

Overview of the Pregnancy Discrimination Act and Related Requirements

The Pregnancy Discrimination Act (PDA) is a federal law that requires covered employers to 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.

Employee Coverage

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.

Employer Coverage

The PDA covers employers with 15 or more employees. Depending on the circumstances, temporary employees may need to be included to determine whether the 15 employee threshold has been met.

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 treat women affected by pregnancy, childbirth, or related medical conditions the same as other employees who are similar in their ability or inability to work with respect to light duty, alternative assignments, disability leave, or unpaid leave.

- *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. 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. The Americans with Disabilities Act 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.

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. 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").

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.

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.

State Laws

If a state or city has laws that are more stringent than those discussed above, employers must also comply with those laws.