

## What to Expect When You're Expecting (and after the birth of your child)... at Work



The Pregnancy Discrimination Act of 1978, which amended Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions.<sup>1</sup> Pregnancy discrimination involves treating an individual - an applicant or employee - unfavorably in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoffs, training, fringe benefits, such as leave and health insurance, and any other terms or conditions of employment. Statutory protections from pregnancy discrimination apply to all DOL employees and applicants for DOL employment.

### General Guidance:

- An agency may not maintain a written or unwritten employment policy or practice, which excludes applicants from employment or denies employees any terms, conditions, or privileges of employment because of pregnancy, childbirth or related medical conditions.
- An agency must permit a pregnant employee to do her job, for as long as she is capable of performing the job.
- Agencies may not make an employment decision about an employee's work performance based on a stereotype or assumption concerning the employee's pregnancy.
- An agency may not single out pregnancy-related conditions for special procedures to determine an employee's ability to work.
- While agencies have a duty to protect employees' health and safety, agencies have no extra duty to protect pregnant employees from dangerous work conditions. Therefore, policies that exclude members of one sex from a workplace for the purpose of protecting fetuses cannot be justified under Title VII.
- An agency may not terminate, deny assignments or deny promotions to a pregnant employee because of her pregnancy or childbirth.

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<sup>1</sup> Likewise, an employer cannot discriminate in its employment practices against an employee who has had an abortion.

### *Guidance on Leave:*

- When an employee goes on leave due to pregnancy, the agency must keep her job open for the same period of time that jobs are kept open for employees who go on disability or sick leave.
- An agency may not have a rule that prohibits an employee from returning to work for a predetermined length of time after childbirth.
- Employees and agencies may have additional rights and obligations under the Family Medical Leave Act of 1993 (FMLA), which permits an employee to take up to 12 weeks of leave (unpaid or paid if the employee has earned or accrued it) that may be used for care of a new child, if the employee has worked for the agency for 12 months prior to taking the leave.

### *Prohibition Against Retaliation*

- It is also unlawful to retaliate against an individual for opposing employment practices that allegedly discriminate based on pregnancy or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII.

## **What If There Are Complications With An Employee's Pregnancy? What Rights Does She Have at Work?**

Pregnant employees who are temporarily unable to perform their jobs due to medical conditions related to pregnancy or childbirth must be treated the same for all employment-related purposes as other persons not so affected but similar in their ability or inability to work.

For instance, if the agency assigns light duty work to employees who are temporarily unable to perform their duties because of a medical condition, then a pregnant employee who is temporarily unable to perform her duties must be given light duty assignments.

Federal employees with pregnancy-related medical conditions or complications may also find protection under the Rehabilitation Act,<sup>2</sup> which affords protection to qualified individuals with a disability from adverse employment actions taken on the basis of the disability.

Who is a qualified individual? Under the Rehabilitation Act, pregnancy is not automatically considered a disability. However, some medical conditions that occur as a

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<sup>2</sup> The Rehabilitation Act of 1973 protects federal employees. The standards for determining employment discrimination under section 501 of the Rehabilitation Act are the same as those used in title I of the Americans with Disabilities Act (ADA). The ADA was amended by the ADA Amendments Act of 2008.

result of or during the course of pregnancy have been held to rise to the level of a disability. The condition must “substantially limit a major life activity” to qualify for additional protection. For instance, the risk of premature labor has been held to create a physical impairment under the law.

If an employee has been absent from work as a result of a pregnancy-related condition and recovers, the agency may not require the employee to remain on leave until she has given birth.

### **What Are Some Agency Best Practices for Employees with Caregiving Responsibilities?**

Title VII prohibits employment decisions that discriminate against employees with caregiving responsibilities, which includes child care, if the decisions are based on sex or another protected characteristic.

Agencies should avoid reliance on common stereotypes or biases about caregivers that may result in unlawful conduct, including:

- assuming that female employees’ caregiving responsibilities will interfere with their ability to succeed in a fast-paced environment;
- assuming that female employees who work part-time or take advantage of flexible work arrangements are less committed to their jobs than full-time employees;
- assuming that female employees prefer, or should prefer, to spend time with their families rather than time at work;

Examples of prohibited conduct related to employees’ caregiving responsibilities include:

- asking female applicants and employees, but not male applicants and employees, about their child care responsibilities;
- steering women with caregiving responsibilities to less prestigious or lower-paid positions;
- treating women of color who have caregiving responsibilities differently than other employees with caregiving responsibilities due to gender, race and/or national origin-based stereotypes.

To learn more go to *EEOC’s Enforcement Guidance Number 915.002: Unlawful Disparate Treatment of Employees with Caregiving Responsibilities* (May 23, 2007). To learn more, visit <http://www.eeoc.gov/policy/docs/caregiving.html>

### **Do DOL Employees Who Are Nursing Mothers Also Have Employment Protections?**

Yes, under the Patient Protection and Affordable Care Act of 2010, which amended the Fair Labor Standards Act, agencies must provide nursing mothers with:

- a reasonable break time to express breast milk for their nursing child each time such employee has need to express milk for one year after the child's birth; and
- 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 the employee to express breast milk.

The Office of the Assistant Secretary for Administration and Management's Human Resources Center, Office of WorkLife, Leave, and Benefits Policy and Programs is responsible for enforcing these regulations for federal employees working for the U.S. Department of Labor. The Wage and Hour Division of the U.S. Department of Labor enforces the Fair Labor Standards Act for employees in the private sector

To learn more, visit <http://www.dol.gov/whd/nursingmothers/>.

### **Do DOL Employees Have Rights Based on Their Status as a Parent?**

Yes, DOL Policy also prohibits discrimination against employees or applicants for employment on the basis of parental status.

Under Executive Order 13152, "status as a parent" refers to the status of an individual who, with respect to an individual who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is a biological parent; an adoptive parent; a foster parent; a stepparent; a custodian of a legal ward; *in loco parentis* over such an individual; or actively seeking legal custody or adoption of such an individual.

### **For More Information**

Any questions on this guidance should be addressed to the Department of Labor's Civil Rights Center. If at any time you think that you have been subjected to pregnancy (or related) discrimination, contact the Civil Rights Center at 202-693-6500 within 45 days of the alleged discriminatory event in order to preserve your right to file an EEO complaint.