



the work and family legal center

Headquarters
40 Worth Street, 10th Floor
New York, NY 10013
t: 212.430.5982

info@abetterbalance.org
abetterbalance.org

Southern Office
301 21st Ave. South, Suite 355
Nashville, TN 37212
t: 615.915.2417

FACT SHEET:

MISCARRIAGE AND WORKPLACE RIGHTS

Various federal, state, and local laws give certain workers who experience or are at risk of miscarriage the right to time off, to receive reasonable accommodations following a miscarriage, and to be free from discrimination by their employers because they have miscarried. This fact sheet will help you navigate your workplace rights if you have had or are at risk of having a miscarriage.

- **What is a miscarriage?**
 - A miscarriage is the natural loss of a fetus before 20 weeks' gestation. Miscarriages are very common, occurring in about 25 percent of pregnancies. The symptoms of a miscarriage may include severe back pain, painful contractions, and bleeding. After a miscarriage, one can often require medical treatment to remove the tissue from the body. This treatment can be by medication or by surgery; both options may require at least a few days of recovery time.¹
 - The loss of a fetus after 20 weeks' gestation is medically considered a stillbirth and is much more rare.² Those who lose a fetus at any stage of pregnancy are entitled to the legal protections outlined here.

- **Do I have the right to take leave while experiencing or recovering from a miscarriage?**
 - The **Family and Medical Leave Act** ("FMLA") gives eligible workers the right to take unpaid leave to care for their own serious health conditions, among other purposes. Miscarriage is considered a "serious health condition" under the FMLA.³
 - *Am I covered?* You are covered if you work for an employer with 50 or more employees within a 75-mile radius of one another, you have worked for your employer for at least one year, and you have worked at least 1,250 hours in the 12 months preceding your miscarriage.
 - *How much unpaid leave can I take?* You can take up to 12 weeks total of FMLA leave per year.

¹*Health Matters Fact Sheet—Miscarriage*, Association of Reproductive Health Professionals (February 2009), <http://www.arhp.org/Publications-and-Resources/Patient-Resources/Fact-Sheets/Miscarriage>.

²*Facts About Stillbirth*, Centers for Disease Control and Prevention (October 2, 2017), <https://www.cdc.gov/ncbddd/stillbirth/facts.html>.

³ H. Rep. No. 103-8, at 40 (1991); S. Rep. No. 103-3, at 29 (1993).



Headquarters
40 Worth Street, 10th Floor
New York, NY 10013
t: 212.430.5982

info@abetterbalance.org
abetterbalance.org

Southern Office
301 21st Ave. South, Suite 355
Nashville, TN 37212
t: 615.915.2417

- **What additional rights to leave might I have under state and local laws?**
 - **Paid sick leave**: If your state or locality has a paid sick leave law, and you are eligible under that law, you are entitled to paid sick time while experiencing or recovering from a miscarriage. Learn more [here](#).
 - **Temporary disability insurance**: If your state or locality has a short-term disability law, you may be entitled to partial wage replacement if you miss work due to a miscarriage. Learn more [here](#).

- **Do I have the right to an accommodation at work following a miscarriage?**
 - Under the [Americans with Disabilities Act](#) (“ADA”), you may have the right to a reasonable accommodation at work following a miscarriage. However, in order for a miscarriage to be considered a disability under the ADA, it must “substantially limit a major life activity.” Many miscarriages may not meet this definition. However, if your miscarriage is particularly severe or has particularly long-lasting effects, it might meet the ADA definition, entitling you to a reasonable accommodation.
 - You may also have the right to a reasonable accommodation under the [Pregnancy Discrimination Act](#) (“PDA”), which says that your employer cannot treat you worse than other employees because you are pregnant or have a condition related to pregnancy. Miscarriage is a condition related to pregnancy under the PDA. Therefore, you may have the right to an accommodation following a miscarriage if your employer provides accommodations to other employees similar in their ability or inability to work. Start looking around at how your employer treats other non-pregnant employees who have needed an accommodation at work. For example, does your employer have a policy of giving light duty only to those with on-the-job injuries? Or did they have no problem helping out folks with non-pregnancy-related disabilities, but sent all the pregnant women out onto unpaid leave? If so, this could be evidence of pregnancy discrimination.
 - *Am I covered?* You are covered under both the ADA and the PDA if you work for an employer with 15 or more employees.
 - *What kinds of accommodations might I be entitled to?* You may be entitled to an accommodation such as light duty or help with lifting, occasional breaks to rest, or unpaid time off to recover.

- **What additional rights to accommodations might I have under state and local laws?**
 - If your state or locality has passed a **pregnant workers’ fairness law** giving workers an affirmative right to accommodations for pregnancy, childbirth, and related medical conditions, you likely have the right to a reasonable accommodation at work after experiencing a miscarriage, even if your miscarriage was not severe enough to be considered a disability under the ADA and your employer does not provide accommodations to non-pregnant employees. Learn more [here](#).



Headquarters
40 Worth Street, 10th Floor
New York, NY 10013
t: 212.430.5982

info@abetterbalance.org
abetterbalance.org

Southern Office
301 21st Ave. South, Suite 355
Nashville, TN 37212
t: 615.915.2417

- **Do I have the right to not be discriminated against by my employer because I have had a miscarriage?**
 - Under the [Pregnancy Discrimination Act](#), employers cannot treat employees affected by pregnancy or related conditions differently from other employees similar in their ability or inability to work. Miscarriage is a related medical condition of pregnancy under the PDA. If an employer treats a worker differently because she has miscarried, for example, by refusing to accommodate her despite making accommodations for other workers, this violates the PDA. Your employer also cannot fire you, demote you, cut your hours, or penalize you in any way for having a miscarriage.
 - *Am I covered?* You are covered if you work for an employer with 15 or more employees.
 - **What additional rights do I have to be free from discrimination because I have had a miscarriage under state and local laws?**
 - If your state or locality has a pregnant workers' fairness law that includes conditions related to pregnancy, you may have additional protection against being discriminated against on the basis of miscarriage, even if you work for an employer with fewer than 15 employees. Learn more [here](#).
 - Many states and localities also have general antidiscrimination laws that include discrimination on the basis of pregnancy and related conditions under sex or family status discrimination. Miscarriage may also be considered a related condition of pregnancy under these laws.
- **What are my rights at work if I am at risk of miscarriage?**
 - **Leave:**
 - If you have a serious health condition that puts you at risk of miscarriage, and you are covered under the [FMLA](#), you have the right to take 12 weeks of unpaid, job-protected leave to care for your health. You only get 12 weeks total per year, so if you take time off during your pregnancy, you will have less time to use for bonding once your baby is born. You may have additional rights to paid leave while you are at risk of miscarriage if your state or locality has a paid sick leave or temporary disability insurance law.
 - **Accommodations:**
 - If you have a pregnancy-related condition putting you at risk of miscarriage that substantially limits a major life activity, and you are covered under the [ADA](#), you have the right to a reasonable accommodation at work. Some pregnancy-related conditions that are considered disabilities under the ADA include preeclampsia and gestational diabetes.



Headquarters
40 Worth Street, 10th Floor
New York, NY 10013
t: 212.430.5982

info@abetterbalance.org
abetterbalance.org

Southern Office
301 21st Ave. South, Suite 355
Nashville, TN 37212
t: 615.915.2417

- You may also have the right to a reasonable accommodation under the **PDA** if your employer provides accommodations to non-pregnant workers with medical conditions. Examples of reasonable accommodations include light duty or help with lifting, extra breaks to eat, extra bathroom breaks, or a stool to sit on during your shift. You may have additional rights to reasonable accommodations if your state or locality has a pregnant workers' fairness law. Learn more [here](#).
- **Discrimination:**
 - If you are at risk of miscarriage, and you are covered under the **PDA**, you have the right to be treated in the same manner as other workers similar in their ability to work. You cannot be fired, demoted, have your hours cut, or be otherwise penalized because you have a medical condition related to pregnancy. Additionally, your employer must accommodate you at work to the extent that they also accommodate non-pregnant workers with medical conditions. You may have additional rights to be free from discrimination if your state or locality has a pregnant workers' fairness law or general anti-discrimination law that includes discrimination on the basis of pregnancy or related conditions.

The information provided in this fact sheet does not constitute legal advice. It is always advisable to consult with an attorney about your individual circumstances if you have questions or think your rights as a worker have been violated. Call A Better Balance's free, confidential legal hotline at 1-833-NEED-ABB (1-833-6333-222) if you have questions.