

Getting Help at Work: The Employee's Guide to Pregnancy Accommodation

A Webinar by
The Center for WorkLife Law
March 31, 2015

Cynthia Thomas Calvert, WorkLife Law

Dina Bakst, A Better Balance



Thank You

We gratefully acknowledge the generous support of



NoVo Foundation
create. change.

And our in-kind sponsors



Today's Presenters

Cynthia Thomas Calvert

- president of Workforce 21C, training /consulting
 - pregnancy discrimination and accommodation
 - family responsibilities
 - flexible work
 - advancing women
- senior advisor to the Center for WorkLife Law



Dina Bakst

- a founder and president of A Better Balance, a national legal advocacy organization
 - promoting fairness in the workplace
 - helping workers care for their families without risking their economic security.
- co-author of *Babygate: How to Survive Pregnancy and Parenting in the Workplace*.



Working While Pregnant



Meet Gina



Gina has gestational diabetes and needs extra breaks at work to eat and to test her blood sugar. Her supervisor allows this, but requires her to work an extra half hour a day to make up for the extra break time.

Working While Pregnant

Meet Shawna



Shawna has been having migraine headaches frequently during her pregnancy. She works next to a paint department, which has a lot of fumes. She is concerned about her and her baby's health, asked to be transferred to a different location, but her employer says there isn't one.

Working While Pregnant

Meet Jessica



Jessica is experiencing severe morning sickness. She has already been hospitalized once for dehydration, and she still can't eat. She feels too weak to work, but she has used up all of her sick days.

Working While Pregnant

Meet Julia



Julia is five months pregnant with a high risk pregnancy. She needs assistance lifting patients.

Her supervisor denies her assistance and tells her she has to take FMLA leave if she can't do her job.

Help May Be Possible

New laws, new regulations, and new court decisions help pregnant women get accommodations

Agenda

- How to request help from your employer
- What to do if your employer says no
- New laws that help pregnant women
- What types of help you can get at work
- Tips for easier working while pregnant

How to Talk to Your Boss about Your Bump



- When to tell your boss you are pregnant
 - No rules
 - 30 days before need maternity leave
 - Earlier if you need time off or other accommodations for pregnancy-related conditions
 - Think about effect on personal relationship

How to Talk to Your Boss about Your Bump

Review employer's policies about parental leave

What to say

- Reassure boss you are committed to your job
- Say you are willing and able to keep working
- Inform boss you are a breadwinner for your family
- Offer to help transition work or train a temporary sub
- Take notes after the conversation about what each of you said

How to Request Help from Your Employer

- How to ask for an accommodation
 - Do you have a diagnosed medical condition?
 - Example: gestational diabetes, hypertension, severe morning sickness, fatigue, migraines
 - Tell your boss about your condition, and ask for a reasonable accommodation of your disability
 - Tell your boss the accommodation you need, and have alternatives
 - Two-way communication

How to Request Help from Your Employer

- How to ask for an accommodation (cont.)
- Doctor's notes
 - Boss may ask for note
 - Make sure it is specific (not “no heavy lifting” but “no lifting over 25 lbs.”)
- Doctor's visits
 - Can use FMLA
 - Need to follow employer's rules as much as possible (examples: give notice, return to work)

What to Do If Your Employer Says No

If you have a second choice for accommodation, ask if the employer will permit that

If you don't get a response, put your request in writing (email, doctor's note, your own note) and be specific about what you are requesting and why

You may need to get HR involved

If you still don't get the help you need, you may want to explore your legal options

State By State Information

<http://babygate.abetterbalance.org>



Working While Pregnant & Parenting

Find Out Your Rights

States With Statutory Protections

- Alaska
- California
- Connecticut
- Delaware
- Illinois
- Louisiana
- Maryland
- Minnesota
- New Jersey
- Texas
- West Virginia

Local Jurisdictions

Five local jurisdictions

- New York City
- Philadelphia
- Providence, RI
- Central Falls, RI
- Washington, DC



Example: California

- It's illegal in California for an employer to refuse to provide reasonable accommodations to an employee for a condition related to pregnancy, childbirth, or related medical conditions.
- Californians can also receive a transfer to a less strenuous or hazardous position, if the request is reasonable.
- Cal. Gov' t Code § § 12945(a)(3)(A); (a)(3)(C).

Example: Connecticut

- Employers have to try to transfer pregnant employees if their current position puts the employee or fetus at risk of injury.
- Conn. Gen. Stat. § 46a-60(a)(7)



Example: Philadelphia

- In 2014, Philadelphia passed an ordinance that requires employers to provide reasonable accommodations to employees for needs related to pregnancy, childbirth, or a related medical condition, so long as such accommodations will not cause an undue hardship to the employer.
- Phila. Code § 9-1128.

New Laws that Help Pregnant Women

State laws

Some states have laws that require pregnancy accommodation

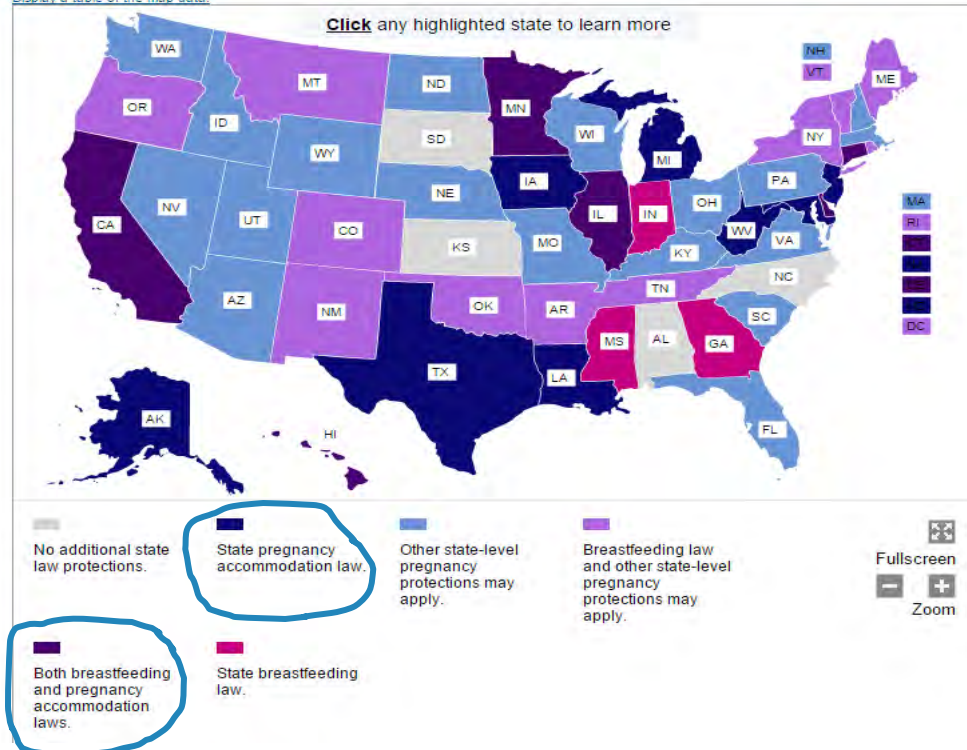


<https://www.aclu.org/maps/delivering-fairness-ending-discrimination-against-pregnant-women-and-moms-work>

More information available in the handouts

Delivering Fairness: Ending Discrimination Against Pregnant Women and Moms at Work

Display a table of the map data.



Federal Law: The ADA



- Protects employees with disabilities from discrimination
- Requires reasonable accommodation to permit employees to work
 - as long as the accommodation does not cause an undue hardship to the employer



ADA Amendments and Pregnancy

- Amendments effective 2009
- Broadened right of accommodation for individuals with a temporary impairment, so pregnancy is not excluded
- Extended coverage to include impairments that limit an individual's major life activities such as the ability to lift, stand, bend, eat and sleep
 - Includes impairments that affect major bodily functions (example: circulatory, reproductive, gastrointestinal)
- A pregnancy-related impairment that substantially limits a major life activity is a disability. 29 C.F.R. § 1630.2(h).
 - Example: gestational diabetes, pregnancy-related sciatica

A Word to the Wise

Many employers and lawyers (and even judges) are not yet familiar with the amendments to the ADA.

Under the old and amended versions of the ADA, normal pregnancy is not a disability.

Example of the change: Under the old ADA, severe morning sickness was not a disability.



- Under the amended ADA, it might be a disability if it is severe: it is an impairment, it limits the ability to eat (it also affects the gastrointestinal system), and it doesn't matter that it is temporary or related to pregnancy.

The Right to Accommodation

If you have a disability, your employer has to provide you with reasonable accommodations so you can continue to do your job.

- Limitation: accommodations that would cause an undue hardship for the employer (cost a lot, prevent operations, be unsafe) don't have to be provided
- Limitation: you aren't entitled to a particular accommodation, only a reasonable one
- Limitation: the employer doesn't have to create a position or move someone else out of a position for you

How Does this Work?



After you tell your employer about your condition and that you need help to do your job, the employer is supposed to engage in a two-way conversation (“interactive process”) with you about what you need and the best way to provide it.

You cannot be retaliated against for asking for an accommodation.

The employer can ask for medical documentation of your condition.

Your needs may change over time, and your accommodations may change, too.

The Pregnancy Discrimination Act

The PDA says that pregnant women are to be treated the same as other employees who are similar in their ability or inability to work.

Examples:

- If a man with a bad back gets help with lifting, a woman with a bad back due to pregnancy should get help lifting, too.
- If a nonpregnant employee can be out of work for a medical reason (surgery) for a few weeks and have his/her job held open, a pregnant employee should be able to be out of work for pregnancy or childbirth for a few weeks and have her job held open.

New Court Decision: Young v. UPS

Some employers limit light duty to employees who were injured on the job. Does that violate the PDA?



The Supreme Court made it very difficult for employers to refuse to give pregnant women light duty on the ground that light duty is reserved for on-the-job injuries.

Most employers will now stop excluding pregnant women from light duty (if light duty positions are available).

Pregnancy Discrimination

The PDA also prohibits discrimination against pregnant women because of their pregnancy.

Employers cannot treat pregnant women more harshly, or harass them, or deny them opportunities and benefits just because they are pregnant.

- Okay: Pregnant Pam's boss yells at everyone, including Pam, when sales are low
 - Not okay: Pregnant Pam's boss yells at her for having low sales, but others have low sales and aren't yelled at



The FMLA

The Family and Medical Leave Act allows pregnant women to take time off for prenatal visits, pregnancy-related conditions (including morning sickness), and childbirth/recovery/bonding.

- But: employees must be eligible for leave (work for an employer with more than 50 employees at/near the worksite, have worked for employer for at least 12 months, have worked at least 1250 hours last year (25 hours per week avg.)
- Only half of workers are covered.
- Leave is limited to a total of 12 weeks per year.

The FMLA (cont.)

Employees cannot be retaliated against for requesting or taking leave

Employees who take leave under the FMLA have to be reinstated to their same jobs or substantially equivalent jobs

Employees have to give at least 30 days' notice of need for leave, unless not possible (unforeseen)

Employers can request medical certification

Gina, Shawna, Jessica & Julia

Gina – gestational diabetes

Her employer is giving her breaks, so she is getting the accommodations she needs. The employer may be within its rights to require her to make up the time by staying later.



Shawna – Migraines worsened by fumes

She was denied a transfer . State law might require the transfer. Under the ADA, if her migraines are disabilities, she might also have to be accommodated. The interactive process may reveal that there are places she can work, or maybe she can work from home.



Gina, Shawna, Jessica & Julia

Jessica – severe morning sickness

Jessica is out of sick days. She can probably still take leave, however. State laws may give her that right, the FMLA provides for leave for morning sickness, if she is covered, and the ADA may also require leave.



Julia – needs help lifting

State laws and the ADA may require the employer to provide help, and the PDA may help her if others have been given help. Leave should be a last resort.



Need More Information?

See the resources in the handouts

Hotlines:



- WorkLife Law

hotline@worklifelaw.org or 415-703-8276

- A Better Balance

212-430-5982



What Type of Help Can You Get?



- Bathroom breaks
- Breaks for rest or water
- Private space for pumping breast milk
- Help with manual labor or lifting items
- Light duty or transfer to less strenuous or hazardous work
- An accessible worksite



More Types of Help You Can Get

- Changes to work schedule or environment
- A chair to sit on
- Reassignment to a vacant position
- Modification of equipment, test or training materials, or policies
- Time off for medical appointments
- Medical leave



More about Leave



Entitlement under FMLA

- Counts against the total 12 week allotment
- DC and some states like California allow “leave stacking” – pregnant women can use medical leave for their pregnancy-related illnesses and still have their full family leave for baby bonding
- If you can’t return at the end of leave for physical or mental conditions that are disabilities, the ADA may help
 - Leave cannot be open-ended

More about Changes to Schedule

Under the FMLA, intermittent leave and reduced schedule leave is possible (counts against 12 weeks)

Other ways to get flexible work:

- Agreement with employer or employer's flexible work policy
- The ADA, if the employee has a condition that is deemed a disability
- The PDA, if the employer allows others who are similar in their ability to work to work flexibly
- State and local accommodation laws



More about Light Duty

Available under the ADA

- If employee has a condition that is deemed a disability
- Employer does not have to create a light duty position
- Employee must have the skills to perform the light duty job

Available under state and local laws

- May be available even without a disability



Tips for Easier Working While Pregnant



1. Know your limits. Don't try to be Superwoman.

- Better to under-promise and over-deliver
- Conserve your energy. Can you:
 - find a place to nap?
 - take off more time?
 - work reduced hours?
 - buy convenience: help around the house; prepared foods; grocery shopping service; errand runner?



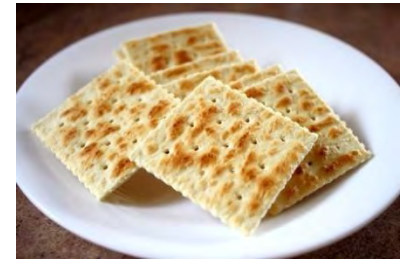
More Tips

2. Know your benefits. What are your employer's policies for
 - Maternity leave
 - Benefits while on leave
 - Flexible work
 - Gradual return to work



More Tips

3. Make yourself comfortable
 - Alternate sitting and standing, if possible
 - Have snacks and water at your work station
 - Avoid rooms with smells that nauseate you
 - Have a change of clothes (and ginger!)
 - Take a short walk outside to clear your head
 - Ask to be seated near the restroom, or closer to people you work with to reduce walking distances
 - Ask for help with lifting and use devices like carts for carrying



More Tips

4. Reassure your boss and coworkers

- Assure them you are still in the game
- If you are going to miss a deadline, give advance notice and say why so they don't assume it is because of your pregnancy
- Let employer know you plan to return



5. Transition your work

- Make a plan with your supervisor
- Leave everything organized so you and others can find them

More Tips



6. Plan for your maternity leave

- Know your rights
 - Calculate leave entitlement with your employer
 - Understand reinstatement rights
- Stay in touch with the office
 - (But don't work)
- Remind your employer of your return date
- Know your rights about breastfeeding
- When you return, be alert to discrimination

Contact Us

Questions or comments? We'd love to hear them!

Cynthia Calvert: CynthiaCalvert@WorkLifeLaw.org

Dina Bakst: Dbakst@abetterbalance.org

Thank you for your participation, and best wishes for you and your baby!

