

Montgomery County Government
Commission for Women
and the Maryland Commission for Women



Employment Rights of Pregnant Women In Maryland



The Pregnancy Discrimination Act*

The Pregnancy Discrimination Act became law on October 31, 1978 as an amendment to Title VII of the Civil Rights Act of 1964, as amended. This act states that discrimination because of pregnancy, childbirth, or related medical conditions is unlawful sex discrimination under Title VII. The Act covers all areas of employment, including hiring, promotion, firing, seniority rights and fringe benefits such as sick leave and health insurance.

The basic idea of the Pregnancy Discrimination Act is that women who are pregnant or have pregnancy-related conditions must be treated the same as other applicants and employees with regard to their ability or inability to work. Disabilities caused by pregnancy, childbirth or related medical conditions must be treated the same, for all job related purposes, as disabilities caused by other medical conditions.

The employer's responsibility to the pregnant worker depends on how the employer treats temporary disability. If the employer has a poor policy regarding temporary disabilities, the pregnant worker has no more rights and privileges than other temporarily disabled workers. However, if the employer has a good temporary disability policy, it must extend to pregnant workers as well.

The Pregnancy Discrimination Act provides that:

- It is illegal for a woman to be fired or refused a job or promotion because she is pregnant or has had an abortion.
- A pregnant worker cannot be forced to go on leave as long as she can still work.
- A woman unable to work for pregnancy-related reasons is entitled to disability benefits or sick leave on the same basis as employees unable to work for other medical reasons.
- Any health insurance provided at work must cover expenses for pregnancy related conditions just as expenses for other medical conditions.
- Information contained here regarding the Pregnancy Discrimination Act was extracted from the Federal Register, Rules and Regulations, Volume 44, No. 78, April 20, 1979.

The Maryland Human Relations Law

In addition to outlawing discrimination in employment on the basis of sex, race, religion, color, or national origin, the Maryland Human Relations Law addresses the issue of pregnancy disability. Section 17 of Article 49B entitled "Disability Due to Pregnancy or Childbirth" states the following:

- Disabilities caused or contributed to by pregnancy or childbirth, are temporary disabilities for all job-related purposes, and shall be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment.
- Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

The Family and Medical Leave Act

The Family and Medical Leave Act of 1993 (FMLA) covers all employees who work for employers with 50 or more employees within 75 miles of a given work place. An employee must have worked at least 12 months for the employer and 1,250 hours in the past year to be eligible for the leave benefit.

All eligible employees may take up to 12 weeks of unpaid leave during any 12 month period for one or more of the following reasons: (1) Birth of a child, (2) Placement of a child for adoption or foster care, (3) Caring for spouse, child, or parent, with a serious health condition, or (4) The serious health condition of the employee. A serious health condition is defined as inpatient care at a hospital, hospice, or residential medical care facility, or the continuing care by a doctor of medicine or osteopathy.

An employee who takes leave under the law must be able to return to the same job or a job with equivalent status and pay.

The employer must continue the employee's health benefits during the leave period at the same level and conditions as if the employee had continued to work.

Questions and Answers

Regarding Your Rights Under The Pregnancy Discrimination Act, The Family and Medical Leave Act, and the Maryland Law

The Pregnant Worker

Q. Who is covered by the federal Pregnancy Discrimination Act?

A. The Act covers federal, state, and local government employers with fifteen or more workers. It also covers private businesses which employ at least fifteen workers and participate in interstate commerce.

Q. Who is covered by the Maryland Law?

A. The Maryland law covers employers who have fifteen or more employees. This also includes state and local government employers.

Q. Who is covered by the Family and Medical Leave Act?

A. All employees who work for employers with 50 or more employees within 75 miles of a given workplace. An employee must have worked at least 12 months for the employer and 1,250 hours in the past year to be eligible.

The following questions and answers apply to both the federal and Maryland laws:

Q. May an employer limit disability benefits for pregnancy to married employees only?

A. No.

Q. If an employer has an all female workforce, must benefits be provided for pregnancy-related conditions?

A. Yes. If benefits are provided for other conditions, they must also be provided for pregnancy-related conditions.

Q. If, for pregnancy-related reasons, an employee is unable to do her job, does the employer have to provide her a different job?

A. Maybe. An employer must treat an employee temporarily unable to perform her job because of a pregnancy-related condition as it treats other temporarily disabled employees. The employer may provide easier tasks, different assignments, disability leave, leaves without pay, etc., if other temporarily disabled employees receive these as well. For example, suppose a woman's primary job function is to operate a machine, and she has to carry materials to and from the machine. If other employees who are temporarily unable to lift materials are relieved of this function, the employer must also relieve the pregnant employee of this job duty.

Q. Must an employer hire a woman who, because of a pregnancy-related condition, is unable to perform the essential functions of the job?

A. An employer cannot refuse to hire a woman because of her pregnancy-related condition so long as she is able to perform the essential functions of the job for which she is applying. Nor can an employer refuse to hire her because of its bias against pregnant workers or the preferences and bias of co-workers, clients, or customers.

Rights of the Pregnant Worker In Maryland

If you are a pregnant worker in Maryland, your rights are protected by

- The Pregnancy Discrimination Act (Federal Law),
- The Family and Medical Leave Act (Federal Law)
and
- Maryland Human Relations Law Article 49B.

Pregnancy-Related Leave

Q. Can an employer require a pregnant employee to take a leave of absence even though she is able to work? Can an employer deny leave to a pregnant employee who is unable to work because of her pregnancy-related condition?

A. No. An employer may not single out pregnancy-

related conditions for special procedures for determining an employee's ability to work. For example, if an employer requires its employees to submit a doctor's statement concerning their inability to work before granting leave or paying sick benefits, the employer may require employees affected by pregnancy-related conditions to submit such statements. If an employer allows its employees to obtain doctor's statements from their personal physicians for absences or return dates for other disabilities, it must accept doctor's statements from personal physicians for pregnancy-related conditions.

Q. Can an employer have a rule prohibiting an employee from returning to work for a certain length of time after childbirth?

A. No.

Q. If an employee has been absent from work as a result of a pregnancy-related condition and recovers, can her employer require her to remain on leave until after baby is born?

A. No. An employee must be permitted to work at all times during pregnancy when she is able to perform her job.

Q. Must an employer hold open the job of an employee who is absent on leave because she is temporarily disabled by pregnancy-related conditions?

A. Maybe. If an employer is covered by the Family and Medical Leave Act of 1993, eligible employees who take leave under this law must be able to return to the same job or a job with equivalent status and pay. For all other cases, the employer must use the same policies for all employees who use sick or disability leave. Unless the employee on leave has informed her employer that she does not intend to return to work, her job must be held open for her return to the same extent that the employer holds jobs open for all other employees.

Q. Must the employer's policy regarding the crediting of seniority during absences for medical conditions be the same for pregnancy-related conditions?

A. Yes, it must be the same.

Q. When determining matters such as vacations and pay increases, may an employer credit time spent on leave for pregnancy-related reasons differently than time spent on leave for other reasons?

A. No. An employer's policy regarding crediting time cannot treat employees on leave for pregnancy-related reasons less favorably than employees on leave for other reasons. For example, if employees on leave for medical reasons get credit for time spent on leave when determining vacation time or pay raises, an employee on leave for pregnancy-related disability qualifies for the same kind of credit.

Q. Can an employee who is absent due to a pregnancy-related disability be required to use up vacation benefits before receiving sick leave pay or disability benefits?

A. Maybe. The employer must treat all employees using medical leave the same. If employees, who are absent because of other disabling causes, receive sick leave pay or disability benefits without any requirements that they first use up vacation benefits, the employer cannot force this requirement on an employee absent for a pregnancy-related cause.

However, if an employee is taking leave under the Family and Medical Leave Act the employer can require the employee to use up all paid vacation, personal or sick leave before using unpaid leave.

Leave For Childcare

Q. Must an employer grant leave to a female employee for childcare purposes after she is medically able to return to work following leave because of pregnancy, childbirth, or related medical conditions?

A. The Family and Medical Leave Act of 1993 does provide eligible employees unpaid leave under those circumstances. While leave for childcare purposes is not covered by the Pregnancy Discrimination Act, Title VII and the Maryland law would require that leave for childcare purposes be granted on the same basis as leave which is granted to employees for other non-medical reasons. For example, if an employer allows its

employees to take leave without pay or accrued annual leave for travel or education which is not job related, the same type of leave must be granted to those who wish to remain on leave for infant care, even though they are medically able to return to work.

Provisions of Benefits

Q. How long must an employer who provides income maintenance benefits for temporary disabilities provide such benefits for pregnancy-related disabilities?

A. Benefits should be provided for as long as the employee is unable to work for medical reasons. If some other limitation is set for all other temporary disabilities then pregnancy-related disabilities should be treated the same as other temporary disabilities.

Q. Must an employer who provides benefits for long-term or permanent disabilities provide such benefits for pregnancy-related conditions?

A. Yes, benefits must be provided to the same extent.

Q. If an employer provides benefits, such as insurance or pension benefits to employees on leave, must the same benefits be provided for those on leave for pregnancy-related conditions?

A. Yes.

Health Insurance Available In Connection With Employment

Q. Where an employer provides its employees a choice among several health insurance plans, must coverage for pregnancy-related conditions be offered in all of the plans?

A. Yes.

Q. On what basis should an employee be paid for medical expenses arising from pregnancy, childbirth, or related conditions?

A. Pregnancy-related expenses should be paid in the same manner as are expenses for other medical conditions. If medical costs for pregnancy-related conditions increase, reconsideration of the

payment level should be conducted in the same manner as for other medical conditions.

Coverage provided by a health insurance program for other conditions must include pregnancy-related conditions. For example, if a plan provides major medical coverage, pregnancy-related conditions must also be covered. If a plan covers the cost of a private room for other conditions, the plan must cover the cost of a private room for pregnancy-related conditions. Where a health insurance plan covers office visits to physicians, both pre-natal and post natal office visits must be covered as well.

Q. May an employer limit payment of costs for pregnancy-related medical conditions to a certain dollar amount set forth in an insurance policy, or other statement of benefits to which an employee is entitled?

A. The amounts payable for the costs incurred for pregnancy-related conditions can be limited only to the same extent as are costs for other conditions.

Q. May an employer impose a different deductible for payment of costs for pregnancy-related medical conditions than for costs of other medical conditions?

A. No. Neither an additional deductible, nor a larger deductible can be imposed for coverage for pregnancy-related medical costs.

Q. Suppose a health insurance plan excludes coverage for pre-existing conditions. Can coverage be denied for a pregnancy existing at the time the insurance plan became effective?

A. Yes.

Health Insurance Coverage of Spouses and Dependents of Employees

Q. Must an employer provide health insurance coverage to the spouses of male employees for the medical expenses of pregnancy-related conditions?

A. If an employer's insurance program covers the medical expenses of spouses of employees, then the coverage must include medical expenses arising from pregnancy-related conditions. The insurance does not have to cover the pregnancy-related conditions of non-spouse dependents as long as it excludes the pregnancy-

related conditions of the dependents of all employees equally.

Q. Must an employer provide the same level of health insurance coverage for the pregnancy-related medical conditions of the spouses of male employees as it provides for its female employees?

A. No. The level of coverage for pregnancy-related conditions can be different for employees than for spouses of employees. But, the level of coverage for pregnancy-related conditions for spouses of employees must be the same as the level of coverage for all other medical conditions for spouses of all employees.

Abortion

Q. Can an employer discharge, refuse to hire or otherwise discriminate against a woman because she has had or is contemplating having an abortion?

A. No.

Q. Must an employer provide health insurance coverage for abortions?

A. No, except if the life of the mother is endangered by the pregnancy.

Q. Must an employer provide other benefits for abortions?

A. Yes. All fringe benefits (other than health insurance), such as sick leave, which are provided for other medical conditions must be provided for abortions.

Q. If complications arise during the course of an abortion, (such as excessive hemorrhaging), must an employer's health insurance plan cover the additional cost?

A. Yes. The plan is required to pay those additional costs attributable to the complications of the abortion. However, the employer is not required to pay for the abortion itself, except where the life of the mother would be endangered.

Q. May an employer elect to provide insurance coverage for abortions?

A. Yes. The Act specifically provides that an employer is allowed to provide benefits for abortions whether directly or through a collective bargaining agreement. If an employer decides to

cover the costs of abortions, the employer must do so in the same manner and to the same degree as it covers other medical conditions.

For Assistance

If you believe that you may have experienced discriminatory employment practices with regard to your rights as a pregnant worker, contact:

The Maryland Commission on Human Relations

20 East Franklin Street
Baltimore, Md. 21202
(410) 333-1700; TTY (410) 333-1737

The Montgomery County Human Relations Commission

164 Rollins Avenue
Rockville, Md. 20852
(301) 468-4260

The Maryland Commission for Women

Saratoga State Center
311 West Saratoga Street, Room 239
Baltimore, Md. 21201
(410) 767-7137 TTY (410) 767-7025

The Montgomery County Commission for Women

255 N. Washington St., 4th fl
Rockville, Md. 20850
(301) 279-8301

The Equal Opportunity Commission

10 S. Howard Street, 3rd fl
Baltimore, Md. 21202
(410) 962-3932

***Union Shop Steward**

***Company Equal Opportunity Official**

***Women's Bureau - Work and Family Clearinghouse**

U.S. Department of Labor
Washington, D.C. 20210
(202) 219-4486

**Please Consult your telephone directory for numbers and locations not listed above.*

It may be advisable to have a trusted friend or family member who speaks English help you contact these agencies.

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