



# Pregnancy, Breastfeeding, and Caregiving: Legal Rights in the Workplace

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# About A Better Balance: The Work and Family Legal Center

# Federal Nursing Moms' Rights in a Nutshell

- **WHAT?** The Affordable Care Act requires employers to provide “reasonable break time for an employee to express breast milk for her nursing child for 1 year after the child’s birth each time such employee has need to express the milk.”
- **WHO?** The law applies to employers and employees covered under the Fair Labor Standards Act (FLSA). FLSA-exempt employees (e.g., administrative and professional workers) are not covered by this law.
- **WHEN?** Assuming an employer is covered, they must provide reasonable unpaid break time for an employee to express breast milk.
- **WHERE?** An employer must provide a clean, private space, other than a bathroom, where workers can pump milk without interruption.

# ACA 101

- The law says employers are required to provide “a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.”
- Exempt employees who work for federal government agencies are covered by the law.
- Employers who have fewer than fifty employees *and* who would have significant difficulty complying with the law because of their size, their financial resources, or the nature or structure of their business *may be excluded*.

# ACA 101

- Approximately half of new mothers are not covered.
- If an employer provides paid breaks, then an employee must be allowed to use that paid time to pump milk.
- Employees are protected from retaliation after filing a complaint.
- Employees who think their rights have been violated should call A Better Balance, at 615-915-2417, or the U.S. Department of Labor, 1-866-487-9273.
- More resources:  
<http://www.dol.gov/whd/nursingmothers/>.

# Health Insurance Coverage

[www.healthcare.gov/coverage/breast-feeding-benefits/](http://www.healthcare.gov/coverage/breast-feeding-benefits/)

- “Health insurance plans must provide breastfeeding support, counseling, and equipment for the duration of breastfeeding. These services may be provided before and after you have your baby.”
- “Your health insurance plan must cover the cost of a breast pump—and may offer to cover either a rental or a new one for you to keep.”
- “In many cases, your insurance plan will follow your doctor’s recommendations on what is medically appropriate.”



# Pumping at Work

- When should a worker talk to her employer?
- What should she say?
  - Health benefits
  - Bottom-line benefits
  - Be prepared!



# The Pregnancy Discrimination Act (PDA) in a Nutshell

**WHAT?** The PDA is a federal law that prohibits unfair treatment of women because of their pregnancy, childbirth, or related medical conditions.

**WHO?** If an employee works for a private employer with 15 or more employees then you are covered. (TN law covers 8+)

**WHEN?** The PDA kicks in when employees are pregnant, but it may also protect employees who are not yet pregnant or have already given birth.

**HOW?** The law prohibits an employer from discriminating against an employee in any aspect of the terms or conditions of employment (including harassment).

**WHY?** Discrimination based on sex was outlawed in 1964, but it took an amendment in 1978 to guarantee equal opportunity for pregnant women and new mothers.



# Pregnancy Discrimination 101

- An employer may not fire an employee because of pregnancy. Example: “we don’t have pregnant hostesses here, you’ll have to go.”
- An employee cannot be denied a job opportunity because of pregnancy. Example: “Why did you come in for this interview with that big belly? This is a waste of time.”
- Other bad treatment because an employee is pregnant is illegal, like cutting hours or reprimands.

# “Related medical conditions”

- Do federal and state pregnancy discrimination laws cover breastfeeding mothers?
- The law protects against discrimination based on medical conditions related to pregnancy and childbirth.
- For many years, courts were split on whether or not lactation was a “pregnancy-related medical condition,” but the trend now seems to be moving toward coverage.

# Fairness for Pregnant Workers

- Dr. Willis treated a pregnant retail worker who was not allowed to drink water.
- She fainted & collapsed and had to be sent to the ER.
- Far too many pregnant women are forced to choose between their health & their jobs.



# *Young v. UPS*

- Peggy Young worked as a minivan driver at UPS, delivering letters. She brought in a doctor's note with a lifting restriction and was placed on unpaid leave, losing her health insurance. UPS maintained a policy of accommodating many other groups of workers.
- The Supreme Court ruled that employers may not place “a significant burden” on pregnant workers— demonstrated by showing that a large percentage of non-pregnant workers are accommodated, but only a small percentage of pregnant workers.
- Why we need clear, statutory protections.

# Americans with Disabilities Act Amendments Act

- The **Americans with Disabilities Act Amendments Act (ADAAA)** requires employers to provide reasonable accommodations for pregnancy-related disabilities and lactation-related disabilities.
- Likely examples include: hypertension, gestational diabetes, placenta previa, severe nausea, and subjective symptoms like back pain.
- Tennessee equivalent disability protections cover employers with 8+ employees.

# Reasonable Accommodations

## Examples

- Ability to sit for periods of time while on a shift
- Bathroom breaks
- Food or drink breaks
- Ability to carry water bottle
- Flexibility around dress code requirements
- Limits on lifting requirements
- Transfer to a less-strenuous shift, position, or work location
- Limited time off or altered work schedule for medical visits
- Reduced schedule



# Sample Provider Note

“On June 15, 2014, my patient Ms. Jane Doe consulted with me in my office. I diagnosed Ms. Doe, who is pregnant, with carpal tunnel syndrome. Consistent with this diagnosis, Ms. Doe needs an accommodation at work until her baby is born, on or around November 1, 2014.

Because of Ms. Doe’s carpal tunnel syndrome, and her associated limitation on repetitive use of both hands for more than 30 minutes without a break, she is having difficulty typing for long periods of time and should be allowed to take a 5-minute break after 30 minutes of continuous typing.

For more information, you may wish to consult the Job Accommodation Network at [www.askjan.org](http://www.askjan.org).”

# Provider Notes: What *Not* to Do

- Blanket restrictions for all pregnant patients.
  - Example: “all patients should refrain from lifting over 20 pounds.”
- Prescribing particular accommodations.
  - Example: “patient needs light duty.”
- Vague or overly broad directives:
  - Example: “patient should avoid heavy lifting, if possible.”
- Illegible, misspellings, or with typos:
  - Sometimes employers require workers to obtain new notes fixing typos, delaying their return to work & wasting provider time.

# State & Local Momentum

- ◆ 27 states/localities have passed explicit statutory protections requiring employers to provide reasonable accommodations for pregnant employees.
- ◆ These measures pass with widespread bipartisan support, and often pass unanimously.
- ◆ 50 bipartisan state and local lawmakers signed an amicus brief in support of Peggy Young in *Young v. UPS*.

# How Have These Protections Come About?

- ◆ Legislators recognize that these laws are critical measures for family economic security—ensuring working families, which depend on women’s income, do not jeopardize their financial security during or after an employee’s pregnancy.
- ◆ Other legislators are moved by the public health case: they do not want pregnant women to feel forced to risk their health, and the health of their pregnancies, when they are denied reasonable accommodations at work.

# Public Education

<http://babygate.abetterbalance.org>

Working While Pregnant & Parenting  
Find Out Your Rights

# Talking to Your Boss

<http://babygate.abetterbalance.org>



**WORK LIFE LAW**  
UC Hastings College of the Law

## **Talking to Your Boss About Your Bump**

*This fact sheet focuses on federal law. Your state or local laws may provide different/broader protections.*

### **WHEN to break the news:**

- There are no real legal deadlines for notifying your employer until late in your pregnancy, when you will need to request leave 30 days in advance of taking off for childbirth, if you are covered by the Family and Medical Leave Act.
- If you need time off for pregnancy-related illness, or you need another workplace change to accommodate your pregnancy, you may have to break the news earlier.
- If you suspect that your boss won't be happy to hear you are pregnant, don't feel



# The Federal Pregnant Workers Fairness Act (PWFA)



- Explicit federal law will ensure no woman has to choose between her job & a healthy pregnancy.
- This public health measure will also shore up economic security for families across the country.

# Federal PWFA: What does it provide?

- The Pregnant Workers Fairness Act (PWFA) would require employers to reasonably accommodate pregnant workers with limitations, unless to do so would be an undue hardship.
- The PWFA also states that an employer could not force a pregnant employee to take an accommodation (such as unpaid leave), if it was not needed by the worker.
- The bill protects against hiring discrimination as well, stating that employers may not refuse to hire a pregnant employee simply because she needs a reasonable accommodation.

# Federal PWFA: Necessary Reform

- Enacting the PWFA would set a national standard and ensure protection for women across the country.
- The bill uses a familiar framework for employers to ensure that pregnant workers are given fair treatment on the job—modeled after the ADA, the law guarantees equal treatment with workers who have disabilities.



# Federal PWFA: Necessary Reform

- The PWFA reduces litigation costs for employers and employees, by providing clarity, consistency, and a common-sense rule that all can follow.
- In fact, after such legislation was enacted in California, pregnancy discrimination cases actually decreased, despite a marked increase in the rest of the country.
- Protecting pregnant workers from discrimination is overwhelmingly popular with the public: 91% of Americans support it, and 70% “strongly favor” it.
- Bill was reintroduced with bipartisan support this summer!

# Caregiver discrimination 101

- Caregivers are not a protected group under federal law.
- However, if some caregivers are treated worse than others, it could still be illegal discrimination—for example, if a single mother is treated worse than other parents.

# Georgia law

- Georgia is one of only a few states in the country that do not have anti-discrimination protections on the basis of sex. (They do prohibit age, disability, & unequal pay discrimination.) Federal law still applies.
- Georgia does have a statute for breastfeeding workers, but it is permissive, not a requirement—it simply says employers are *allowed* to provide reasonable unpaid break time in an area other than a toilet stall.
- However, Atlanta law protects parents from discrimination at work. Atlanta, Ga. Code § 94-112.
- *\*Note, this is not legal advice; I am not licensed to practice law in the state of Georgia.*



# Thank you!

We hope you will get involved in our fight to educate every pregnant and breastfeeding worker about her rights, and to bring about better laws & policies.

(615) 915-2417

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