You must file your earned sick time or fair scheduling complaint with the agency within two years of the alleged violation.
- Alternatively, you may file a lawsuit in court without first filing a fair scheduling complaint with the New York City Department of Consumer and Worker Protection, but must do so within two years of the alleged violation.

IF YOU WORK IN NEW YORK STATE:

New York State Division of Human Rights

Call **1 (888) 392-3644**

- Enforces anti-discrimination law, including, but not limited to, sex discrimination, sexual harassment, disability discrimination, familial status, pregnancy accommodations, and discrimination based on status as a victim of domestic violence.
- You can also file a complaint with the Division alleging pay discrimination as a form of sex discrimination.
- You must file your complaint with the agency within one year of the date that the last act of discrimination took place.
- Alternatively, you may file a lawsuit in court without first filing a discrimination complaint with the New York State Division of Human Rights. You have three years from the date of discrimination during which to file a lawsuit.

New York State Department of Labor

Call **1 (888) 4-NYSDEL**

1 (888) 209-8124 (to file unemployment insurance claim)

- Enforces equal pay law, pumping law, minimum wage and overtime laws, and unemployment insurance law.
- You can file a complaint with the agency at any point upon realizing there may be a potential violation of these laws, but note that employers are often only obligated to keep payroll records on hand for a certain number of years, so it's advisable to file a complaint as soon as you realize there may be a violation.

- Alternatively, you may file a lawsuit in court alleging violations of the minimum wage, overtime, or equal pay laws, but must do so within six years of the alleged violation.

New York State Workers' Compensation Board

Call 1 (877) 632-4996

- Enforces workers' compensation law, paid family leave law, and the temporary disability insurance law.
- You can file a complaint for an alleged violation of the paid family leave law (i.e. your boss retaliates against you, refuses to reinstate you, or refuses to continue your healthcare coverage) within two years of the violation.



FEDERAL AGENCIES:

U.S. Equal Employment Opportunity Commission (EEOC)

Call 1 (800) 669-4000

- Enforces federal anti-discrimination law, including discrimination based on sex, race, color, religion, and national origin.
- In most circumstances, you must file a complaint with the EEOC before filing a complaint in court and you must file it with the agency within 300 days of the discriminatory act that took place.

U.S. Department of Labor—Wage & Hour Division

Call 1 (866) 487-9243

- Enforces the Family and Medical Leave Act (FMLA), minimum wage and overtime laws, and the federal break time for pumping law.
- You can file a complaint with the agency within a reasonable time of the alleged violation.
- Alternatively, you may file a lawsuit in court related to an alleged FMLA violation or failure to receive minimum wage or overtime, but must do so within two years of the alleged violation (or within three years if the violation was particularly egregious or “willful”).



the work and family legal center

For more resources on all
of the laws discussed in this
guide, visit our website at
www.abetterbalance.org.



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THE WORKING WOMAN'S POCKET GUIDE

A Better Balance is a non-profit legal advocacy organization working nationally to promote fairness, equality, and justice in the workplace for women and families.

Help support more outreach and public education projects like our Working Woman's Pocket Guide at www.abetterbalance.org.



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