

The Shop Steward's Guide

to Counseling and Representing Pregnant Workers



This guide is a product of the Pregnancy Accommodation Working Group, an initiative of the Center for WorkLife Law at the University of California, Hastings College of the Law. The guide was jointly created by the Labor Project for Working Families, AFL-CIO, SEIU, A Better Balance, and the Center for WorkLife Law, with invaluable guidance from key members of the working group, and generous funding from the W.K. Kellogg Foundation and the NoVo Foundation.



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WHAT DOES THIS GUIDE OFFER?

Shop stewards play a key role in ensuring that pregnant women receive the full protections of their collective bargaining agreements and state and federal worker-protective laws.

Too often, when women become pregnant, employers push them out of the job or deny them minor changes needed to continue working safely. Women are a growing demographic of workers represented by unions. Ensuring their fair and equal treatment on the job promotes goals fundamental to the labor movement – worker safety, job security, and wage protection.

This manual provides shop stewards the tools they need to effectively represent pregnant workers. It provides practical tips for counseling them about critical workplace issues. It explains the laws and common contractual provisions that may assist pregnant women who have been discriminated against or who need reasonable accommodations to continue working while maintaining a healthy pregnancy. And it provides guidance on grieving contractual violations on behalf of pregnant workers. Last, it provides contact information for organizations that can provide free advice if you need more information.

The laws and contractual provisions discussed in this manual provide legal rights, but pregnant workers benefit from these protections only when they are enforced. It's the job of the shop steward to empower workers and demand employer compliance. This manual is meant to guide you in educating pregnant workers and enforcing their hard-won rights.

Thank you for your commitment to protecting the rights of pregnant women and all working people.

BASIC WORKPLACE RIGHTS FOR PREGNANT WOMEN

Pregnant women have workplace rights based on state and federal laws as well as union contracts. Understanding these rights will enable you to counsel and to advocate for pregnant workers.

► Pregnancy Discrimination Is Illegal and Violates Most Collective Bargaining Agreements

The federal **Pregnancy Discrimination Act of 1978**, and the laws of many states, prohibit employers from discriminating against an employee on the basis of pregnancy, childbirth, or a related medical condition. Likewise, many union contracts prohibit discrimination on the basis of “sex,” which the Pregnancy Discrimination Act says includes

pregnancy, childbirth, and related medical conditions. This means:

Employees cannot be fired, demoted, or made to suffer any other negative work consequences because of pregnancy, childbirth, breastfeeding (lactation/pumping milk), or related medical conditions.

- Employers cannot push workers out on leave or fire them because of pregnancy, **even if the employer claims it is acting in the best interest of the pregnant woman** or for the health of the fetus or newborn. For example, an employer may not assume that working with particular chemicals is dangerous for a pregnant woman and force her out of her job.



Armanda Legros worked for an armored truck company on Long Island, NY for two years before she was pushed out of her job. She was six and a half months pregnant when she pulled a muscle doing heavy lifting on the job. Her doctor told her to avoid heavy lifting so she wouldn't hurt herself again, but her manager took one look at her doctor's note and sent her home without pay, indefinitely. Her manager said he could not let her keep working because of a company policy that did not allow

anyone with medical restrictions to work there. However, they had previously accommodated someone else with an on-the-job back injury. Armanda did not have a union to help her. She struggled financially when she lost her job and had a hard time just putting food on the table for her family. Thankfully, she was able to obtain legal assistance to get her job back and has since then become an advocate for pregnant workers and families across the country.

Pregnant women must be given the same benefits as are given to non-pregnant employees who are similar in ability to work.



EXPERT STEWARD TIP:

Although new employees still on probation may normally not be allowed to challenge their dismissal under the terms of the contract, some contracts allow probationary employees to file grievances in cases of discrimination. And probationary employees are still covered by federal and state laws that may prohibit discrimination and require accommodation, even during the probationary period.

- ▶ Employers cannot make job decisions that cause **negative consequences based on stereotypes or assumptions** about pregnant women, instead of objective facts. For example, it is illegal to refuse to promote a pregnant woman based on the *assumption* that she is no longer committed to the job because she's pregnant.
- ▶ Employers may not engage in **harassment** – including offensive comments, intimidation, ridicule, or interference with work performance – motivated by pregnancy, childbirth, or lactation.

Pregnant women, and women who just gave birth or are breastfeeding, may not be treated worse than other employees who are similar in their ability to do their jobs.

- ▶ Pregnant women cannot be held to higher performance standards than others. For example, pregnant women cannot be penalized

for being late, when tardiness is regularly overlooked for other similar employees.

- ▶ Workers who need time off of work because of pregnancy or childbirth must be treated the same as employees who need time off of work for other reasons, in terms of availability of leave, longevity pay, seniority, maintenance of health insurance, and any other benefits.
- ▶ Pregnant women must be given the same benefits as are given to non-pregnant employees who have a similar ability to work, for example the opportunity to take leave, to work light duty, or to receive an adjustment or accommodation in how the job is done.

In addition to the Pregnancy Discrimination Act, there are other sources of legal rights for pregnant women, including the Americans with Disabilities Act, the Family and Medical Leave Act, state and local law, and the collective bargaining agreement. The charts on pages 22 and 23 provide more information on these rights.



shop stewards can play a meaningful role in ensuring a pregnant worker's position and health remain secure

Pregnant Women May Be Entitled To Reasonable Accommodations Under the Law and Contract

Pregnant workers may require adjustments in how, when, or where they do their work to maintain a healthy pregnancy. As with workers who need reasonable accommodations for other reasons, shop stewards can play a meaningful role in ensuring a pregnant worker's position and health remain secure when she needs an accommodation on the job.



Reasonable accommodations that may be helpful for pregnant women, depending on their job duties and medical condition, include

- ▶ Receiving a stool for sitting
- ▶ Carrying a water bottle
- ▶ Taking additional breaks for snacks or resting
- ▶ Working a modified schedule
- ▶ Taking time off for medical appointments
- ▶ Receiving assistance with heavy lifting
- ▶ Light duty assignment

For workable accommodation ideas for typical pregnancy-related conditions, visit Pregnant@Work's accommodations chart at <https://www.pregnantatwork.org/wp-content/uploads/Workable-Accommodation-Ideas.pdf>.



EXPERT STEWARD TIP:

When a pregnant woman is injured on the job, the same rules that apply to non-pregnant employees who are injured on the job must be applied. For example, if a pregnant woman hurts her back or develops carpal tunnel syndrome stemming from her work duties, she should qualify for workers' compensation or other benefits in the same manner as other employees injured on the job. Treating a pregnant woman differently because she is pregnant is discrimination.

There are a number of laws and standard contractual provisions that entitle pregnant women to receive reasonable accommodations so they can stay healthy and keep working.



Although not every pregnant woman who needs an accommodation will be entitled to receive it, there are a number of laws and standard contractual provisions that entitle pregnant women to receive reasonable accommodations so they can stay healthy and keep working. **See the charts on pages 22 and 23 to determine what laws and contractual provisions may apply.** You'll also want to determine whether the employer has a policy or past practice of accommodating pregnant employees or other employees that need modifications at work, such as those with on-the-job injuries or workers with disabilities.

 **EXPERT STEWARD TIP:**

The terms of a collective bargaining agreement typically *do not override* the legal obligation not to discriminate against pregnant women. The only exception to this rule is where the different treatment is due to application of a *genuine seniority* system that uses employees' length of service to determine which employees will receive certain benefits.

For example, when a pregnant woman needs a **light duty position**: ◀•••••

Illegal: The collective bargaining agreement limits light duty positions to only employees who have been injured on the job, so a pregnant woman who needs light duty is not given it, even though many employees who are injured on the job are given light duty. This is unlawful pregnancy discrimination.

Legal: The collective bargaining agreement makes the limited number of light duty positions available based on seniority. A pregnant woman is not provided a light duty position because they are all filled by employees who have more seniority. (However, the employer may be obligated to provide another reasonable accommodation that allows the pregnant woman to continue working.)

COUNSELING PREGNANT WOMEN

As a shop steward, you may be asked for guidance by pregnant workers. Women are often nervous about talking to their bosses about their pregnancies, and they **don't know what to expect**. Women who need changes on the job **may not know how to request accommodations**. Workers who **understand their legal rights** are more likely to assert them when they are violated. The assistance of a knowledgeable shop steward can make all the difference.



Provide Guidance on Talking About Pregnancy at Work

Pregnant women are often unsure about how and when to tell their managers about a pregnancy.

When to tell management:

A worker is not legally required to tell her employer she's pregnant, and she should wait until she's ready. However, the following situations may require notice to the employer:

- ▶ She may have to notify supervisors about her pregnancy in order to request time off for medical appointments or to seek a reasonable accommodation for pregnancy.
- ▶ She must give the employer 30 days notice of her need to take FMLA leave when foreseeable, such as leave for childbirth.
- ▶ Even if not required, managers and co-workers may appreciate knowing about the pregnancy for planning purposes.

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WOMEN MAY NOT KNOW HOW TO REQUEST ACCOMMODATIONS

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EXPERT STEWARD TIP:

Consider asking the represented worker if she would like you to participate in any discussions she has with her manager or supervisor about her rights and needs as a pregnant employee. This may help her feel more comfortable, and also communicate to the worker and employer that the Union is knowledgeable about these important issues and fully prepared to pursue the worker's contractual and legal rights.



What to Say:

There are no magic words. However, because managers or supervisors may wrongly assume pregnancy means the end of a worker's commitment to the job, pregnant workers should emphasize that they can still be counted on, both now and after the baby is born. Some key messages to use:

- I am able to continue working while pregnant, and want to do so. (Any impact pregnancy has on my abilities is only short term and can be easily resolved through a reasonable accommodation.)
- It is important to me to continue working because my family depends on my paycheck to get by.
- I am committed to this job, and plan to return to work after having my baby.

To download a [handout for pregnant women](#) on "Talking to Your Boss About Your Bump" with this information and more, visit <https://www.pregnantatwork.org/pregnant-women> or www.babygate.abetterbalance.org.

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Counsel Pregnant Workers on Requesting A Reasonable Accommodation or Light Duty Assignment

The advocacy organizations A Better Balance and The Center for WorkLife Law have developed practical advice for pregnant women about requesting an accommodation. As the Union representative, **you can help the worker prepare for this conversation with her supervisor or Human Resources.** Here are some tips for that discussion:

- ▶ She should tell her boss she needs a reasonable accommodation so she can continue to do her job safely.
- ▶ She should **specify** what kind of accommodation she needs, including any job duties she needs modified, and make sure her boss knows she can **still perform the bulk of the duties of her job.**
- ▶ See Pregnant@Work's accommodation ideas at <https://www.pregnantatwork.org/wp-content/uploads/Workable-Accommodation-Ideas.pdf>.
- ▶ She should be **prepared with a plan** – what kind of changes does she need and how can she make that work? Tell her to talk with coworkers and enlist their help.
- ▶ She should explain to her supervisor how her requested accommodation **will not be too difficult or expensive for the company** (e.g. it's time limited, another employee is willing to help her on occasion with the task she can't perform, etc.)

EXPERT STEWARD TIP:

Pregnant workers are *not* required to bring in a **doctor's note** when first telling management about a pregnancy. Medical notes are sometimes used by employers as an excuse to push pregnant women out of their jobs. Unless a pregnant woman needs a reasonable accommodation, or family and medical leave, there's no reason for her to bring a letter from her doctor or for the employer to contact her doctor directly.

When an employer requires a doctor's note to support a request for a reasonable accommodation, there are guidelines healthcare professionals should follow for writing notes to ensure the pregnant employee receives the accommodation she needs to continue working. Pregnant women can download printable guidelines to bring their healthcare providers on Pregnant@Work, www.pregnantatwork.org/pregnant-women.

- ▶ This should be a two-way conversation. If her boss asks for additional information, she should provide it. She should try to be respectful and appear reasonable – her actions may be evaluated later by an arbitrator if her request is denied.

- ▶ Advise her to document the conversation in writing – she may send her supervisor an e-mail or note summing up what was discussed. Keep a copy for your records.
- ▶ If the accommodation request is denied, or if it appears that the worker is being treated unfairly, you can offer to meet with her and her supervisor or file a grievance on her behalf. (See below).



The information a worker must legally provide when she asks her boss or human resources for an accommodation varies from state to state. Visit Pregnant@Work or A Better Balance to download the handout “Talking to Your Boss About Your Bump,” which provides advice on requesting accommodations in each state: <https://www.pregnantatwork.org/pregnant-women>; www.babygate.abetterbalance.org.



Remind Pregnant Women That There Can Be Risks Associated with Taking Leave or Working a Reduced Schedule

When management makes it difficult for a pregnant employee to keep working, she may be tempted to take leave instead of pushing for a reasonable accommodation that allows her to stay on the job. You should counsel pregnant women about the risks of taking leave during pregnancy:

- ▶ Employees on leave typically receive **no income**, or receive only partial income replacement. Review your company's disability leave policy and any disability insurance program available in your state to determine what, if any, benefits would be granted to the employee. Even if a pregnant worker can obtain disability benefits, short-term plans are often limited and may not cover the remainder of her pregnancy as well as a recovery period after childbirth.
- ▶ The amount of leave time available to employees – if any – is typically limited (12 weeks under federal law, although some states provide more). If the pregnant worker goes out early in her pregnancy, **she may exhaust her leave and may end up being fired** because she will be unable to return to work when her leave runs out. If this happens, a pregnant woman's request for a finite amount of additional leave qualifies as a reasonable accommodation under the Americans with Disabilities Act.
- ▶ **Employers may deduct leave from employees who work reduced schedules based on the hours they don't work.**
- ▶ Leave can result in disruption in benefits, seniority, and otherwise disrupt an employee's career plans.





Encourage Pregnant Women to Start Thinking Early About Maternity Leave and Returning to Work Following Childbirth

LEAVE FOR CHILDBIRTH

Pregnant workers will want to know how much job-protected leave is available for the period they're unable to work due to pregnancy and childbirth, and also for time to bond with their new baby. Assist pregnant workers in calculating their leave availability by checking:

- ❑ The union contract
- ❑ Employer policies or employee handbook
- ❑ The Family and Medical Leave Act (see the chart on page Y for more info)
- ❑ Review A Better Balance's "Babygate" website to determine the availability of leave under your state's laws: <http://babygate.abetterbalance.org>.

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HELP PREGNANT WOMEN TO DEVELOP A PLAN FOR HOW THEIR WORK WILL BE HANDLED WHILE THEY'RE AWAY, AS WELL AS A PLAN FOR HOW THEY WILL TRANSITION BACK.

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EXPERT STEWARD TIP:

Leave is often unpaid by the employer. However, several states provide partial income replacement for women disabled by pregnancy or childbirth, or paid family leave for baby bonding. At the time of publication, these states include California, New Jersey, Rhode Island, New York, and Hawaii. Visit <http://babygate.abetterbalance.org> to learn more.

If appropriate, advise pregnant women to develop – or assist their supervisor with – a plan for how their normal work will be handled while they're away, as well as a plan for how they will transition back to work when their maternity leave is over. Thinking these issues through in advance makes the transition easier for everyone involved. They should also keep in mind that their baby could potentially arrive early and work that possibility into their plans.



Employers are required to provide reasonable break time for covered employees to express breast milk.

LACTATION RIGHTS FOR NURSING MOTHERS

Encourage women who are considering breastfeeding their baby to speak with their supervisor or HR before going out on leave about any accommodations they know they will need upon their return. **Don't wait until the first day back to make a plan.**



The federal **Affordable Care Act** requires covered employers to provide **reasonable break time** for a covered employee¹ to express breast milk for her nursing child (pumping) for one year after the child's birth *each time* the employee has a need to express milk. Employers must also provide **a private place the employee can use to express milk**. It must be shielded from view and free from intrusion by coworkers and the public – and **not a bathroom**.

Under the **Pregnancy Discrimination Act**, if breaks are regularly given to non-pregnant employees who need them, like smokers or workers with disabilities, nursing mothers may also be entitled to take breaks for expressing milk (see the chart on page 22). Additional lactation protections may be provided under **state law**. To learn about the lactation laws in your state, visit A Better Balance's "Babygate" website: <http://babygate.abetterbalance.org>.

Having trouble figuring out how to provide a private place for pumping at your worksite? See the U.S. Department of Health and Human Services' tips for providing space in different industries: www.womenshealth.gov/breastfeeding/employer-solutions/index.html.

¹ The **Affordable Care Act**'s nursing mother protections cover only employees who are eligible to receive overtime under the FLSA ("non-exempt" workers). The law applies to employers of any size that are covered by the FLSA, but employers with fewer than 50 employees are not required to comply when doing so would impose an undue hardship (significant difficulty or expense).



EMPLOYERS MUST PROVIDE A PRIVATE PLACE THE EMPLOYEE CAN USE TO EXPRESS MILK. IT MUST BE SHIELDED FROM




VIEW AND FREE FROM INTRUSION BY COWORKERS AND THE PUBLIC.



FILING A GRIEVANCE ON BEHALF OF A WORKER WHO HAS BEEN DISCRIMINATED AGAINST OR DENIED A REASONABLE ACCOMMODATION

When a woman has been discriminated against because of pregnancy, childbirth, or lactation, or when she has been denied a reasonable accommodation she needs to keep working safely, **there are several standard contractual provisions that may have been violated.** Check the chart on page 23 to figure out if your collective bargaining agreement includes any of these provisions and how they may apply. There are several key steps to take to pursue such a grievance successfully:

.....▶ **Negotiating an Early Resolution**

 **Keep in mind that there are often short deadlines for filing a grievance.**

It is important to try to resolve the grievance quickly so the pregnant employee can get back to working while maintaining a healthy pregnancy. In failure-to-accommodate grievances, it may help to emphasize at the first step that the accommodation being sought is low-cost or cost-free and will be easy to provide – while failure to provide it will open the employer up to a potentially costly lawsuit, workplace injuries, or other expensive issues, such as low employee morale and productivity. It makes most sense from the employer’s perspective to provide an accommodation and put the grievant back to work quickly. There are numerous materials directed toward employers that encourage them to accommodate pregnant women. Providing some

of these sources to the employer may boost your credibility, as well as demonstrate that the Union is prepared to pursue the issue vigorously:

1. Harvard Business Review article explaining that the Pregnancy Discrimination Act requires pregnancy accommodations: *What Young v. UPS Means for Pregnant Workers and Their Bosses*, <https://hbr.org/2015/03/what-young-vs-ups-means-for-pregnant-workers-and-their-bosses>.
2. Harvard Business Review article explaining that the Americans with Disabilities Act requires pregnancy accommodations: *Pregnant Workers Have Rights, No Matter What the Supreme Court Says About UPS*, <https://hbr.org/2014/12/pregnant-workers-have-rights-no-matter-what-the-supreme-court-says-about-ups>.



EMPHASIZE AT THE FIRST STEP THAT THE ACCOMMODATION BEING SOUGHT IS LOW-COST OR COST-FREE AND WILL BE EASY TO PROVIDE”



It is important to try to resolve the grievance quickly so the pregnant employee can get back to work.

3. Society for Human Resource Management (reputable source for employers) explaining the requirement to accommodate pregnant women: *Accommodating Pregnant Employees*, <https://www.shrm.org/publications/hrmagazine/editorialcontent/2014/0214/pages/0214-pregnancy-accommodation.aspx>.
4. Department of Labor's Job Accommodation Network's summary of laws requiring pregnancy accommodation and practical tips for providing accommodations: *Accommodation Ideas for Employees Who Are Pregnant*, <https://askjan.org/media/pregnancy.html>.
5. Explanation of why accommodating pregnant employees is actually good for the employer's bottom line: *The Business Case for Accommodating Pregnant Workers*, National Women's Law Center, http://nwlc.org/wp-content/uploads/2015/08/the_business_case_for_accommodating_pregnant_workers_may_2015.pdf.
6. Equal Employment Opportunity Commission's Enforcement Guidance on Pregnancy Discrimination and Accommodation: http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm.

Unions Fight for Fairness for Pregnant Workers

The Communication Workers of America filed a grievance on behalf of member Catherine Bishop when the Mountain States Telephone Company disqualified her from requesting a new assignment because she was pregnant. The grievant was eligible under the contract to apply for transfer from the classification of telephone operator to the classification of service representative. But after a supervisor suspected she was pregnant, the company refused to allow the grievant to apply, claiming she was disqualified because she would have to take time off to have her baby while she was still undergoing training for the new position. The company admitted that, had she not been pregnant, the grievant would have been awarded the requested transfer.

Following a contested arbitration hearing, the arbitrator ruled that the company's actions violated a contractual provision prohibiting sex discrimination and awarded the grievant back pay and the opportunity to transfer to the new position. As shown in the chart on page 23, most collective bargaining agreements contain similar anti-discrimination provisions that can be used to protect the rights of pregnant workers.





Investigating the Grievance

Successfully proving pregnancy discrimination depends on gathering all of the necessary facts. The thoroughness of your investigation is essential. Always try to obtain written documents and take careful notes about your investigation. Here are some examples of the kind of evidence you should be looking for:

GRIEVANCE TYPE 1:

Employer discriminated or took a negative action against grievant because of pregnancy, childbirth, lactation, or a related condition. Gather evidence of the following:

- Direct statements from management or superiors that the negative employment action was taken based on pregnancy (e.g., “I’m sending you home because this job is dangerous for a pregnant woman”).
- Stereotypical remarks made by management about pregnant women or mothers (e.g., “You just haven’t been as *reliable* lately”).
- Relationship between the timing of the pregnancy announcement and the negative employment action (e.g., reduced schedule or unfavorable job evaluation soon after management finds out about a pregnancy, because close timing suggests discrimination).
- More favorable treatment of similar employees or extra scrutiny of pregnant employees (e.g., other non-pregnant employees were not punished for being late or for missing deadlines).

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THE THOROUGHNESS OF YOUR INVESTIGATION IS ESSENTIAL. ALWAYS TRY TO OBTAIN WRITTEN DOCUMENTS AND TAKE CAREFUL NOTES ABOUT YOUR INVESTIGATION.

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- The reason the employer has given for taking the negative employment action is false (e.g., supervisor says she did not meet her monthly performance objective when she actually had reached her goals).

Successfully proving pregnancy discrimination depends on gathering all of the necessary facts.



- Grievant is a high performer who is committed to her job and received positive feedback prior to management finding out she is pregnant.
- In cases of harassment: the hostile remarks or conduct was so frequent or severe as to create an abusive or offensive work environment (e.g., ongoing abuse like yelling or name calling based on pregnancy; requiring performance of certain work tasks with the intention of risking the pregnant employee's safety or the health of her pregnancy; making repeated sexual jokes about pregnant women).

GRIEVANCE TYPE 2:

Employer failed to provide a reasonable accommodation (such as light duty) for grievant.

Gather evidence of the following:

- Contract allows light duty but employer provides accommodation/light duty only for non-pregnant employees (e.g., employer accommodates only employees with work-related injuries).
- Non-pregnant employees with a similar ability or inability to work have received accommodations/light duty, especially the same accommodation grievant was seeking.
- Other pregnant women also did not receive accommodations.
- Grievant cooperated with the employer in making the request, and answered the employer's questions about her accommodation needs.
- Employer did not take the grievant's request seriously (it failed to consider the request or to ask for more information necessary to determine whether she was entitled to an accommodation).
- Employer responded to grievant's request by requiring her to do more strenuous or hazardous duties.
- Grievant required the accommodation to maintain a healthy pregnancy or to work safely (e.g., she consulted with her healthcare provider and/or provided a doctor's note).

- Grievant has/had a pregnancy-related medical condition that would constitute a disability under the ADA (see page 22 for types of conditions that qualify), and the employer knew about the condition.
- Stereotypical or hostile remarks were made about pregnant women or mothers.
- A suitable accommodation could have been easily provided with no undue hardship (little or no difficulty or expense).
- Grievant is a high performer who is committed to her job and has a good work record.



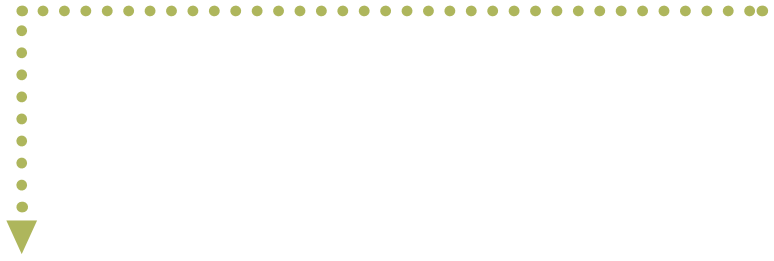
EXPERT STEWARD TIP:

The employer may refuse to provide information or documents concerning the grievant's medical condition without a signed authorization from the grievant.

GRIEVANCE TYPE 3:

Employer refused to accommodate the grievant, but there is no available evidence that it was based on pregnancy discrimination (Type 2, above). The failure to accommodate may still violate the contract if it was contrary to a longstanding past practice or based on race or some other protected category.

- Employer has a past practice of providing accommodations for pregnant workers and has offered no good reason not to do so in this case.
 - ▶ Accommodating would not involve different costs or disruptions than in other earlier cases;
 - ▶ The worker's job assignments are the same or similar to those of workers who were previously accommodated;
 - ▶ There has been no agreement with the union to end a longstanding practice of permitting such temporary job changes.
- There is evidence that the employer's decision not to accommodate the grievant was due to discrimination based on race or ethnicity or some other protected category, or was in retaliation for exercising statutory rights, such as taking family and medical leave. For example, white women were accommodated but a woman of color was not.



Pursuing the Grievance

Every collective bargaining agreement is different, but most contain certain language that can be used in support of a pregnant woman's grievance. **Check the chart on page 23** to figure out if your contract includes any of these provisions and how they may apply.



** If you are unable to resolve the matter early and it appears to be headed for arbitration, you should seek legal advice from your Union's attorneys. You may also want to call one of the legal hotlines listed on page 21 for help in understanding the law or to get advice for the arbitration. (If your Union uses counsel for arbitrations, be sure to share this information with the Union's attorney.)

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**IF YOU ARE UNABLE TO
RESOLVE THE MATTER EARLY
AND IT APPEARS TO BE
HEADED FOR ARBITRATION,
YOU SHOULD SEEK LEGAL
ADVICE FROM YOUR
UNION'S ATTORNEYS.**

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INCREASING PROTECTIONS

FOR PREGNANT WOMEN IN YOUR BARGAINING UNIT

Your experience counseling pregnant women may highlight that job security and safety for pregnant workers has not always been a priority for your employer or union in the past. Here are some ways to change that:

- ▶ Start a committee at the local level that can inform the bargaining committee about the needs of pregnant workers, new parents, and other caregivers.
- ▶ Include a question about pregnancy accommodation and paid family leave in the bargaining survey to gauge support for the issue.
- ▶ Recommend that your bargaining team negotiate for contract language that protects pregnant women, new parents, and other caregivers. Remember pregnancy accommodations typically do not cost the employer much, if anything, so may be (relatively) easier to obtain in bargaining. Share the employer benefits articles listed on

pages 13–14 with the bargainers or other Union officials. And contact the Labor Project for Working Families for sample contract language.

- ▶ If your employer has a history of discriminating against pregnant women, consider filing a group grievance. If a group grievance is filed, one important remedy, in addition to providing accommodations or taking other action that will provide relief for women who have been harmed by such practices, would be to ask the employer to provide training to supervisors on fair treatment and accommodations for pregnant workers.
- ▶ Consider filing a complaint with the EEOC alleging that the employer has a pattern or practice of pregnancy discrimination. The Union can be a charging party in an EEOC complaint on behalf of represented women workers and may be in the best position to provide factual evidence of past discriminatory actions by the employer. Normally, an EEOC complaint must be filed within a relatively short time after discrimination takes place (180–300 days depending on the particular state). The EEOC complaint should focus on the most recent example within this period but allege that the discrimination is part of a “pattern and practice” of pregnancy discrimination that is “continuing.” Offer evidence of past discriminatory treatment of pregnant workers to support that claim.



GETTING HELP FOR NON-UNIONIZED WORKERS

You may receive a request for guidance from a pregnant woman who needs help in a non-unionized workplace. Unionized pregnant employees have greater protections than non-unionized workers because of provisions that may be included in the contract to prohibit

discrimination and require accommodation. However, federal and state laws provide protections to workers in non-unionized workplaces too.

All of the laws described in the chart on page 22 apply equally to non-unionized employees. And the information provided on pages 23–24 about legal rights and practical tips generally apply in non-unionized workplaces. You may also direct non-unionized pregnant women who have more questions to one of the free legal hotlines or web resources listed in the next section.



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UNIONIZED PREGNANT EMPLOYEES HAVE GREATER PROTECTIONS THAN NON-UNIONIZED WORKERS, HOWEVER, FEDERAL AND STATE LAWS PROVIDE PROTECTIONS TO WORKERS IN NON-UNIONIZED WORKPLACES TOO.

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ASK QUESTIONS & GET MORE INFO

For additional guidance on legal protections for pregnant women and new parents, you may contact any of these free legal hotlines:

- ▶ The Center for WorkLife Law at **415-703-8276**.
- ▶ A Better Balance at **212-430-5982** or **615-915-2417** (Southern Office).
- ▶ Equal Rights Advocates at **800-839-4372**.
- ▶ In California, Legal Aid Society-Employment Law Center at **800-880-8047**.
- ▶ In the District of Columbia, First Shift Justice Project at **240-241-0897**.
- ▶ For more information on navigating the grievance process and preparing for collective bargaining, contact: Labor Project for Working Families at **202-288-4762**.



Additional resources on accommodating pregnant women at work can be found on **Pregnant@Work** (www.pregnantatwork.org). To learn more about the workplace protections available to pregnant women and parents in your state, visit **A Better Balance's Babygate website** (www.babygate.abetterbalance.org).



LAWS PROHIBITING PREGNANCY DISCRIMINATION AND REQUIRING EMPLOYERS TO ACCOMMODATE PREGNANT WOMEN

- ▶ **The Pregnancy Discrimination Act** prohibits discrimination on the basis of pregnancy, childbirth, and related medical conditions like lactation. It also requires that employers treat pregnant women the same as other non-pregnant employees who are similar in their ability or inability to work. This means that an employer that provides a benefit or accommodation, such as light duty, to non-pregnant employees must also provide the accommodation to pregnant employees unless it has a strong, legitimate reason (other than cost or convenience) for treating the pregnant employees differently. To prove a violation, it is helpful to show that the employer has accommodated large numbers of *non*-pregnant employees, while not also accommodating pregnant employees. It is also helpful to show that the employer's failure to accommodate pregnant women has placed a burden on them, as compared to non-pregnant employees. See *Young v. UPS*, 135 S.Ct. 1338 (2015). This law applies to private and public employers with 15 or more employees.
- ▶ **The Americans with Disabilities Act** requires employers to provide reasonable accommodations to workers with disabilities, unless providing an accommodation would cause undue hardship to the employer (significant difficulty or expense). Although pregnancy alone is not a disability, many medical conditions associated with pregnancy constitute disabilities that must be accommodated, including migraine headaches, carpal tunnel syndrome, gastrointestinal acid reflux, urinary incontinence, fatigue, severe back pain, hypertension, gestational diabetes, pre-eclampsia, and severe morning sickness. Prior to 2009, pregnancy-related conditions were not covered by the ADA, but they now are because of amendments to the law that expanded the meaning of disability under the law to cover many pregnancy related conditions, as well as other previously uncovered conditions. This law applies to private and public employers with 15 or more employees.
- ▶ **Family and Medical Leave Act** requires covered employers¹ to provide eligible employees² up to 12 weeks of unpaid leave for prenatal medical appointments, morning sickness, pregnancy-related conditions, and in the final weeks of pregnancy when a woman may be unable to work. Leave may be taken on an intermittent basis (e.g., for medical appointments or as needed) or reduced schedule basis (e.g., part time). Be aware that any FMLA leave taken during pregnancy will reduce the amount available following childbirth, although additional leave may be provided under state or local law, or union contract. See the warning on page 10 about taking leave during pregnancy.
- ▶ **State or Local Law** may provide additional protections for pregnant women who need accommodations. As of August 2016, additional protections exist in the following states: Alaska, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Louisiana, Maryland, Minnesota, Nebraska, New Jersey, New York, North Dakota, Rhode Island, Texas, Utah, West Virginia. And the following cities: New York City, NY; Philadelphia, PA; Providence and Central Falls, RI; Washington, D.C. New protections may exist since this manual was published.

For a current list of states and cities with additional pregnancy accommodation protections and a comprehensive review of the federal laws that provide a right to pregnancy accommodation, visit Pregnant@Work's legal overview at <https://www.pregnantatwork.org/wp-content/uploads/FINAL-Pregnancy-Accommodation-Laws-Outline.pdf>.

¹ Covered employers include (1) Private-sector employers, with 50 or more employees; (2) Public agencies, including a local, state, or federal government agency, regardless of the number of employees it employs; or (3) Public or private elementary or secondary schools, regardless of the number of employees it employs.

² Eligible employees (1) Have worked for the employer for at least 12 months; (2) Have at least 1,250 hours of service for the employer during the 12 month period immediately preceding the leave; and (3) Work at a location where the employer has at least 50 employees within 75 miles.

COMMON CONTRACTUAL PROVISIONS THAT MAY PROVIDE PROTECTIONS FOR PREGNANT WOMEN

The chart below explains how provisions commonly found in collective bargaining agreements can be used to support a grievance claiming that a pregnant woman has been discrimination against, or not received a work accommodation, in violation of the contract. These provisions may not be included in all contracts, and some contracts may have provisions that are similar, but do not use the exact language quoted below. If the language in your contract sounds similar to the language below, it can also be used to support a pregnant woman's grievance or request for accommodation.

| Contract Language | Prohibiting Pregnancy Discrimination | Requiring Pregnancy Accommodation |
|--|--|--|
| <p>“The parties to this agreement shall comply with all local, state, and federal laws.”</p> <p>*Some arbitrators accept that this provision is inferred in all collective bargaining agreements, even if not explicitly stated.</p> | <p>The Pregnancy Discrimination Act and various state and local laws prohibit employers from discriminating on the basis of pregnancy, childbirth, or related medical conditions (e.g., lactation). See page 22 for more info.</p> | <p>Various federal, state, and local laws require some employers to provide modifications to the jobs of many women who need them to maintain a healthy pregnancy. See the chart on page 22 for details.</p> |
| <p>“The parties to this Agreement agree that they shall not discriminate against any employee because of race, creed, color, sex, sexual orientation, national origin, age, health status, or physical or mental disability.”</p> <p>Even if your contract does not include this type of explicit anti-discrimination language, it may include a provision about equal opportunity in employment, or making employment decisions without regard to sex and other protected categories. This language may also serve as the basis of an anti-discrimination grievance.</p> | <p>A prohibition of discrimination because of “sex” inherently includes a prohibition of discrimination because of “pregnancy” and “childbirth.” This is explicit under the federal Pregnancy Discrimination Act, which states that unlawful discrimination “on the basis of sex” includes discrimination “on the basis of pregnancy, childbirth, or related medical conditions.” This also makes sense because only people of female sex can become pregnant and birth children.</p> <p>Policies that explicitly prohibit discrimination based on “pregnancy” or “childbirth,” may exist in some contracts.</p> | <p>When an employer provides accommodations to non-pregnant employees, but fails to also accommodate pregnant employees, it has discriminated unlawfully on the basis of sex, unless it has a strong justification (other than cost or convenience) for excluding pregnant women. See <i>Young v. UPS</i>, 135 S.Ct. 1338 (2015) and discussion of the Pregnancy Discrimination Act in the chart on page 22.</p> |

| Contract Language | Prohibiting Pregnancy Discrimination | Requiring Pregnancy Accommodation |
|---|--|---|
| <p>“Employer shall not discipline or dismiss any permanent employee bound by this Agreement except for just cause.” Some arbitrators will apply a just cause standard even when none is explicitly included in the contract.</p> | <p>In showing that a pregnant woman’s discipline was not for just cause, keep in mind:</p> <ol style="list-style-type: none"> 1. Employers may make decisions about pregnant women based on stereotypes or untrue assumptions. For example, the employer may incorrectly assume a pregnant woman is no longer able to do her job, and send her out on leave or terminate her as a result. When discipline is based on stereotypes instead of facts, there is no just cause. 2. Because of negative assumptions about the commitment and reliability of pregnant women and mothers, employers may hold them to higher standards than in the past, or compared to other employees. Just cause requires that employees be treated equally and non-arbitrarily with regard to work performance expectations, attendance and punctuality, rule enforcement, etc. Treating a pregnant woman differently violates just cause. | <p>If an employer refuses to grant a pregnant woman’s reasonable accommodation request and then sends her out on unpaid leave or terminates her because she can’t perform some of her job duties, there is no just cause for those adverse actions. The pregnant woman was reasonable in ensuring the health of her pregnancy by not performing the risky job duties, and the employer could have avoided the situation by simply providing the requested reasonable accommodation.</p> |
| <p>“Upon submission of medical documentation that an employee is unable to temporarily perform his or her regular job duties, Employer will provide an alternative light duty assignment.”</p> | <p>n/a</p> | <p>Pregnant women must be covered by light duty policies that are made available to other similar employees. Under the Pregnancy Discrimination Act, an employer cannot provide light duty assignments for illness, injury, or other reasons – but not also for pregnancy – unless it has a strong justification (other than cost or convenience) for excluding pregnant women. See <i>Young v. UPS</i>, 135 S.Ct. 1338 (2015) and the chart on page 22.</p> |
| <p>“Employer will provide reasonable accommodations to employees affected by disability, so long as Employer is able to do so without undue hardship.”</p> | <p>n/a</p> | <p>Although pregnancy alone is not a “disability,” under the Americans with Disabilities Act, many pregnancy-related conditions qualify as a “disability” that must be accommodated. See the chart on page 22.</p> |
| <p>“Employer shall comply with the Americans with Disabilities Act.”</p> | <p>n/a</p> | <p>See immediately above and the chart on page 22.</p> |

