

Fact Sheet for Small Businesses: Pregnancy Discrimination

This document explains the requirements of the Pregnancy Discrimination Act (**PDA**), as well as the requirements of Title I of the Americans with Disabilities Act (**ADA**) as it applies to women with pregnancy-related disabilities. The PDA and ADA apply to employers with 15 or more employees.

Basic PDA Requirements

The PDA requires that a covered employer treat women affected by **pregnancy, childbirth, or related medical conditions** in the **same** manner as other applicants or employees who are **similar in their ability or inability to work**. The PDA covers all aspects of employment, including firing, hiring, promotions, and fringe benefits (such as leave and health insurance benefits). Pregnant workers are protected from discrimination based on current pregnancy, past pregnancy, and potential pregnancy.

- *Current pregnancy.* Under the PDA, an employer cannot fire, refuse to hire, demote, or take any other adverse action against a woman if pregnancy, childbirth, or a related medical condition was a motivating factor in the adverse employment action. **This is true even if the employer believes it is acting in the employee's best interest.**
- *Past Pregnancy.* An employer may not discriminate against an employee or applicant based on a past pregnancy or pregnancy-related medical condition or childbirth. For example, an employer may not fire a woman because of pregnancy during or at the end of her maternity leave.
- *Potential Pregnancy.* An employer may not discriminate based on an employee's intention or potential to become pregnant. For example, an employer may not exclude a woman from a job involving processing certain chemicals out of concern that exposure would be harmful to a fetus if the employee became pregnant. Concerns about risks to a pregnant employee or her fetus will **rarely, if ever**, justify sex-specific job restrictions for a woman of childbearing capacity.
- *Medical Condition Related to Pregnancy or Childbirth.* An employer may not discriminate against an employee because of a medical condition related to pregnancy and must treat the employee the same as others who are similar in their ability or inability to work but are not affected by pregnancy, childbirth, or related medical conditions. For example, under the PDA, since lactation is a medical condition related to pregnancy, an employer **may not discriminate against an employee because of her breastfeeding schedule**. (For information about a provision of the Patient Protection and Affordable Care Act that provides additional protections for breastfeeding employees, see the section on "Other Federal Laws Protecting Pregnant Workers" below.).

Harassment

It is unlawful to harass a woman because of pregnancy, childbirth, or a related medical condition. Harassment is illegal when it is **so frequent or severe** that it creates a **hostile or offensive environment**, or when it results in an adverse employment decision (such as the victim being fired or demoted).

Workers with Caregiving Responsibilities

Discrimination against a worker with caregiving responsibilities violates Title VII if it is based on sex, and violates the ADA if it is based on a family member's disability. For example, an employer violates Title VII by treating a female employee with young children less favorably than a male employee with young children when deciding on work opportunities, based on a belief that the mother should focus more on the children than on her career. In addition, an employer violates the ADA where it takes an adverse action, such as refusing to hire or denying promotion, against a mother of a newborn with a disability over concerns that she would take off a lot of time for the child's care or that the child's medical condition would impose high health care costs.

Benefits of Employment

An employer must provide the same benefits of employment to women affected by pregnancy, childbirth, or related medical conditions that it provides to other persons who are **similar in their ability or inability to work**.

- *Light Duty Policies.* An employer has to provide light duty, alternative assignments, disability leave, or unpaid leave to pregnant workers if it does so for other employees who are similar in their ability or inability to work.
 - An employer **may not limit** a pregnant worker's access to light duty based on the **source of her impairment** (e.g., it may not deny light duty to a pregnant worker based on a policy that limits light duty to employees with on-the-job injuries).
 - However, if an employer's light duty policy restricts the number of light duty positions or the duration of light duty assignments, the employer may lawfully apply those restrictions to pregnant workers, **as long as it also applies the same restrictions to other workers similar in their ability or inability to work.**
- *Leave.* While an employer may not compel an employee to take leave because she is pregnant as long as she is able to perform her job, it **must allow** women with physical limitations resulting from pregnancy to take leave on the same terms and conditions (e.g., provide them with the same amount of leave) as others who are **similar in their ability or inability to work.**

- An employer:
 - may not single out an employee’s pregnancy-related condition for medical clearance procedures that are not required of employees who are similar in their ability or inability to work,
 - may not remove a pregnant employee from her job because of pregnancy as long as she is able to perform her job, and
 - must allow her to return to work following recovery from a pregnancy-related condition to the same extent that employees on sick and disability leave for other reasons are allowed to return.
- If the pregnant employee used leave under **the Family and Medical Leave Act**, the employer must restore the employee to the employee’s original job or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. (For information about the Family and Medical Leave Act, see the section on “Other Federal Laws Protecting Pregnant Workers” below.)
- Title I of the ADA may require an employer to provide leave **beyond that which it usually allows its employees to take**, as a reasonable accommodation for an employee with a pregnancy-related impairment that is a disability.
- *Medical Benefits.* The PDA requires employers who offer health insurance to include coverage of pregnancy, childbirth, and related medical conditions. An employer must provide the **same terms and conditions for pregnancy-related benefits** as it provides for benefits relating to other medical conditions.

The Americans with Disabilities Act

Although pregnancy itself is not a disability, **pregnant workers may have impairments related to their pregnancies that qualify as disabilities under the ADA.** Amendments to the ADA made in 2008 make it much easier than it used to be to show that an impairment is a disability. A number of pregnancy-related impairments are likely to be disabilities, **even though they are temporary**, such as pregnancy-related carpal tunnel syndrome, gestational diabetes, pregnancy-related sciatica, and preeclampsia.

An employer may not discriminate against an individual whose pregnancy-related impairment is a disability under the ADA and must provide an individual with a **reasonable accommodation** if needed because of a pregnancy-related disability, unless the accommodation would result in **significant difficulty or expense (“undue hardship”).**

Examples of reasonable accommodations that may be necessary for a pregnancy-related disability include:

- Redistributing **marginal** or nonessential functions (for example, occasional lifting) that a pregnant worker cannot perform, or altering how an essential or marginal function is performed;
- **Modifying workplace policies** by allowing a pregnant worker more frequent breaks or allowing her to keep a water bottle at a workstation even though the employer generally prohibits employees from keeping drinks at their workstations;
- **Modifying a work schedule** so that someone who experiences severe morning sickness can arrive later than her usual start time and leave later to make up the time;
- Allowing a pregnant worker placed on bed rest to **telework where feasible**;
- **Granting leave** in addition to what an employer would normally provide under a sick leave policy;
- **Purchasing or modifying equipment**, such as a stool for a pregnant employee who needs to sit while performing job tasks typically performed while standing; and
- **Temporarily reassigning** an employee to a **light duty** position.

Other Federal Laws Affecting Pregnant Workers

The Family and Medical Leave Act (FMLA) allows eligible employees of employers with **50 or more employees** to take up to **12 workweeks** of leave for, among other things, the birth and care of the employee's newborn child and for the employee's own serious health condition. The Department of Labor enforces the FMLA. For more information about the FMLA see <http://www.dol.gov/whd>.

Section 4207 of the Patient Protection and Affordable Care Act amended the Fair Labor Standards Act to require employers to provide "reasonable break time" for hourly employees to express breast milk until the child's first birthday. Employers are required to provide "a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk." **Employers with fewer than 50 employees** are not subject to this requirement if it "would impose an undue hardship by causing significant difficulty or expense when considered in relation to the size, nature, or structure of the employer's business." DOL has published a Fact Sheet providing general information on the break time requirement for nursing mothers. The Fact Sheet can be found at <http://www.dol.gov/whd/regs/compliance/whdfs73.htm>.