



Pregnant Workers Guide

What Should Trans & Non-Binary People Know?

I. Introduction



Many transmasculine and non-binary people choose to get pregnant and carry children.

For some transmasculine and non-binary people, getting pregnant is planned in advance. For other people, pregnancy may be unexpected, and for some, unwanted. Though there is a misconception that transmasculine and non-binary people who have taken or are currently taking testosterone either cannot get pregnant or will have challenging pregnancies, neither of those things are true.¹ While it is true that once pregnant, hormone replacement therapy (HRT) treatments must be paused, emerging evidence shows that transmasculine and non-binary people who have used HRT have fertility rates similar to cisgender women, and have no greater likelihood of negative birth outcomes.² Additionally, some transgender and non-binary people lactate and breastfeed/chestfeed their babies. This includes adoptive and non-gestational parents, including transgender women and trans-femmes.³

1 Sarah Prager, *Transgender Pregnancy: Moving Beyond Misconceptions*, Healthline (Oct. 22, 2020).

2 Trystan Reece, *Trans Fertility: How Does Testosterone Affect Egg Health?*, Family Equality (June 24, 2020).

3 Jojanneke E. van Amesfoort, Norah M. Van Mello, and Renate van Genugten, *Lactation induction in a transgender woman: case report and recommendations for clinical practice*, International Breastfeeding Journal (2024), see also Amy K. Weimer, *Lactation Induction in a Transgender Woman: Macronutrient Analysis and Patient Perspectives*, Journal of Human Lactation, (May 3, 2023).

I. Introduction

However, transgender and non-binary people do experience far greater instances of stigmatization, discrimination in perinatal (perinatal refers to the time period during pregnancy to around a year after birth) healthcare, workplace discrimination, and other social harms during pregnancy.⁴ This is particularly true for transgender and non-binary people of color, as it is well documented that people of color, particularly Black people, experience multiple forms of discrimination when seeking perinatal healthcare.⁵

This guide focuses specifically on helping transgender and non-binary workers understand their rights under the Pregnant Workers Fairness Act (PWFA) and the PUMP Act, including the right to reasonable accommodations at work, a designated space to pump milk and breaks for pumping, and postpartum (the time period following childbirth) health protections.

In addition to the accommodations available under the PWFA and PUMP Act, pregnant and postpartum workers may also be eligible for unpaid leave under the Family and Medical Leave Act (FMLA) and, depending on the state, statewide paid (and unpaid) family and medical leave laws. For more information see our [FMLA guide](#) and our [Statewide Paid Leave Protections guide](#).

This guide also includes a list of resources on other topics related to pregnancy, lactation, and the postpartum experience.

What does this guide cover?

This guide provides an overview of the PWFA and PUMP Act with a focus on scenarios that transgender and non-binary people may experience before, during, and after pregnancy.



⁴ Bella Isaacs-Thomas, *For Many Pregnant Trans People, Competent Medical Care is Hard to Find*, PBS (May 26, 2021); see also *Pregnant transgender man files an employment discrimination lawsuit against Amazon* and *Advocates for Trans Equality: Employment*.

⁵ Latoya Hill, Samantha Artiga, and Usha Ranji, *Racial Disparities in Maternal and Infant Health: Current Status and Efforts to Address Them*, KFF (Nov. 1, 2022).

II. Overview of the PWFA

What is the PWFA, and What Does it Provide?

The Pregnant Workers Fairness Act (PWFA) is a landmark nationwide civil rights law that gives pregnant and postpartum workers the right to reasonable accommodations, or changes to their work, for pregnancy, childbirth and related medical conditions. The PWFA:



Covers assisted reproductive technology and other fertility treatments such as intrauterine insemination (IUI) and in vitro fertilization (or IVF) sought for the purpose of becoming pregnant



Ensures that workers who are pregnant, seeking to become pregnant, or postpartum (the time period following childbirth or loss of pregnancy) are not forced off the job by guaranteeing them the accommodations they need to stay safe and healthy.



Includes protections for pregnant and postpartum workers from discrimination or retaliation for needing reasonable accommodations. The law ensures that millions of pregnant workers, and those who are seeking to become pregnant or have recently given birth, can protect their health without risking their paycheck.

Does the PWFA Apply to Me?

All employees (including government employees) who work for an employer with **15 or more employees** are covered under the PWFA regardless of how long they've been working for their employer. There is no waiting period to receive accommodations. You can get reasonable accommodations as soon as you start working at a new employer, or even sooner if you need accommodations during the application/hiring process, as long as you have a health need related to pregnancy or childbirth that requires accommodations.

Some states and cities have their own versions of the PWFA that apply to smaller employers. If you work for a company with fewer than 15 employees, be sure to check out A Better Balance's [Workplace Rights Hub](#) for information about any applicable rights in your state.

II. Overview of the PWFA

What is a Reasonable Accommodation?

A reasonable accommodation is a change to an employee's work environment, job duties, or schedule that they need to perform their job while keeping safe and healthy. Covered employers have to provide reasonable accommodations for their employees' pregnancy, childbirth, and related medical conditions unless it would be an "undue hardship" to the employer.

Examples of potential reasonable accommodations include (but are not limited to):

- Light duty, **including reducing or receiving help with manual labor and lifting or climbing**
- Temporary **transfer** to a less physically demanding or safer position
- Additional, longer, or more flexible **breaks** to drink water, eat, rest, or use the restroom
- **Changing food or drink policies** to allow you to eat or drink water at your workstation
- Providing **additional equipment**, such as a stool to sit on at your workstation
- **Making existing facilities easier to use**, such as relocating your workstation closer to the restroom
- **Changing a uniform or dress code**, like allowing you to wear looser clothes to accommodate your pregnancy
- **Limiting exposure to hazardous chemicals** and other workplace hazards
- **Flexible/modified scheduling**, such as for prenatal or postnatal doctor's appointments or to accommodate morning sickness
- **Remote work or telework**
- **Time off** for **prenatal** appointments or to obtain **postpartum-related care**
- **Time off** for appointments related to **fertility/assisted reproductive care** for the purpose of becoming pregnant
- **Leave or time off to recover from childbirth**, even if you don't qualify for leave under other laws like the federal FMLA
- **Leave or time off for other pregnancy- or postpartum-related health issues**, such as bedrest, recovery from miscarriage, postpartum depression, or mastitis
- **Lactation-related accommodations**, such as providing a worker break time to pump milk or creating a clean, private lactation space (that isn't a bathroom)

II. Overview of the PWFA

These are only examples, and there are plenty of other changes you could ask for at work to protect you and your pregnancy. Keep in mind that your employer doesn't necessarily have to provide you with your preferred accommodation, but they do have to provide you with an accommodation that meets your health needs, as long as it would not create an undue hardship for the employer (see more below).

When is an Accommodation an Undue Hardship?

An accommodation is an undue hardship if it would be **significantly difficult or expensive** for the employer to provide the accommodation.

Whether an accommodation is an undue hardship always depends on the situation in your workplace, taking into account things like the cost of the accommodation, the size of your employer, and your employer's financial resources.

Employers have to be able to explain why a certain accommodation would be an undue hardship, and this is a high bar to meet. An accommodation is not an undue hardship if it will only be moderately difficult or expensive for your employer to provide. Employers may have to make exceptions to their usual policies to accommodate workers, and this isn't automatically an undue hardship. "Unfairness" to other workers or concerns about employee morale are also not undue hardships.



III. Protections for Lactating and Nursing Workers Under the PWFA and PUMP Act

Workers have rights related to lactation and pumping milk under the PUMP Act and the PWFA, detailed below.

What Is the PUMP Act and What Does It Provide?

The PUMP Act provides lactating workers nationwide the right to reasonable break time and a place, other than a bathroom, that is shielded from view and free from intrusion, to pump or express milk while at work. This right is available for up to one year after the child's birth. These protections apply regardless of gender or gender identity.

Am I Protected Under the PUMP Act?

Thanks to the PUMP Act, nearly all workers are now covered by the federal lactation break time and space requirements.

The PUMP Act applies to employees regardless of the size of their employer. In some situations, employers that have fewer than 50 employees may be excused from complying with the law when providing the break time and space required by the PUMP Act would be significantly difficult or expensive (called an "undue hardship"). According to the U.S. Department of Labor, undue hardship is extremely rare in the context of the PUMP Act.⁶ In almost all situations, employers with fewer than 50 employees must provide the required break time and space. And there is no undue hardship exemption available for employers with 50 or more employees; they must follow the law without exception.

Special rules apply to certain rail carrier and motorcoach employees. Unfortunately, airline flight crewmembers (flight attendants and pilots) remain uncovered by the law.

Employees may have additional rights to receive break time, space, and modifications at work for lactation under other federal and state laws. See [Section IV](#) for where to go for help.

⁶ U.S. Department of Labor, [Field Assistance Bulletin No. 2023-02](#), ("Because the law requires only space and time for unpaid breaks for one year after a child's birth, and the employer must be able to demonstrate 'significant' difficulty or expense, employers will be exempt only in limited circumstances.").

III. Protections for Lactating and Nursing Workers Under the PWFA and PUMP Act

Does the PWFA Also Cover Nursing or Lactation-Related Accommodations?



Yes.

Lactation is a medical condition related to pregnancy or childbirth, so employees can ask for accommodations related to nursing under the PWFA, even if they are not covered by the PUMP Act. Lactating employees may need accommodations to pump at work, prevent infections or mastitis, keep up their milk supply, and more. Some examples of lactation accommodations include (but are not limited to):

Regular breaks to pump milk

A private, non-bathroom space that you can pump in

Temporary transfer to another position to prevent exposure to environmental hazards/chemicals, or to give you access to a pumping location

Modifications to your uniform or equipment

IV. Enforcement and Other Considerations

Protection From Employer Interference and Retaliation Under the PWFA and PUMP Act

If you think your rights have been violated under the PWFA or PUMP Act or need more information, the following options may be useful to you:



Call A Better Balance's free and confidential legal helpline at **1-833-NEED-ABB** (1-833-633-3222) or complete our [online contact form](#).



Contact Transgender Law Center's legal information helpdesk by using our [online intake form](#).



IV. Enforcement and Other Considerations

Additional Protections Against Employment Discrimination

Following the Supreme Court's landmark *Bostock v. Clayton County* decision in 2020, transgender and non-binary people with an employer that has at least 15 employees are protected under federal law against employment discrimination based on sexual orientation or gender identity. If you believe you have been discriminated against based on your sexual orientation or gender identity you can [file a complaint](#) with the Federal Equal Employment Opportunity Commission (EEOC).

You may also be able to file a complaint with your state and/or local discrimination enforcement agency. For more information about employment discrimination see Transgender Law Center's online [employment resources](#). If you feel that you are experiencing workplace discrimination, the Transgender Law Center's [Legal Information Helpdesk](#) can provide information about addressing employment discrimination and legal resources.



[File a Complaint](#)
with the Federal
Equal Employment
Opportunity
Commission



Transgender Law
Center's [Employment
Discrimination
Resources](#)



Transgender Law
Center's [Legal
Information Helpdesk](#)

IV. Enforcement and Other Considerations

Protections Under the FMLA and State Paid Leave Laws

Pregnant workers may also be eligible for leave under the Family & Medical Leave Act (FMLA) and/or statewide paid family and medical leave laws. The FMLA provides eligible employees up to 12 weeks of unpaid, job-protected leave to bond with a new child, recover from their own serious illness, or to care for a seriously ill family member. In a growing number of states, statewide paid family and medical leave laws provide similar or expanded protections. Additionally, many states provide for some level of wage replacement (i.e. paid leave), and many have more expansive definitions of family that include chosen family and other loved ones. For more information about the FMLA, see our guide [here](#). For more information about statewide paid family and medical leave, see our guide [here](#).

Other Resources

Trans Fertility Co.: A trans-led project containing articles on academic research, videos on many aspects of trans fertility, and opportunities for fertility and family-building practitioners to deepen their commitment to the trans community.

Family Equality: An organization focused on advancing the rights of LGBTQ families, Family Equality has several trans and non-binary specific resources, including:

- [Preparing for Pregnancy as a Non-Binary person](#)
- [Transmasculine Fertility](#)
- [Trans Fatherhood](#)
- [LGBTQ+ family building provider directory](#)

Transgender Law Center:

- [A Language Guide for Journalists and Communities: Abortion and Reproductive Care](#)

What's in A Name? Gender Inclusion in Maternity and Beyond