



the work and family legal center

Know Your Rights:
Pregnancy and COVID-19
Workplace Rights

Wednesday, April 22
12 PM ET

Welcome

Today's presenters:

Dina Bakst — Co-Founder and Co-President

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Office



the work and family legal center

About A Better Balance

WHO WE ARE National legal advocacy organization with offices in New York City, Nashville, Washington D.C., and Denver

MISSION Leverage the power of the law to ensure workers can care for themselves and their loved ones, without risking their economic security. When women, caregivers, and families have a fair shot in the workplace, our families, our communities, and our nation are healthier and stronger. Key ABB priorities:

- Pregnancy discrimination & accommodations
- Lactation discrimination & accommodations
- Caregiver discrimination
- Defending local democracy
- Paid family and medical leave
- Paid sick time
- LGBTQ Rights & Family Recognition
- Predictable & flexible scheduling

Pregnancy + COVID 19: The Healthcare Landscape

CDC Guidance for Pregnant People: “We do not currently know if pregnant people have a greater chance of getting sick from COVID-19 than the general public nor whether they are more likely to have serious illness as a result. Based on available information, pregnant people seem to have the same risk as adults who are not pregnant.”

American College of Obstetricians & Gynecologists (ACOG): “Pregnant women are known to be at greater risk of severe morbidity and mortality from other respiratory infections such as influenza and SARS-CoV. As such, pregnant women should be considered an at-risk population for COVID-19.”

Medical research and guidance is constantly changing and more medical research on the effects of COVID-19 on maternal and infant health is needed. Doctors & healthcare providers may also have individual recommendations based on each pregnant person’s specific health needs and medical history.

CDC: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/pregnancy-breastfeeding.html> (last updated April 15, 2020)

ACOG: <https://www.acog.org/clinical/clinical-guidance/practice-advisory/articles/2020/03/novel-coronavirus-2019> (last updated April 21, 2020)

Pregnancy + COVID 19: The Healthcare Landscape

Women, disproportionately women of color, are on the front lines of this crisis. According to the Center for Economic and Policy Research, nearly $\frac{2}{3}$ of frontline workers are women, and people of color are overrepresented in these industries. A snapshot:

Industry	Female (%)	People of Color (%)
Building cleaning: housekeeping	90.7	69.8
Childcare workers	95.0	44.8
Home health care services	87.5	53.0
Nursing care facilities	84.2	44.6
Cashiers	71.8	44.6

SOURCE:
<https://cepr.net/a-basic-demographic-profile-of-workers-in-frontline-industries>

Pregnancy + COVID 19: The Healthcare Landscape

With this backdrop in mind, the purpose of today's webinar is to highlight the workplace laws that do exist that can help pregnant workers assert their rights amidst this crisis and beyond.

Knowledge is power.

What We'll Cover Today

YOUR RIGHTS IF:

- ❖ You need **workplace accommodations** related to your pregnancy & COVID-19.
- ❖ You're experiencing **pregnancy discrimination.**
- ❖ You need **paid or unpaid time off** if you're unable to work due to your pregnancy and COVID-19 related issues but want to return to your position.
- ❖ You need **lactation accommodations** if you are working and breastfeeding.
- ❖ You need **unemployment assistance** if you are no longer working due to COVID-19.

Key Laws We'll Discuss

PERMANENT LAWS

Pregnancy Discrimination Act (federal)

Americans with Disabilities Act (federal)

Family and Medical Leave Act (federal)

Occupational Safety and Health Act (federal)

State Temporary Disability Insurance Laws & Paid Medical Leave Laws

State/Local Pregnant Workers Fairness Act Laws

State/Local Paid Sick Time Laws

EMERGENCY LAWS THAT EXPIRE AT VARIOUS POINTS IN 2020 AND/OR ARE COVID-19 SPECIFIC

Families First Coronavirus Response Act (federal)

CARES Act (federal)

State/local emergency paid sick leave laws

Workplace Accommodations

I'm pregnant and work at a grocery store. I have gestational diabetes and am nervous about my health during this crisis and staying safe at work.

I also have a friend working at another store who is pregnant and has severe respiratory issues and shares similar concerns.

Are there any changes she and I can ask for in the workplace to ensure we stay safe and healthy while working?

Workplace Accommodations

Americans with Disabilities Act

If you work for an employer with **15 or more** employees and have a “**pregnancy-related impairment**” that limits a “**major life activity**” (including major bodily functions) you may have the right to receive reasonable accommodations so long as the accommodation does not impose an “undue hardship,” i.e. is not very difficult or very expensive for the employer to provide. Many states also have similar laws that may have lower thresholds, providing coverage to more workers.

What is a pregnancy-related impairment? Examples can include, but aren't limited to, gestational diabetes, preeclampsia, abnormal heart rhythms that may require treatment. **Note:** Pregnancy itself is not a disability.

Workplace Accommodations

What are examples of reasonable accommodations?

- Making changes to your workplace to reduce contact with others
- Temporarily changing some of your job duties
- Modifying your work schedule (e.g. staggering commuting times)
- Temporarily transferring positions
- Requesting to telework

These are all examples of accommodations cited in the EEOC's pandemic-specific guidance and FAQs for workers with disabilities.

Workplace Accommodations

Americans with Disabilities Act

The Equal Employment Opportunity Commission, the agency that enforces the ADA, recently said that so long as it does not impose an undue hardship on an employer, *if an employee has an underlying disability that puts them at higher risk of severe illness if they contract COVID-19*, there are reasonable workplace accommodations that can be provided to prevent exposure.

Workplace Accommodations

Americans with Disabilities Act

How do you ask for an accommodation?

The first step in the **“interactive process”** is to let your employer that you have a need for an accommodation. You must inform your employer that you’re requesting an adjustment or change at work for a reason related to a medical condition.

You don’t need to use the exact phrase “reasonable accommodation” or “ADA” — you can use plain English.

Workplace Accommodations

Americans with Disabilities Act

After you've asked for the accommodation, your employer can ask you to provide a note from a health care provider to confirm you have a disability. If your boss does request a note, make sure it is as specific as possible and outlines exactly what you can and cannot do at work.

Make sure your health care provider avoids using vague terms about your condition or vague language about the type of accommodation you need. Your employer need not provide the exact accommodation you ask for and may not have to provide accommodation at all if it imposes an "undue hardship."

For more guidance visit babygate.abetterbalance.org.

Workplace Accommodations

I'm a food service worker, pregnant, and worried about my health and safety at work but it is not clear that I have a pregnancy-related disability.

What rights might I have to accommodations?

Workplace Accommodations

Pregnancy Discrimination Act

If you work for an employer with 15 or more employees, you may have the right to a reasonable accommodation under the Pregnancy Discrimination Act **even if you don't have a disability associated with your pregnancy.**

Under this law, if your employer is providing accommodations to other employees similar to you but refusing to provide you with an accommodation, that could be a violation of the law and they would need to provide you with the accommodation.

Workplace Accommodations

STATE PREGNANT WORKERS FAIRNESS LAWS

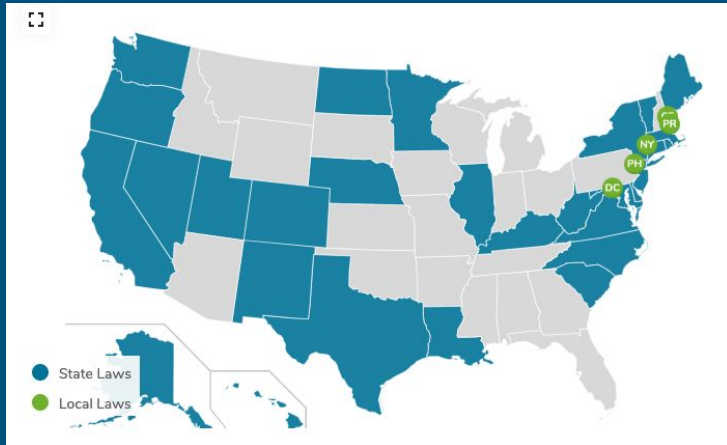
29 states & 5 cities have adopted **pregnant workers fairness laws**.

Generally, these laws require employers to provide reasonable accommodations for limitations related to pregnancy, childbirth, or related medical conditions unless it would cause an undue hardship on the employer.

This means that unlike federal law, you do not need to have a disability OR compare yourself to someone else to receive an accommodation.

Workplace Accommodations

STATE PREGNANT WORKERS FAIRNESS LAWS



- | | | | |
|-------------|---------------|----------------|------------------|
| Alaska | Louisiana | New York | Vermont |
| California | Maine | North Carolina | Virginia* |
| Colorado | Maryland | North Dakota | Washington |
| Connecticut | Massachusetts | Oregon | Washington, D.C. |
| Delaware | Minnesota | Rhode Island | West Virginia |
| Hawaii | Nebraska | South Carolina | |
| Illinois | New Jersey | Texas | |
| Kentucky | New Mexico* | Utah | |

* Law not yet in effect.

These laws help workers get the accommodations they need, quickly, and without conflict. We have seen this firsthand through the many workers we've assisted through our legal helpline.

Workplace Accommodations

STATE PREGNANT WORKERS FAIRNESS LAWS

The process for getting an accommodation under this type of law usually consists of:

Asking your employer for an accommodation based on a limitation, medical need, or condition you have related to your pregnancy (doesn't need to be a disability).

- Typical accommodations can include light duty, bathroom breaks, temporary transfer, the ability to carry a water bottle on the job.
- COVID-related accommodations may include those outlined in the ADA context - e.g social distancing, modified work schedule, teleworking, and personal protective equipment.

Your employer works with you on an individual basis to come up with an accommodation unless it cause an “undue hardship,” i.e. it is very difficult or expensive for them to provide.

Workplace Accommodations

OCCUPATIONAL SAFETY AND HEALTH ACT

Under the federal Occupational Safety and Health Act your employer is required to provide employees with a workplace that is “free from recognized hazards likely to cause death or serious physical harm.”

The Occupational Safety and Health Administration (OSHA) has released guidance that provides recommendations on how workplaces can best prepare and protect their workers from COVID-19. **Unfortunately, this guidance is not law and does not create any new obligations or requirements for employers and current enforcement of OSHA, generally, is limited.**

Pregnancy Discrimination

I'm pregnant and my boss just terminated me saying I won't work as hard as my colleagues because I'm pregnant and should be at home resting anyway.

Is this illegal?

Pregnancy Discrimination

This is likely illegal pregnancy discrimination under the **federal Pregnancy Discrimination Act** and/or **state civil rights laws**.

Under these laws, your employer cannot treat you differently from other employees based on your pregnancy so if they are taking action against you but not others because you're pregnant (i.e. firing you, cutting your hours, or forcing you out), that could be pregnancy discrimination.

How do I know if I'm covered under the Pregnancy Discrimination Act?

If you work for an employer with 15 or more employees, you're covered. State laws may have even lower thresholds, providing coverage if you work for a smaller employer.

Pregnancy/Race Discrimination

If you are a woman of color, and you think your boss is also treating you differently not just because you are pregnant but because you are a person of color, e.g. he is providing accommodations to white employees who are pregnant but not Black employees who are pregnant, this could be evidence of race discrimination.

The same federal law that protects you from pregnancy discrimination also protects you from discrimination based on race.

Unpaid/Paid Time Off

I'm pregnant and work for a small restaurant chain coordinating take out but my health care provider advised me to self-quarantine because they fear I may have been exposed to someone with COVID-19 and I'm exhibiting symptoms. I now need to take leave but I want to return to my job. What can I do to receive income while I'm not working?

Paid Time Off

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

First time in history the U.S. has passed any sort of national paid leave and paid sick time law.

- Only applies to COVID-19 related needs
- Sunsets on December 31, 2020

Paid Time Off

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

Who does the law cover?

You can probably take paid leave if:

- You work as an employee in any public agency regardless of size (with some limits for federal employees)
- You work as an employee for a private entity with fewer than 500 employees total

Other coverage exclusions:

- You are a health care provider or emergency responder
- You may be excluded if you work for a business with fewer than 50 employees

Paid Time Off

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

If covered, you can take up to **80 hours** of emergency paid sick leave if you:

1. Have been advised by a health care provider to self-quarantine due to COVID-19 related concerns
2. Have COVID-19 symptoms and are seeking a medical diagnosis
3. Are subject to a quarantine or isolation order.
 - a. This includes if you are subject to a stay-at-home or shelter-in-place order
4. Need to care for someone who is subject to a quarantine or isolation order or who has been advised to self-quarantine due to COVID-19
5. Child's school or daycare is closed due to COVID-19

Paid Time Off

FAMILIES FIRST CORONAVIRUS RESPONSE ACT

If you are taking emergency sick leave for your own health needs, you must be paid 100% of your pay.

However, your employer is not required to pay you more than \$511 per day for personal care, meaning caring for yourself not others, under emergency sick leave or more than \$5,110 total.

Paid Time Off

State/Local Paid Sick Time Laws

Laws in your state, county, or city may also help. Twelve states, Washington D.C., and dozens of localities guarantee workers a permanent right to paid sick time.

Some laws have specific “closure provisions” that may also enable you to stay home to protect your health during times of public health emergencies. These laws can also be used if you need to attend prenatal appointments or have other pregnancy-related medical needs.

If you qualify for emergency paid sick leave under the federal Families First Coronavirus Response Act, you may still, in addition, take paid sick leave to which you are entitled.

Paid Time Off

Temporary Disability Insurance or Paid Medical Leave

If your state or locality has a short-term disability law (NY, NJ, RI, HI, or CA) or paid medical leave law (WA), you may be entitled to partial wage replacement if you are unable to work due to a serious health need, which could include COVID-19 or symptoms of COVID-19.

Unpaid Time Off

Family and Medical Leave Act

If you need time to attend prenatal appointments or have an incapacity related to pregnancy, then you may be able to take up to 12 weeks of job-protected unpaid time off, either all at once or on an intermittent basis. Note: if you're taking paid leave under Families First for school closure, that time will count against your 12 weeks, though your employer can always be more generous.

To be eligible for the FMLA you need to have:

- Worked 1,250 hours in the year prior to needing leave
- Worked at the employer at least a year
- Work for an employer with 50+ employees within a 75-mile radius

Unpaid Paid Time Off

I'm pregnant and work at a child care facility that is still open during COVID-19. My health care provider and I think I should take leave to avoid risk of exposure. What are my rights to leave in this circumstance?

Unpaid Time Off

LEAVE AS AN ACCOMMODATION REQUEST

If you do not yet have COVID-19, but are worried about contracting the virus, you may be able to ask for leave as a reasonable accommodation under the Americans with Disabilities Act, Pregnancy Discrimination Act, or a state pregnant workers fairness law.

Leave as accommodation does not necessarily have to be paid but does mean your job will be protected.

Paid Time Off

TEMPORARY DISABILITY INSURANCE OR PAID MEDICAL LEAVE

If your state or locality has a short-term disability law (NY, NJ, RI, HI, or CA) or paid medical leave law (WA), depending on your state's law, if you have been advised to reduce exposure to COVID-19, you may be eligible for disability benefits, but it may vary by state.

In New York, for example, you would likely be eligible for disability benefits in these scenarios.

Unpaid/Paid Time Off

**I'm worried that if I take leave under the Families First
Coronavirus Response Act I won't have time left to take leave
once I give birth. What are my rights in this situation?**

Unpaid/Paid Time Off

If you are eligible for the federal **Family and Medical Leave Act (FMLA)** but you use up your full 12 weeks before you give birth, you may not have the right to take take off as much time as you'd originally anticipated once you give birth. However, if you have not used the full 12 weeks, you may still have time available.

To be eligible for the FMLA you need to have:

- Worked 1,250 hours in the year prior to needing leave
- Worked at the employer at least a year
- Work for an employer with 50+ employees within a 75-mile radius

Unpaid/Paid Time Off

Family and Medical Leave Act & State Paid Family Leave Laws

If you live in a state with a paid family and medical leave law that is already in effect and are eligible to receive benefits, you may still have time available to take maternity leave to bond with your new child under the state law even if you took FMLA leave to care for yourself, a loved one, or for school closure-related reasons.

Lactation Accommodations

I work at a fulfillment center and just gave birth. I'm breastfeeding and want to keep pumping but my employer is giving me a hard time about my taking break time to pump because we are so overwhelmed with orders. What are my rights?

Lactation Accommodations

Federal Break Time For Nursing Mothers Law

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. Breaks do not need to be paid unless they are concurrent with paid breaks.

WHERE: An employer must provide a clean, private space, other than a bathroom, where workers can pump milk without interruption.

Lactation Accommodations

State Pregnant Workers Fairness Laws & State Break Time/Space Laws

If you are not covered under federal law, many states have their own break time and space laws that may provide additional protections.

Additionally, many states with pregnant workers fairness laws also specify that employers must provide reasonable accommodations for lactation-related needs.

Unemployment Assistance

I'm pregnant and was let go from my job along with my co-workers. What rights do I have to unemployment insurance?

Unemployment Assistance

Depending on the circumstances, you may be entitled to regular unemployment compensation (with some boosts based on a new federal law) or pandemic unemployment assistance.

The **CARES Act** created three new temporary programs to supplement current unemployment compensation laws by providing additional time and funding for beneficiaries of regular UI and creating a pandemic unemployment assistance program for workers not eligible for regular UI.

For more information visit: <https://www.abetterbalance.org/covid19/>

More Progress is Needed to Support Pregnant Workers.

29

STATES that have stronger protections for pregnant workers who need workplace accommodations regardless of whether or not they have a disability. Virginia's passed as recently as April 11, 2020.

**BUT WE STILL NEED A FEDERAL LAW. WE NEED THE
PREGNANT WORKERS FAIRNESS ACT.**

GET HELP

VISIT our Pregnancy + COVID-19 FAQs:
www.abetterbalance.org/covid19/

CALL our free, confidential legal helpline:
1-833-NEED-ABB

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QUESTIONS?

