



What to Expect from Your Employer When You're Expecting



WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR



U.S. Equal Employment
Opportunity Commission



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During Your Pregnancy

If my employer knows that I am pregnant or may become pregnant, could I get fired?

Pregnancy discrimination is against the law. The EEOC enforces federal laws that protect job applicants and employees who are pregnant, who have pregnancy or childbirth-related medical conditions, who are trying to become pregnant, and those who are in the post-partum period.

- **Title VII of the Civil Rights Act of 1964, as amended (Title VII)**, prohibits discrimination based on sex in employment.

- **The Pregnancy Discrimination Act (PDA)** is an amendment to Title VII clarifying that discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under Title VII.

What if I am being harassed because of pregnancy or a pregnancy-related medical condition?

- The laws enforced by EEOC protect you from being harassed at work because of pregnancy.
- Examples of harassment can include unwelcome and offensive jokes or name-calling, ridicule, insults, intimidation, threats, or physical assaults based on pregnancy.



What if I am having difficulty doing my job because of pregnancy or a medical condition related to my pregnancy?

- As of **June 27, 2023**, The Pregnant Workers Fairness Act or “PWFA” will require covered employers to provide “reasonable accommodations” to a qualified worker’s known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an “undue hardship.”

“Reasonable accommodations” are changes to the work environment or the way things are usually done at work.

“Undue hardship” is significant difficulty or expense for the employer.

- Employees may also have the right to a workplace accommodations under Title VII, the ADA, or state or local laws.

What are some accommodations I might be able to get at work?

Some examples of possible reasonable accommodations under the PWFA for pregnant workers are:

- the ability to sit or drink water on the job
- receiving closer parking
- being provided flexible hours
- receiving appropriately sized uniforms and safety apparel
- receiving additional break time to use the bathroom, eat, and rest
- taking leave for appointments or time off to recover from childbirth
- being excused from strenuous activities, such as lifting heavy objects, and activities that involve exposure to chemicals that are not safe during pregnancy.

What if there's no way that I can do my regular job, even with an accommodation?

- If an employee is unable to do their regular job, even with accommodation, they may be eligible for light duty, a temporary alternate work assignment or reassignment, or leave if necessary.



How do I talk to my employer about needing an accommodation, light duty, or leave because of my pregnancy?

- Check your employee handbook or employee intranet site.
 - Does your employer have a policy in place?
- Talk to Human Resources.
- If you work for a smaller employer, talk to your manager.
 - Good communication goes a long way.

I'm pregnant. What rights do I have to take leave from work?

- The Family and Medical Leave Act (FMLA) is a federal law that provides job protected leave to certain workers.
- A worker who is **eligible** may take FMLA leave for their own or a covered family member's pregnancy.



May I take FMLA leave for my same sex spouse's pregnancy?

- Under the FMLA, the definition of spouse includes common-law marriage and same-sex marriage.
- You may take FMLA leave for the care of a spouse during pregnancy, including for prenatal care.
- You may also take FMLA leave to care for your spouse who is recovering from childbirth.
- You may not take FMLA leave for the care of a partner unless you are married.

For example, you may not take FMLA leave for the care of a pregnant domestic partner, civil union partner, or for a co-parent unless you are married to that person.



Birth & Bonding

I have a new child. What rights do I have to take leave from work?

- You may use FMLA leave when your child is born or placed with you for adoption or foster care, and to bond with your new child.
- FMLA leave for birth, placement, or bonding must be taken within one year of your child's birth or placement.
- You may also use FMLA leave before the actual placement or adoption of your child in situations where you may be required to, for example:
 - Attend counseling sessions,
 - Appear in court,
 - Consult with the attorney or doctor(s) representing the birth parent,
 - Submit to a physical examination, or
 - Travel to another country to complete an adoption.

May I take FMLA leave for the birth of my partner's new child?

Anyone who is a parent to a child can take FMLA leave for the child's birth, placement, or care.

- You can take FMLA leave for a child who is your stepchild or legal ward.
- You can take FMLA leave for a child when you have or will have the role of a parent, including day-to-day responsibilities to care for or financially support the child, even if you do not have a biological or legal relationship to the child.
- Men and women have an equal right to FMLA leave for the birth, placement, or care of a child.
- You do not have to be married to take FMLA leave for the birth of your child or for the placement of your child for adoption or foster care.

What happens to my health insurance and other job benefits while I am on FMLA leave?

- Your employer must continue your group health plan coverage with the same benefit coverage as if you were not on leave.

For example, if family member coverage is provided to an employee, family member coverage must be maintained during the FMLA leave.

- Your rights to benefits, other than group health benefits, while on FMLA leave depend upon your employer's established policies. Any benefits that would be maintained while the employee is on other forms of leave must be maintained while the employee is on FMLA leave.

How much FMLA leave is available to me for pregnancy, birth, placement, and bonding?

- Up to 12 workweeks of leave in a 12-month period for one or more of the following reasons (among others):
 - Pregnancy, including if you are unable to work due to pregnancy
For example, you have severe morning sickness or are on bed rest due to a complication
 - Caring for your family member who is unable to work, go to school, or do other regular daily activities due to pregnancy
 - For your own or a family member's prenatal care
For example, you take your spouse to a prenatal care appointment
 - For your own or a family member's recovery from childbirth
 - Birth or placement of a child for adoption or foster care, including bonding time

Eligible spouses who work for the same employer are limited to a combined total of 12 workweeks of leave in a 12-month period for, among other reasons, birth, placement, and bonding with a new child.

Will I be paid during my FMLA leave?

- The FMLA does not require your employer to pay you for your time off.
- The FMLA does require that if your employer already provides paid time off (PTO), paid vacation, or paid sick leave benefits, etc. then:
 - Your employer may require you to use PTO, vacation, or sick leave, etc. during your FMLA leave, OR
 - You may choose to use the PTO, vacation, or sick leave, etc. your employer provides during your FMLA leave.
- Also, if you qualify for paid family and medical leave, parental leave, or disability leave under State law while you are on FMLA leave, your state paid leave benefit may be paid at the same time you are on FMLA leave.
- The FMLA does not allow you to save your FMLA leave for use after you have exhausted your other leave benefits.
 - As soon as you are eligible for FMLA leave, AND
 - You have a qualifying reason for FMLA leave,
 - Your employer must follow the requirements of the FMLA.

How do I know if I am eligible for FMLA leave?

First, you must work for a covered employer:

- An employer who has 50 or more employees OR
- A public agency, elementary, or secondary school



How do I know if I am eligible for FMLA leave? (continued)

If you work for a covered employer, you also must--

1. Have worked for your employer for at least 12 months,
2. Have worked for your employer for at least 1,250 hours in the last 12 months,* AND
3. Your employer must have 50 or more employees within 75 miles of your worksite.

*There is a different hours of service rule for airline attendants and crew members.



What do I have to tell my employer to request FMLA leave?

- **Both you and your employer** have responsibilities for notifying the other when FMLA leave is being used.
- YOU must provide your employer with appropriate notice of your need for leave.
- YOUR EMPLOYER must:
 - Notify you if you are eligible for FMLA leave within five business days of your first leave request,
 - Give you a notice of your rights and responsibilities under the FMLA, and
 - Let you know if your leave is designated as FMLA-qualifying.

What do I have to tell my employer to request FMLA leave?

What you must do:

- Follow your employer's leave request policies
- Request leave at least 30 days in advance
- If that's not possible, request leave as soon as possible and practical
- Provide your employer with enough information that they will know your leave request may be covered by the FMLA

What your employer must do:

- Tell you whether you are eligible for FMLA leave
- Tell you in writing what your FMLA rights are
- Tell you in writing if your time off will be counted as FMLA leave

Do I have to give medical information to my employer to take FMLA leave?

- Your employer may require a medical certification when you request leave for your own or a family member's serious health condition, including pregnancy.
- Your employer may not request a medical certification for FMLA leave for you to bond with a healthy newborn child or a healthy child placed for adoption or foster care.
 - Employers may require employees to provide reasonable documentation of a family relationship.
 - To satisfy this requirement, you may provide your employer with a simple written statement or provide your employer with a copy of an official document, such as your child's birth certificate or a court document, for review and return to you.

What if I do not qualify for FMLA leave?

- You may still qualify for the reasonable accommodation of leave under the PWFA.
- You may still qualify for leave under a state or local law or under your employer's policies.

A photograph showing a blue and black bag on the left, partially open, and several clear plastic bottles with yellow caps on the right. The bottles are filled with a yellowish liquid, likely breast milk. The background is a light-colored surface.

Returning to Work & Nursing

What happens when I am ready to go back to work?

Under the FMLA, when you go back to work, your employer must restore you to the same job that you held when your leave began, or to a job that is virtually identical to your original job in terms of pay, benefits, and other employment terms and conditions (including shift and location).



What happens if my employer treats me differently when I return to work?

Title VII protects against employment discrimination on the basis of sex. This can include situations where a person is discriminated against because the employer is acting based on stereotypes about how much working mothers can or can't do.

For example, your employer stops assigning you to shifts where you can earn higher tips and keeps telling you that they don't think you can manage being a mother and working at this job.

What if I am having difficulty doing my job when I return to work?

If the difficulty is a physical or mental condition related to your pregnancy, childbirth or a related medical conditions, you may be able get a reasonable accommodation under the PWFA.

I am breastfeeding my baby. How can I continue to pump breast milk when I go back to work?

- Under the Fair Labor Standards Act (FLSA), eligible nursing employees have the right to reasonable break time to express breast milk and a private place, other than a bathroom, that may be used to express milk.
- This right is available for up to 1 year after the child's birth.
- Workers who telework are eligible to take pump breaks under the FLSA on the same basis as other workers.

How often may I take pump breaks? How long may I break to pump?

- If you are eligible, you may take reasonable pump breaks as often as you need to for the first year of your child's life.
- How often you need to take a pump break, and how long your pump breaks last, will probably vary depending on factors related to you and the nursing baby.
- Talk with your employer about how often and for how long you need breaks.



Where can I pump during my breaks?

- Employers are required to provide a space that is shielded from view, free from intrusion from coworkers and the public, and NOT a bathroom.
- A place that is “shielded from view” means that if you are taking a break to pump, you must be free from observation by any employer provided or required video system, including computer camera, security camera, or web conferencing platform.
- A bathroom is not permissible.
- A space temporarily created or converted to space for expressing milk may be sufficient if it is available when needed.

Will my pump breaks be paid?

- Employers are not required to provide compensated break time under the FLSA.
- However, if you are not relieved from your work duties during your break time, your break must be counted and paid as work time.
- If your employer already provides paid break time and you use that time to express breast milk, you must be compensated for that time just as other employees would be compensated for the time.

How do I know if I'm eligible for breaks and a private space to pump at work?

Under the Fair Labor Standards Act (FLSA), most nursing employees have the right to reasonable break time and a place, other than a bathroom, that is shielded from view to express breast milk while at work. This right is available for up to one year after the child's birth.

You are covered by the FLSA if you are an employee and:

- You work for an employer that has at least two (2) employees and at least \$500,000 a year in business, OR
- You work for a hospital, residential medical or nursing care facility, school, preschool, or government agency, OR
- You work in domestic service, including home care, OR
- You work in interstate commerce, i.e., your work crosses state lines.

For example, you make telephone calls to other states, order or receive goods from out-of-state suppliers, send or receive interstate mail or e-mail, handle credit card transactions or perform accounting or bookkeeping for such activities, or travel to other states.

How do I know if I'm eligible for breaks and a private space to pump at work? (continued)

On December 29, 2022, the Providing Urgent Maternal Protections for Nursing Mothers Act became law, extending protections to millions of workers.

Nearly all employees covered by the FLSA are eligible to pump at work.

Employees are eligible to pump at work for one year after the child's birth.

Narrow exemptions may apply for certain employees of small companies and certain transportation employees.

Do I have rights to pump at work if I work for a small employer?

Generally, yes. An employer that employs fewer than 50 employees must provide break time and space under the FLSA **unless** it would pose an **undue hardship**:

- **The employer bears the burden of proving that providing reasonable break time and space would pose an undue hardship; size alone does not excuse an employer from complying.**
- **Undue hardship is defined as “causing the employer significant difficulty or expense when considered in relation to the size, financial resources, nature, or structure of the employer’s business.”**
- Must count all employees, including part-time employees, at all worksites.

What if I work in a State that has greater protections for nursing mothers?

Generally, workers are entitled to the most protective applicable labor standards. State or local worker protection laws that provide greater protections to employees (for example, providing compensated break time, or providing break time beyond one year after the child's birth) than the protections under the FLSA will apply to employees who pump at work.

What should I tell my employer if I need to take breaks to pump?

- Talk to your employer in advance, if you can, about your needs for break time and space to pump.
- Talk to your employer, if you can, about the frequency and duration of breaks you will need to express milk.
- Visit [dol.gov/agencies/whd/nursing-mothers](https://www.dol.gov/agencies/whd/nursing-mothers) for information and contact your local WHD District Office if you have questions.



What other workplace protections do I have for lactation?

You are protected from discrimination based on lactation under the Title VII & the Pregnancy Discrimination Act (PDA).

Under the PWFA, as of June 27, 2023, workers may also be entitled to reasonable accommodations regarding lactation, absent undue hardship, if they are not covered by the PUMP Act.



Taking Action

What should I do if I think I am being discriminated against, harassed, or denied an accommodation?

- Complain internally.
 - Does your employer have an internal complaint process?
- File a complaint with the EEOC or the Fair Employment Practice Agency in your local area.
 - To file a complaint with the EEOC, visit [eeoc.gov](https://www.eeoc.gov).
 - Click on the tab **Employees & Job Applicants** and click on **Filing a Charge**.
 - Jurisdictional requirements: 180/300 days to file; 15 or more employees.
 - You can also access more information about your federally protected rights by visiting [eeoc.gov](https://www.eeoc.gov).

What if my employer tries to fire me or punish me for reaching out to the EEOC?

The laws enforced by EEOC protect you from being punished, treated differently, harassed or fired because you file a job discrimination complaint with the EEOC, report discrimination to others, or help someone else report job discrimination, even if it turns out the conduct was not illegal.



What should I do if I think that my rights to FMLA leave have been violated?

- To enforce FMLA rights, you may:
 - File a complaint with U.S. Department of Labor's Wage and Hour Division (WHD), or
 - File a private lawsuit.
 - Action must be taken within two years after the last action which may have been violation of the FMLA, or three years if the violation was willful.
- All persons, whether are not employers, are prohibited from discharging or in any other way discriminating against any person, whether or not an employee, because that person has:
 - Filed any charge, has instituted, or caused to be instituted any proceeding under or related to the FMLA,
 - Given, or is about to give, any information in connection with an inquiry or proceeding relating to any right under the FMLA, or
 - Testified, or is about to testify, in any inquiry or proceeding relating to a right under the FMLA.
- Visit dol.gov/agencies/whd/fmla for more information about the FMLA.

What if my employer stops me from taking FMLA leave? Or fires or punishes me for taking or trying to take FMLA leave?

- Your employer cannot terminate your employment or discriminate against you for using FMLA, asking about the FMLA, or complaining about any unlawful practice under the FMLA.
- Your employer cannot discriminate or retaliate against you for exercising or attempting to exercise any FMLA right.

For example, your employer cannot give you an attendance point for being absent from work on FMLA leave.



What should I do if I think that my FLSA break time rights have been violated?

To enforce FLSA rights, you may:

- File a complaint with the U.S. Department of Labor's WHD, or
- File a private lawsuit.

Note: Unlike the 10-day period which may apply to certain private lawsuits, there is no waiting period to file a complaint with the WHD.

Action must be taken within two years after the last action which may have been a violation of the FLSA, or within three years if the violation was willful.

Can my employer retaliate against me for taking or requesting a pump break?

The FLSA prohibits employers from retaliating against workers for exercising their rights, including taking or requesting break time to pump or filing a complaint that an employer is not providing reasonable break time and a private place to pump.

Any employee who is “discharged or in any other manner discriminated against” because, for instance, they filed a complaint or cooperated in an investigation, may file a retaliation complaint with WHD or may file a private cause of action seeking appropriate remedies including, but not limited to, employment, reinstatement, lost wages and an additional equal amount as liquidated damages.

Filing a Complaint with WHD

The U.S. Department of Labor's WHD is responsible for administering and enforcing the FMLA and the FLSA.

If you have questions, or you think that your rights under the FMLA or the FLSA, including your right to pump at work may have been violated, you can contact WHD at 1-866-487-9243 or visit dol.gov/agencies/whd.

You will be directed to the [nearest WHD office](#) for assistance. There are WHD offices throughout the country with trained professionals to help you.



Filing a Complaint with WHD (continued)

Visit dol.gov/agencies/whd/contact/complaints/information to read about information you may need to file a complaint.

When filing a complaint with WHD, you may be asked:

- Your name,
- Your address and phone number (how you can be contacted),
- The name of the company where you work or worked,
- The location of the company (this may be different than the actual job site where you worked),
- The phone number of the company,
- Your manager's or the business owner's name, and
- The circumstances of your FMLA request or your pump at work needs and your employer's response.

