

Pregnancy Discrimination

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The Pregnancy Discrimination Act (PDA) is a federal law that prohibits discrimination against pregnant women in the workplace; it amends title VII of the Civil Rights Act of 1964, making it illegal to discriminate based on sex. The PDA prohibits discrimination, requires reasonable accommodation, protects health insurance coverage, and applies to all employers.

The Pregnancy Discrimination Act prohibits employers from discriminating against pregnant women in any aspect of employment to include hiring, firing, pay, job assignments, promotions, and training. The PDA requires employers to provide reasonable accommodations to pregnant employees who have limitations related to pregnancy, childbirth, or any medical related condition; for example, modified work schedules, additional breaks during working hours, and access to health insurance. The PDA ensures that pregnant women have access to health insurance coverage for pregnancy-related conditions just as they do for other medical conditions. The act applies to all employers with 15 or more employees.

In order for a plaintiff to prove they are a protected member of the Pregnancy Discrimination Act, they must be pregnant, have a past pregnancy, or a potential or intended pregnancy or related medical condition; they must show they were or are qualified for the job and job duties performing satisfactorily; they experienced a contrary action such as termination, demotion, or not hired because of their condition, meaning a non-pregnant person was hired or the contrary circumstance occurred giving rise to an implication of discrimination. The “PDA covers all aspects of pregnancy and all aspects of employment, including hiring, firing, promotion, health insurance benefits, and treatment in comparison with non-pregnant persons similar in their ability or inability to work (Yang, J.)”. On the counteraction for the employer, the employer may defend there was a legitimate, non-discriminatory reason such as poor performance, attendance issues, downsizing or violation of company policy and “demonstrating that this reason is genuine and not a pretext of discrimination (Barrett & Farahany)”.

If a claim needs to be filed, a plaintiff must first document the discrimination, report to their employer, and file a formal complaint with the Equal Employment Opportunity Commission (EEOC) or state agency. An employee must record the facts by writing down what happened to include dates, times, locations, and who was involved; gather evidence by collecting texts, emails, or documents that support their claim; and identify witnesses by making a list of anyone who witnessed the discriminatory actions and can provide a statement in their favor. An employee must then report to their employer and review the company policy on how to file a complaint; contact their human resources department or supervisor if they feel safe in doing so, to discuss the incident and the procedure to file a formal complaint; and use their employer's procedures to file an internal complaint. However, in the case that the employee's internal formal complaint with the employer doesn't resolve the issue, the employee may file a formal complaint with the EEOC or state agency by contacting them through phone, email, letter or online to discuss the probable complaint; a staff member of the EEOC or state agency can assist in completion of a formal charge, which then can be reviewed and signed by the employee. If the internal complaint escalates to a formal complaint with the EEOC or state agency, the employee must be aware of certain deadlines, such as 180 days within the discriminatory act, and 300 days if the state or local agency handles the claim. Lastly, the EEOC will investigate the charge and may try to negotiate a resolution, the EEOC will send a letter to the employee of the "Right to Sue (Filing a lawsuit)" which is permission to file a lawsuit, and the employee will then have the right to file a lawsuit in federal or state court within 90 days of receiving the letter.

Some remedies available to plaintiffs involving the Pregnancy Discrimination Act include monetary compensation and equitable relief. For example, back pay for any lost wages and benefits from the time of the discriminatory action to the date of verdict; front pay which is "an equitable remedy, an element of the "make whole" relief available to victims of employment discrimination (Front pay)", can be awarded for lost future earnings while the plaintiff finds a comparable job, compensatory

damages such as out of pocket expenses during job searches, medical expenses, and mental stress; and legal costs if the plaintiff is successful in court, to include attorneys' fees, witness fees, and court costs. Equitable relief includes court orders for specific actions, such as hiring of denied job or reinstatement to a previous position; promoting a plaintiff if discrimination prevented the promotion; reasonable accommodations for pregnancy-related conditions; and the plaintiff's seniority and benefits can be restored to what they would have been without the discriminatory act.

Pregnancy discrimination is more common and relevant than most realize. For example, a general harassment case, while not a specific case with a public outcome, but involving offensive comments, inappropriate questions, or jokes about a pregnant employee's medical information could result in violating federal law, which can lead to legal actions and potential settlements; this reinforces that discrimination includes creating a hostile work environment, not just contrary employment actions like demoting or firing an employee. Other cases of pregnancy discrimination include Walmart, Walgreens, Smiley Dental and recent legal challenges to the Pregnant Workers Fairness Act (PWFA), all of which have been recent and relevant cases within the last six years. Walmart faced an employment discrimination charge on "behalf of Corrisa Hernandez, a former cashier, and all pregnant and disabled Walmart employees (Former cashier files legal charge)". Walmart's unlawful actions resulted in a \$14 million dollar settlement because pregnancy was specifically excluded from their policy as a medical condition. Another incident involved Walgreens in 2024. The EEOC sued Walgreens after a pregnant employee was denied "emergency medical leave, forcing her to quit (Walgreens)". Although the manager could have covered the employee's shift, the manager told her she "could not leave until they found a replacement for her (Walgreens), and that "she had already asked for too many accommodations (Walgreens). The lawsuit resulted in a settlement that Walgreens had to "pay \$205,000.00 and provide other relief to settle a pregnancy discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (Walgreens)". In 2019, Smiley Dental had a lawsuit against them

from the EEOC on behalf of an employee who was fired because of her pregnancy. The EEOC entered a Consent Decree after “settling the lawsuit, which was signed by U.S. District Court Judge Karen Gren Scholer on October 16, 2019 (Tarquin, J. P.)” that in agreement, Smiley Dental would pay the employee “\$20,000 to resolve the pregnancy discrimination lawsuit (Tarquin, J. P.)” and “provide training to all employees on the federal anti-discrimination laws (Tarquin, J. P.)”. Lastly, there have been recent legal challenges to the Pregnant Workers Fairness Act in which several states have grouped together and sued the federal government, challenging the inclusion of abortion as a medical related condition under the PWFA; this is ongoing and has had several appeals, ultimately, leaving the outcome in the states’ hands to challenge certain parts of the law. The EEOC noted that the “PWFA is a “workplace anti-discrimination law” that neither requires any employer or taxpayer to support abortion nor compels any health care provider to perform one (Mishra, D.)”. The EEOC stated that instead, the most likely accommodation to be sought under the “PWFA regarding an abortion is time off to attend a medical appointment or for recovery (Mishra, D.)”.

Title VII and the Pregnancy Discrimination Act prohibits employers from discriminating against an individual because of pregnancy, childbirth, or related medical conditions. The liability of the employer proceeds that employers must treat pregnant employees the same as other employees, an employer is liable for failure to hire a pregnant worker because of the prejudices of co-workers, clients, or customers, and an employer must provide reasonable accommodations for qualified employees impacted by pregnancy, childbirth, or related medical conditions.

Pregnancy discrimination is a persistent issue that’s reoccurring of firing and denial of promotions. Pregnancy discrimination excessively affects women’s economic advancement, forcing them out of jobs, and eventually leads to the loss of income and benefits. The Pregnancy Discrimination Act is often interpreted very narrowly by courts and inconsistently enforced.

For businesses to protect themselves from violating the Pregnancy Discrimination Act, the focus should be shifted on creating a detailed policy that states a company's commitment to protecting employees from discrimination against pregnancy and childbirth, ensure unbiased hiring and promotion decisions, and grant simple accommodations automatically without an extensive process to do so.

In conclusion, the Pregnancy Discrimination Act prohibits unfavorable treatment by employers in any aspect of employment due to pregnancy, policies that limit or prevent women from performing jobs because they are pregnant, loss of benefits from previous years worked because of maternity leave, and retaliation against an employee for conflicting pregnancy discrimination. The PDA requires that pregnant employees be treated the same as other employees on a similar basis as other medical conditions, employer's health insurance plans must cover pregnancy related expenses on the same basis as other medical conditions, and protection against being fired or laid off due to pregnancy; the law applies to any employer with 15 or more employees. Pregnancy discrimination is against the law.

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