



Guide to Protecting Yourself Against Pregnancy Discrimination

A pregnant woman in a white short-sleeved shirt is the central figure, holding a large document with both hands. She is standing in an office environment. In the background, two other people are seated at a white desk, working on laptops. The scene is overlaid with a semi-transparent blue filter. A teal banner at the bottom contains the text "Pregnancy Discrimination".

Pregnancy Discrimination

PREGNANCY DISCRIMINATION

Since 1978, it's been illegal to discriminate against a woman based on pregnancy, childbirth, or related medical conditions. The goal of the Pregnancy Discrimination Act (PDA) was to make it clear that pregnant women must be allowed to work under the same conditions as their co-workers.

The PDA protects women's current pregnancies, past pregnancies, potential or intended pregnancies—and even medical conditions related to pregnancy or childbirth.

The law has two essential points:

First, an employer cannot discriminate against an employee based on the fact she is pregnant or just gave birth. So, for example, a woman cannot be fired after she tells her boss she's pregnant—or because her boss suspects she's pregnant. Similarly, she cannot be fired because she is planning to get pregnant or just gave birth.

Secondly, the law requires that pregnant employees be treated the same as non-pregnant employees who are like them in their ability or inability to work. For example, if a pregnant woman suffers from low back pain and cannot lift heavy objects, then she should get the same treatment as any other employee who needs an accommodation (which may include light-duty) due to a medical condition.



A Clear Case of Pregnancy Discrimination



A CLEAR CASE OF PREGNANCY DISCRIMINATION

We once represented a woman who was well on her way to starting a new job. She had several interviews with a company and completed all the hiring requirements. She even had a start date.

Shortly before she was scheduled to begin, this woman told the company she would need to take a day off to go to a doctor's appointment regarding her pregnancy.

The company immediately rescinded its offer to hire her and told her directly that it was doing so because she was pregnant. A supervisor told her that she should contact the company again after giving birth.

Not all cases are this obvious, but this one was a clear violation of the law: She was being discriminated against because of her pregnancy. A company can't fire, demote, or refuse to hire someone because she is pregnant.

This was also a case of sex discrimination, which is often true with pregnancy violation since only woman can get pregnant, so we represented her on both claims.

WHY WE HAVE THIS LAW?

While the PDA was a step in the right direction, we still need laws to protect pregnant women from discrimination. Statistics show that women continue to be discriminated against because they are pregnant. Thousands of women file charges of discrimination each year, alleging violations of the PDA.

In 2008, one study found that pregnancy discrimination complaints have risen at a faster rate than the steady growth of women in the workplace, and discrimination on the basis of pregnancy disproportionately affects minority women.

When a woman believes she has a claim under the PDA, she must first file a "charge of discrimination" with the U.S. Equal Employment Opportunity Commission (EEOC), which is charged with the responsibility to investigate violations of federal discrimination law. Charges of discrimination may also be filed with local, county, and state agencies which administer laws which also protect women against pregnancy discrimination.

The EEOC has found that the most common issue alleged in charges is illegal termination because of pregnancy. Other charges include allegations that a woman was treated differently because of her pregnancy. For example, some pregnant employees are scrutinized more closely or face harsher discipline than non-pregnant employees. That's unlawful.



Who's Covered by the PDA

WHO'S COVERED BY THE PDA?

1. People who are currently pregnant

This kind of discrimination happens when an employer refuses to hire, fires, or takes any other adverse action against a woman because she is pregnant, without regard for her ability to perform the duties of the job.

As a threshold matter, the pregnant employee will have to show that the employer knew the female employee was pregnant when the employer refused to hire her, fired her, or took some other adverse action against her. However, this doesn't mean she has to have told a supervisor. Perhaps her employer was made aware of her pregnancy through gossip or because it is obvious by looking at the employee.

2. People who were pregnant

The PDA doesn't limit claims to those currently pregnant. It protects people who were pregnant, including those who have given birth. This provides an obviously needed a second layer of protection by prohibiting the firing of a recently pregnant woman the day after her delivery.

Timing is often very important in this type of claim. It's generally easiest to prove that an employer violated the law if the employee is fired soon after she gave birth and/or took parental leave.

3. People who intend to become pregnant

The U.S. Supreme Court has held that federal law "prohibit[s] an employer from discriminating against a woman because of her capacity to become pregnant." Therefore, a woman cannot be discriminated against because she might get pregnant or intends to become pregnant. Employers really shouldn't be asking about an employee's intent to become pregnant, as this can often be used as evidence of pregnancy discrimination if the employer subsequently takes adverse action against that employee.

Often, when an employer wants to fire an employee because she plans to become pregnant, it is based on stereotypes that women with children will not be hard workers who are devoted to their jobs because they are too busy with domestic responsibilities. Meanwhile, statistics show that men with children are often regarded as more stable and responsible. This is obviously an outdated double standard, and it does not justify the firing of a woman who plans to become pregnant.

4. People who have a medical condition related to pregnancy or childbirth

An employer can't discriminate against a woman who has a medical condition related to pregnancy or childbirth. This goes back to the beginning, when we said that the employer must treat her the same as other employees who are "similar in their ability or inability to work" but not affected by pregnancy or childbirth.

This rule sometimes allows employers to legally fire a pregnant employee. For example, if a woman works for a company that only provides four weeks of medical leave to employees who have worked less than a year—and that woman goes on maternity leave and doesn't return after four weeks—the employer can fire her, so long as the employer uniformly applies that company policy company-wide. In other words, if an employee is eligible for light duty, or a leave of absence, or reassignment of job duties to accommodate a heart condition unrelated to pregnancy, the pregnant woman must be eligible for the same considerations.

A pregnant woman with blonde hair is sitting in an office chair, holding her head with both hands, suggesting a headache or physical discomfort. She is wearing a grey long-sleeved top. In the background, there is a computer monitor and some office equipment. The image has a blue tint.

Disabilities Stemming from Pregnancy

DISABILITIES STEMMING FROM PREGNANCY

The Americans with Disabilities Act (ADA) protects people with qualified handicaps and disabilities from discrimination. And while pregnancy itself is not a “disability” under the ADA, pregnant workers and job applicants may still be protected by the ADA. That’s because a 2008 amendment to the ADA makes it easier for a woman with pregnancy-related impairments to demonstrate that she has disabilities that entitle her to an accommodation.

These accommodations must be “reasonable” so they don’t put too much of a burden on the employer. Oftentimes, reasonable accommodations for a pregnant employee include allowing the woman to take more frequent breaks, allowing her to keep a water bottle near her work area, letting her use a stool or chair, or giving her a temporary assignment to a light-duty position.

Like we explained earlier, under the PDA, an employer is required to treat an employee who is temporarily unable to perform the functions of her job because of her pregnancy-related condition the same way the company treats other employees who are “similar in their ability or inability to work.” This might include allowing the pregnant employee to perform modified tasks or assignments, as well as allowing her to use disability leave and leave without pay.

Often, a pregnant woman’s condition requires that she work light-duty because she should not lift heavy objects. A pregnant woman can prove discrimination if she seeks such an accommodation—like a lifting restriction—and is denied while others “similar in their ability or inability to work” get such an accommodation. If no one gets the option to lift only light-weight items because, say, lifting 50-plus pounds is an essential part of the job, then the pregnant worker might not be entitled to such an accommodation either.



A man in a dark suit, white shirt, and patterned tie is seated at a desk, pointing with his right hand at a document. He is looking directly at the camera with a serious expression. In the foreground, the back of a woman's head with long brown hair is visible, looking towards the man. On the desk, there are two white mugs, a laptop, and some papers. The background is a blurred office setting with vertical lines.

Forced Leave is Discrimination

FORCED LEAVE IS DISCRIMINATION

An employer cannot force an employee to take leave because she is pregnant, as long as she is able to perform her job. This violates the law even if the employer does it for the seemingly benevolent reason of it being in the “best interest” of the employee.

This illegal practice is seen most often in manual labor jobs, where bosses are worried the pregnant woman could hurt herself while working. If the employee feels fine, she should be allowed to work.



The Family Medical Leave Act (FMLA)



ANOTHER LAW AFFECTING PREGNANT WORKERS: THE FAMILY AND MEDICAL LEAVE ACT

Although the PDA does not require an employer to provide pregnancy-related or child care leave, the Family and Medical Leave Act (FMLA) does require covered employers to provide such leave, if the employer and employee are covered under the act.

The FMLA covers private employers with 50 or more employees within 75 miles of the workplace in 20 or more workweeks during the current or preceding calendar year, as well as federal, state, and local governments. Employees are covered by the FMLA if they have worked at least one year and 1,250 hours during the preceding 12 months.

Under the FMLA, an eligible employee may take up to 12 workweeks of leave during any 12-month period for one or more of the following reasons:

- 1. The birth and care of the employee's newborn child;**
- 2. The placement of a child with the employee through adoption or foster care;**
- 3. To care for the employee's spouse, son, daughter, or parent with a serious health condition; or**
- 4. To take medical leave when the employee is unable to work because of a serious health condition.**



ANOTHER LAW AFFECTING PREGNANT WORKERS: THE FAMILY AND MEDICAL LEAVE ACT

An employer doesn't need to pay an employee during FMLA leave, and it can require the employee to first use vacation time and paid-leave time.

The FMLA provides several other protections in addition to the right to take up to 12 weeks of unpaid leave:

The employer must maintain the employee's existing level of coverage under a group health plan while the employee is on leave. After the leave, 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.

An employer may not discriminate against any employee for opposing any practice prohibited by the FMLA or for being involved in any FMLA related proceeding. That means that if your employer denies an eligible person's leave under the FMLA and you object to it, you cannot be demoted or fired. That's considered unlawful retaliation.



About the Author



ABOUT THE AUTHOR



Matthew K. Fenton has been a member of the Florida Bar since 1994 and has been practicing exclusively in matters arising from the employment relationship since 1997. He received his law degree from the University of Florida, with honors, in 1993, where he served on the Editorial Board of the University of Florida Law Review. Shortly after graduation, he served as law clerk to U.S. Magistrate Judge Mark A. Pizzo from 1995 to 1997. Mr. Fenton is a trial lawyer who has tried numerous employment law cases in both state and federal courts.

He has been selected by his peers for inclusion in every edition of the Best Lawyers in America since 2009 and has been repeatedly selected by his peers as a Florida Super Lawyer in Employment Law, which denotes status as one of the top 5 percent of Florida's lawyers. He has also been selected as a member of the Legal Elite in Employment Law by Florida Trend Magazine, representing approximately 2 percent of the active Florida bar members who practice in Florida. In 2016, Mr. Fenton was selected by Best Lawyers in America as the "Lawyer of the Year" for individuals in Tampa Employment Law.

Mr. Fenton has spoken on employment law topics and authored numerous publications on employment law, most recently contributing a chapter to the American Bar Association's practice guide "Litigating the Workplace Harassment Case." Mr. Fenton is a member of several voluntary bar organizations, including the Hillsborough County Bar Association where he is a past Co-Chair of the Labor and Employment Law Section.

Mr. Fenton is active in both the Florida and national chapters of National Employment Law Association, the Tampa Bay Trial Lawyers Association and the Florida Justice Association. Mr. Fenton has been admitted to practice in all Florida courts, in the United States District Court for the Middle District of Florida, the United States District Court for the Southern District of Florida and in the Eleventh Circuit Court of Appeals.

Mr. Fenton, a lifelong resident of Tampa, Florida, is proud to be married to a first generation Cuban-American, Rebeca Fenton, and father to two wonderful boys. When he is not fighting for employee rights, Mr. Fenton enjoys traveling with his family, collecting and listening to music from a broad variety of musical genres, spending time at the beach, and watching or attending Florida Gator football and basketball.



About the Firm

ABOUT THE FIRM

At Wenzel Fenton Cabassa, P.A., we represent workers who have been wronged by their employers. We strive to get to know each client's unique circumstances, and we advise them on the best course of action. Our objective is to secure justice for our clients and to hold their employers accountable.

At our firm, our attorneys have decades of experience representing employees, so we are uniquely positioned to advise you on the best course of action, whether you've been fired or you're facing problems in your current job.

At Wenzel Fenton Cabassa, we know that good work doesn't always get rewarded. Our firm handles cases involving employment discrimination and harassment, whistle-blowing, civil rights, wrongful termination, the Family Medical Leave Act (FMLA), wage and overtime disputes, workers compensation issues, contract disputes, severance-related issues, EEOC mediations, government investigations, and violations of non-compete and trade secret agreements, among others.

We offer a free initial consultation, during which we will listen to your employment-related issues and discuss the steps we can take to resolve them.

Disclaimer: The facts and circumstances of your case may differ from the matters in which results have been provided. All results of cases handled by the lawyer/firm are not provided. The results provided are not necessarily representative of results obtained by all clients or others with the lawyer/firm. Every case is different, and each client's case must be evaluated and handled on its own merits.

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