

CWEALF Publications

Family Medical Leave

The Law

Connecticut Anti-Discrimination Law

The Connecticut law on Human Rights and Opportunities (C.G.S. 46a-51, et seq.) is the state law that prohibits employment discrimination on the basis of sex, age, ancestry, color, learning disability, marital status, mental disorder, mental retardation, national origin, physical disability, race, religion, sexual orientation and criminal record (in employment licensing by the state). Pregnancy falls under the category of sex discrimination. The Connecticut law applies to all private and public employers, labor organizations, and employment agencies with 3 or more employees, members or clients. This law prohibits discrimination in hiring, as well as terms, conditions and privileges of employment on the basis of sex.

In addition, sections of the law are specifically addressed to pregnancy discrimination. Areas covered by these laws include: firing, pregnancy leave, benefits, job transfers, protection from employers' questions about pregnancy and reproduction, and protection from hazardous substances.

Federal Law

Title VII (42 U.S.C. 2000e) is the federal law that prohibits employment discrimination on the basis of sex, race, color, religion and national origin. It applies to employers with 15 or more employees, including all public schools, private businesses, government agencies, labor unions, apprenticeship and training programs, and employment agencies. It covers hiring, firing, compensation, training, promotion, fringe benefits, seniority and membership. In 1978, Congress passed the Pregnancy Discrimination Act [42 U.S.C. 2000e(k)], which amended Title VII to specifically include pregnancy and childbirth in the prohibition against sex discrimination.

Family and Medical Leave Laws

Both Connecticut and the federal government have enacted laws which provide for what is known as "family and medical leave." Although the two are similar in some respects, they differ in others. The following paragraphs will briefly outline the state and federal laws. Specific issues under these laws will be addressed in Frequently Asked Questions.

Connecticut Law

In addition to federal and state anti-discrimination laws, there are two state laws in Connecticut that address family and medical leave. Passed in 1989, the first of these laws (C.G.S. 5-248a, et seq.) provides both women and men employed by the state with unpaid "family leave" to care for a child upon the child's birth or adoption or to care for a seriously ill child, spouse, or parent. The law also provides unpaid "medical leave" for the serious illness of the employee. Subject to certain restrictions, a permanent state employee is entitled to a combined total of 24 weeks family and medical leave during a two-year period under the Connecticut state law.

The second of these laws (C.G. S. 31-51kk, et seq.), passed in 1989 and amended in 1996, requires that private employers with 75 or more employees within Connecticut provide up to 16 weeks of unpaid leave within any two-year period.

Neither law applies to employees of municipalities, local or regional boards of education, or private or parochial elementary or secondary schools. (They are covered by the federal law, discussed later.)

There are very important regulations issued by the State Department of Administrative Services (DAS) and the State Department of Labor (DOL) that also pertain to each of these laws.
Federal Law

In 1993, Congress passed the federal Family and Medical Leave Act (FMLA) (29 U.S.C. 2601 et seq.). The federal FMLA applies to all employers with 50 or more employees within a 75-mile radius. It also covers employees of the federal, state and local government and non-profit organizations. It provides eligible employees with up to 12 weeks of unpaid leave in any given 12-month period. Generally, the federal FMLA does apply to municipalities, local educational agencies and any private elementary or secondary school. There are also very extensive regulations issued by the Federal Department of Labor, which apply to this law.

Other Connecticut Laws

Three other laws in Connecticut provide protection to pregnant women and/or women of childbearing age. The first requires employers to inform employees about toxic substances that are used or produced in the workplace that might pose a reproductive hazard (C.G.S. 31-40g). The second is a law that permits employees, in certain circumstances, to refuse to expose themselves to hazardous conditions in the workplace and prohibits employers from retaliating against them (C.G.S. 31-40t). Complaints must be filed with the Department of Labor within 180 days of the violation. The third is a law that prohibits employers from requiring employees to be sterilized as a condition of employment (C.G.S. 31-40h). The law allows an employee to sue an employer in court for a violation of this prohibition.

Protections These Laws Provide

If you work for a private or public employer, labor organization or employment agency with 3 or more employees, members or clients you are protected as follows:

It is illegal for an employer to deny you a job because you are pregnant, if you are ready, willing and able to work.

It is illegal for an employer to demote you because you are pregnant.

It is illegal for an employer to fire you because you are pregnant.

It is illegal for an employer to deny you an unpaid leave of absence for a reasonable length of time for pregnancy-related disability.

It is illegal for an employer to force you to take a leave of absence because you are pregnant, if you are ready, willing and able to work.

It is illegal for an employer to refuse to give you back your job or an equivalent position, including accumulated seniority and benefits, when you return from a reasonable pregnancy leave except in the case of a private employer, when the employer's circumstances have changed so radically that to reinstate you would be impossible or unreasonable.

- It is illegal for an employer to apply its temporary disability plans and policies differently to you than to other employees because your disability is caused by pregnancy.
- It is illegal for an employer to provide health insurance coverage that treats pregnancy and childbirth less favorably than other medical conditions.
- It is illegal for an employer to deny you a transfer to another position, if one exists, if you are pregnant and you give written notice of your pregnancy, and you or your employer reasonably believe that to continue to work in your current position might cause injury to you or your fetus.

- It is illegal for an employer to fail to inform you about substances that it uses or produces that the employer should have reasonable cause to believe will cause birth defects or be a hazard to your reproductive system or, if you are pregnant, to your fetus.
- It is illegal for an employer to refuse to take reasonable measures, upon your request, to protect you from workplace exposure to substances which the employer has informed you may cause birth defects or be a hazard to your reproductive system, or if you are pregnant, to your fetus.
- It is illegal for an employer, or a potential employer, to ask you questions relating to having children, such as your child-bearing age or plans, your pregnancy, your reproductive health, your use of birth control or your family responsibilities, unless this information is directly related to a bona fide occupational qualification or need.

A bona fide occupational qualification (BFOQ) permits an employer to discriminate on the basis of sex, if the sex of the employee “actually interferes” with her or his “ability to perform the job,” and that job function relates to the central mission of the employer’s business. See *U.A.W. v. Johnson Controls, Inc.* 499 U.S. 187, 204 (1991). The classic example of a permissible BFOQ is the requirement that a woman be used to model dresses.

The only exception to the prohibition on asking questions concerning reproductive status is that an employer can request this information through a doctor, if the employer has informed you of possible exposures to hazardous substances which might harm your reproductive system or potential fetus, and if the requested information is directly related to this possible exposure.

- It is illegal for an employer to require you to be sterilized as a condition of employment.
- With certain restrictions, it is illegal for the government or large private employers to deny you “family leave,” that is, unpaid, job-protected leave for child-rearing , or “medical leave,” that is unpaid, job-protected leave to care for a seriously ill spouse, child, or parent or if you are seriously ill. Specific issues under the state and federal laws will be addressed in Frequently Asked Questions.

Limits of These Laws

Salary/Compensation

No law requires that employers offer disability benefits, health insurance, paid disability leave, or paid family leave to any employee. The laws against pregnancy discrimination only provide that if disability benefits, health benefits, or paid disability or family leaves are offered, they must cover pregnancy and childbirth in the same way they cover situations not related to pregnancy or childbirth.

Medical Insurance Benefits

Employers are not required to provide health insurance and other health related benefits. However, if the employer does provide such benefits, state and federal anti-discrimination laws require equal treatment with respect to pregnancy.

In addition, the federal FMLA, but not the state FMLA requires employers to continue health insurance during a family and medical leave.

If your insurance covers office visits, it must cover office visits for pregnancy. If it covers a certain percentage of hospital room costs, it must cover the same percentage for your room during childbirth. There can be no limits such as maximum amounts of payments unless these apply to other medical conditions as well. Similarly, if your health insurance plan excludes pre-existing conditions, then it can exclude a pregnancy that existed before you were hired. However, if your coverage does not exclude pre-existing conditions, then it cannot exclude a pre-existing pregnancy.

The only exception to equal coverage is that, under the federal anti-discrimination law, health insurance plans do not have to cover abortions unless the life to the mother would be endangered if the fetus were carried to term. If the abortion results in medical complications, these do not have to be covered. Of course, an employer can offer coverage for abortion if it chooses.

Frequently Asked Questions

Pregnancy Leave Under the State Anti-Discrimination Law (Sec. 46a-60)

What exactly is pregnancy leave?

Pregnancy leave is an unpaid leave of absence for a reasonable length of time resulting from pregnancy or childbirth. The assumption is that for a period of time immediately after you give birth, you may be temporarily disabled and the employer must give you time off to recover. "Reasonable" is often interpreted to mean 6-8 weeks, although it can be either longer or shorter depending upon your health and it can occur before childbirth if your doctor disables you because of your pregnancy. While we discuss pregnancy leave separately here, please remember that pregnancy leave, family leave, and medical leave are interrelated and can overlap. For example, you may wish to have your "pregnancy leave" treated as a medical leave under the FMLA. Pregnancy leave does not, however, include child-rearing or "maternity" leave to be home with your child once you are no longer disabled from the birth of your child. That is considered family leave. Thus, while we discuss family leave and medical leave later, your pregnancy may trigger entitlements not just under the pregnancy laws, but under the family and medical leave laws as well.

Am I entitled to this leave as soon as I begin my employment?

Yes. As soon as you begin to work for an employer, your right to pregnancy leave begins.
What if I have complications and my doctor thinks I need longer than 6-8 weeks to recover?

Your employer may not impose an arbitrary time limit on your pregnancy leave. You should be able to remain on leave as long as you are disabled, that is, as long as you have a medical reason, directly related to your pregnancy or recent childbirth, that prevents you from returning to work. Problems with childcare, etc. do not qualify as a medical disability.

Do I have to take pregnancy leave before I give birth?

No. If you are able to continue working, you can do so until the day you give birth if you choose.

Do I have to give written notice to my employer?

You are not required by law to give notice in writing when you plan a pregnancy leave. It is always good protection for you to give and receive written acknowledgment of your leave and your plans to return, and to keep copies. However, your employer may have a policy concerning written notice for leaves of absence. If the employer does have such a policy, you are required to follow it, so it is important to check on this in advance. If you are taking a "medical leave" under the provisions of the Family and Medical Leave Acts, there are notice requirements which you should follow. See Family and Medical Leave.

Will I get paid during my pregnancy leave?

The law does not require that pregnancy leave be paid. However, if your employer has a paid temporary disability leave or other leave plan which pays all or part of your salary while you are temporarily disabled, you are entitled to this income while you are temporarily disabled during pregnancy and childbirth. In other words, pregnancy leave is considered a disability leave and must be treated as any other disability leave; if an employer offers paid disability leave, that policy must extend to pregnancy leave.

If I have health insurance benefits through my employer, will that continue during my pregnancy leave?

The law does not provide a clear answer to this question. At a minimum, if your employer continues insurance for other employees on disability leave, your insurance must also be continued while on

pregnancy leave. While it would be very unusual for an employer to have a policy of cutting off benefits during disability leave only to reinstate them upon return of the employee, it is not illegal. It is, however, conceivable that your employer might ask you to pay the employer's share of your health insurance premium during your leave.

When you return to work after your leave, the scope of your insurance coverage must not be adversely affected by your having taken a pregnancy leave, i.e., you must not be treated as a "new hire" or become subject to a new "pre-existing injury" exclusion period. Remember, with respect to this, as with anything else, if your employer has a policy about health insurance during leaves of absence, it must treat a pregnancy leave at least as well as any other kind of leave.

If you take your pregnancy leave under the provisions for "medical leave" under the federal FMLA, your employer must continue health benefits while you are on leave (as long as your leave period does not exceed the 12 weeks per year provided by the federal law). (See Family and Medical Leave.)

Can my employer require that I bring a doctor's note, stating that I am able to return to work?

Yes, if the employer requires it of all temporarily disabled employees. If not, it cannot. If you are taking the leave under the FMLA, see Family and Medical Leave.

Who decides when I am ready to come back to work?

The decision should be made by you and your doctor and is based upon your medical condition as it relates to your pregnancy or recent childbirth. It is not the employer's decision to make.

Does my employer have to give me my job back?

Yes. Connecticut law requires that when you return from pregnancy leave, you must be returned to the original job you held upon requesting the leave, or to an equivalent position with equivalent pay. All service credits such as seniority, retirement and fringe benefits should be retained at the same level you accumulated before you went on your leave. The only exception to this is if a private employer can show that circumstances have changed so much that it would be impossible or unreasonable to return you to work. Examples of this are a company-wide layoff or departmental cutback.

Can I use my accumulated sick time and vacation time to get paid while I am on pregnancy leave?

Yes. Unless your employer's policy on temporary disabilities forbids the use of such benefits for all temporary disabilities, you are entitled to get paid for accumulated sick leave, vacation time, or any other paid leave owed to you that you wish to use during your pregnancy leave.

Can my employer make me use sick time or vacation time?

It depends on the policy of your employer. Nothing in the law requires you to use sick time or vacation time, but your employer can require it if it is a standard requirement for all employees who become temporarily disabled. If you are taking your pregnancy leave under the "medical leave" provisions of the state or federal FMLA, your employer can require this as well. (See Family and Medical Leave.)

Can I collect unemployment benefits while I am out on pregnancy leave?

Generally, no. You are only eligible for unemployment benefits if you are "ready and able" to work. During your pregnancy leave, you are temporarily disabled. This usually means you are not eligible for unemployment benefits. However, there may be circumstances in which you are physically unable to do your regular job during your pregnancy leave, but are capable of performing other light duty work which your employer does not have. In such cases, it may be possible to be able and available for work, and thus eligible for unemployment benefits.

Family and Medical Leave

What are the laws regulating family and medical leave?

There are three laws, which regulate family and medical leave. The first is a state law which covers state employees (C.G.S. 5-248a, et seq.). The second is a state law which covers private employers (C.G.S. 31-51kk, et seq.). The third is the federal law which, with certain exceptions, covers employees of both public

and private employers (29 U.S.C. 2601). In addition, each of these laws has accompanying regulations. The interrelatedness of these laws and their implementing regulations is very complex.

What exactly is family and medical leave?

The various laws require government employers and large private companies to provide unpaid job-protected leaves of absence for employees in the following situations:

Family leave is for all employees to care for a newly-born, adopted, or foster care child. Medical leave is time off for employees to care for a spouse, child, or parent with a “serious health condition,” defined as an illness, injury, impairment, or physical or mental condition that involves inpatient care and/or continuing treatment by a healthcare provider or for employees who need time off because of their own serious health condition.

Who is covered under these laws?

The state and federal statutes differ somewhat on this question. The following is only a summary of how the two levels interact.

Connecticut Law

You are covered by Connecticut law if:

Your employer is a private employer with 75 or more employees within Connecticut or you are employed by the state. Employers not covered under Connecticut law include municipalities, local or regional boards of education, and private or parochial elementary or secondary schools.

And

You have been employed by a private employer for 12 months or more and have worked at least 1,000 hours during the 12 months immediately preceding your leave or you are a “permanent employee” of the state (in most cases defined as those who have held a position for more than six months).

Federal Law

You are covered by federal law if:

Your employer is a private employer with 50 or more employees within a 75 mile radius or if you are employed by the state. Municipalities, local educational agencies, and private or parochial elementary or secondary schools are covered under federal law.

And

In addition, you have been employed by that employer for 12 months or more and have worked at least 1,250 hours during the 12 months immediately preceding your leave.
Most Favorable to Employees

If you are eligible for family and medical leave under both Connecticut and federal law, the general rule is to follow whichever law is more favorable to the employee:

If your employer has more than 75 employees, it is covered by both the state and federal laws; if it has between 50 and 74 employees, it is covered by only the federal law.

If you work for an employer who is covered by both Connecticut and federal laws, you need only have worked 1,000 hours in order to be eligible for family and medical leave. If, however, you work for an employer who is only covered by federal law, you must follow the 1,250-hour rule.

For example: Say you work for an employer with 100 employees. Your employer is covered by both the federal and state laws. What this means for you is that you are only required to have worked 1,000 hours in order to be eligible for family and medical leave. However, say you work for an employer with 55 employees. Your employer is then only covered by the federal law, so you need to have worked 1,250 hours in the previous year in order to be eligible for family and medical leave.

How much leave do these laws provide?

Connecticut Law

Eligible state employees are guaranteed up to 24 weeks of unpaid leave during a two-year period. Eligible employees of private firms are entitled to 16 weeks of unpaid leave during a two-year period.

Federal Law

All eligible employees are entitled to 12 weeks of leave during a 12-month period. This is true both for employees of the government and employees of private employers.

Most Favorable to Employees

If you qualify under both the state and federal acts, you can use the most favorable combination of leave.

For example, if you are a private employee, this means that 16 weeks of leave could be taken the first year under the state law and 12 weeks the second year under the federal law for a total of 28 weeks in a two-year period.

Can both men and women take family and medical leave?

Employees of Private Employers

Yes. However, if both spouses work for the same employer, the combined total number of weeks they can take is no more than the maximum allowed an individual employee (16 weeks per two-year period under the Connecticut law, or 12 weeks per year under the federal law). An exception is made under the Connecticut law if you need to care for your child or yourself. Under the federal law, an exception is made if you need to care for your spouse. Under these exceptions, you and your spouse are each entitled to your usual leave.

State Employees

Yes. There are no limitations on maximum leave under the Connecticut law if both spouses are state employees. However, if leave is being taken under the federal law, employees are subject to the same restrictions as private employees.

Do I have to take the weeks off continuously?

Employees of Private Employers

The Connecticut law and federal law specifically provide for intermittent leave (leave taken in separate blocks of time due to a single qualifying reason) or reduced leave schedule (a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday). Under the federal law you are allowed to take intermittent leave or to go on a reduced leave schedule under the following circumstances:

- For family leave, i.e., in order to care for a newly-born, adopted or foster child (employer consent is needed here, unless, the leave is required either because you have a serious health condition related to the birth of your child, or if your newborn child has a serious health condition)

- For medical leave, either to receive treatment for a serious health condition, or to recover from treatment for a serious health condition, or to recover from a serious health condition
- In order to provide psychological comfort to a member of your immediate family with a serious health condition

Your employer's consent is not necessary when you are taking intermittent or reduced leave for medical reasons. You must, however, attempt to schedule the leave to be as least disruptive as possible. The employer may require a temporary transfer to a position that better accommodates intermittent or reduced leave.

State Employees

Intermittent leave is provided by the federal law but the state law is silent on this issue.

Do my health insurance benefits continue during my family or medical leave?

The Connecticut law is silent on this issue. The federal law makes the following provisions:

Employees of Private Employers

Under the federal FMLA, all employers are required to continue group health plan benefits for employees on family or medical leave. Because the state law has no such requirement for private employers, this means that for the first 12 weeks of leave that you take each year (which is the amount provided under the federal FMLA leave), your employer must continue health benefits.

If you fail to return to your job at the end of your leave period, your employer may seek to recover premiums it paid to maintain health coverage while you were on leave.

State Employees

Yes, both the state law covering employees and the federal law require the state to continue to pay its share of your health benefits.

If my employer already provides a leave of absence under its own policies, am I entitled to an additional 12 or 16 weeks?

No. The 12 or 16 weeks per year includes any time your employer already allows for a family leave of absence.

Can I get paid while I am out on leave?

All of these laws provide for unpaid leave. An employer can choose to provide paid family and medical leave, but very few companies do this. An employer can, however, adopt a policy requiring you to take any of your unused sick time or vacation time (which is usually paid time) during the 12 or 16 week family or medical leave period. Once you run out of your sick or vacation time, the rest of the leave will be unpaid. The employer may have a disability insurance policy which provides some pay while you are out on a medical leave if you qualify under the policy.

What kind of notice do I have to give to my employer before I go on leave?

Employees of Private Employers

If you are taking a leave of absence under the federal or state law, you are required, if the leave is foreseeable, to give a 30-day advance notice. If the leave is unforeseeable you should give notice as soon

as possible. While you do not have to specifically mention the “FMLA,” you must give your employer sufficient information to make the employer aware that this is an “FMLA-qualifying leave” and the anticipated timing and duration of the leave. While oral notice is sufficient, an employer may require written notice.

Can an employer require a “doctor’s note” supporting my medical condition?

An employer may require that a request for “medical leave” because of your own serious health condition or for you to care for a family member be supported by a certification issued by a health care provider and that this certification be provided in advance of the leave, unless this is not possible. If an employer does require medical certification, it must inform its employees in advance of this requirement.

What happens if my employer questions the adequacy of the medical certification I have provided in support of my request for a medical leave?

The employer may not contact your health care provider. With your permission, only the employer’s health care provider can contact your health care provider and they can do so only for the purpose of seeking clarification of the information contained in the medical certification.

If the employer has reason to doubt the validity of the information in that certification, the employer can require you to get a second opinion, at its expense. If the first and second opinions differ, the employer can require a third opinion from a jointly selected health care provider. This third opinion is final and binding.

While you are on leave, the employer can request “re-certifications” of your medical condition, but generally not more than once during a 30-day period and in any case, it may not unreasonably require re-certification of your medical condition.

What may an employer require about my intent to return to work and my “fitness” to return to work?

An employer may require that you inform it of your intent to return to work. Be aware that as soon as you unequivocally inform your employer that you do not intend to return to work, its obligations to reinstate you to your position (and under the federal law, to continue your health insurance) cease.

If an employer has a uniformly applied policy or practice that it requires “fitness for duty certifications” for all employees out on health-related leaves, then it can require you to provide a statement from your health care provider that you are able to return to work before reinstating you. It can only request this information about the condition for which you are out on leave; it cannot seek information about your general fitness to work.

State Employees

If you are taking a leave of absence under the federal law, you are required to give a 30-day advance notice whenever possible.

The following is required under the state law:

- If you are taking a leave because of a serious illness—either a medical leave for your own illness or for the illness of a family member—you must provide a note from your doctor.
- If you are requesting a family leave, you must submit a signed statement that you intend to return to your job after your leave.

There are additional requirements on how and to whom to submit your request for leave and what information the request must contain. These are contained in the state regulations 5-248b-1-9. You should obtain this information before requesting and taking your leave.

If you qualify under both laws, you can take the least restrictive combination of the two laws, meaning no specific time specification on when you must request your leave (state law) – although it is always good policy to give advance notice--and no statement of intent to return to work (federal law).

The law does not contain a specific requirement that you give notice before you return to work. However, you must state your anticipated return to work date when you go on leave.

What happens when my leave is over?

Employees of Private Employers

When your leave is over you are entitled to return to your job, or if that job is not available, to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment.

Under federal law, if you meet the definition of “key employee” (those whose salaries are within the top 10% of all employees within a 75 mile radius), your employer does not have to reinstate you if refusing reinstatement is necessary to prevent “substantial and egregious injury” to the operations of the employer.

Under state law, there is no such “key employee” exception. Further, you have more entitlement to be restored to your original position (instead of an equivalent position) and if your leave was for medical reasons, and you are medically unable to return to your original position, you are entitled to a transfer to a position you can perform, if such a position is available. The federal law does not have such a transfer requirement (but it must comply with the Americans with Disabilities Act, which has its own very specific requirements).

Most Favorable to Employees

If you qualify under both the state and federal acts, you can use the most favorable combination of these reinstatement rights.

For example, if you are a private employee and meet the definition of key employee, because the state law does not have such an exception, your employer cannot refuse to reinstate you. Further, it must restore you to your original position unless your original position is not available, then it must reinstate you to an equivalent position; if you are medically unable to return to your position, you are entitled to a transfer.

State Employees

Same as above. Your service credits will not accrue during your leave. The federal and state laws are extremely similar on this issue.

There are many other issues which have not been covered here, including interaction between the FMLA laws and the Americans with Disabilities Act, and certain provisions under the collective bargaining agreements. For information on issues such as these, it may be necessary to contact an attorney.

Unemployment Benefits

What do state unemployment benefits provide?

State unemployment benefits are provided to workers who are “able and available for work and who are making reasonable efforts to find work,” but have been unable to locate a job. However under certain circumstances, you are not eligible to collect unemployment benefits including if you have been fired from a job for repeated willful misconduct or if you voluntarily quit your job. These same rules apply to pregnant workers and new mothers. You cannot be denied unemployment benefits solely because of

pregnancy or because you are a new mother. However, you must be “able and available for full time work” in order to qualify for benefits. If you think you have been unlawfully denied unemployment benefits, you should appeal the ruling.

If I am pregnant, can I get unemployment benefits?

You should be eligible for unemployment benefits if:

- You are illegally fired because you are pregnant. If you lose your job, you may apply for unemployment benefits and then decide whether you want to take other steps to get your job back.
- You lose your job after a pregnancy leave because your employer does not hold your job open for you, either legally, as in the case of major company-wide layoffs in which your job is eliminated, or illegally, as in the case of an employer who tells you after your pregnancy leave that you cannot return to work because of the time you have taken off.
- You lose your job because you are able to do some kinds of work during your pregnancy but not others, and your employer is unable to transfer you to work that you are able to do. A statement from your doctor saying that you are not disabled from most kinds of work will help convince the Job Center that you are ready and able to work.

You are not eligible for unemployment benefits if:

- You voluntarily resign from your job.
- You voluntarily decide not to come back to work after your pregnancy leave.

Recent legal cases have improved chances of pregnant women receiving deserved unemployment benefits. However, problems can still arise, in which case you should consult an attorney.

Protection From Job Hazards

How do I know if something in my workplace will be harmful to my reproductive system or my pregnancy?

Whether you are pregnant or not, your employer is required to inform you about hazardous substances which the employer should have reasonable cause to believe may cause birth defects or pose a hazard to your reproductive system or fetus (C.G.S. 31-40g). However, even if your employer has not informed you of a hazardous substance or if your working condition may be harmful, ask your doctor or contact the Connecticut Coalition on Occupational Safety & Health (549-1877), the Connecticut State Occupational Health & Safety Administration (566-4550), or the U.S. Occupational Health & Safety Administration (240-3152).

What should I do if I find out that a substance is dangerous to my reproductive system or my pregnancy?

You should notify your employer (in writing is always best) about your concern that a particular substance is harmful. If you are pregnant, you should also notify your employer in writing of your pregnancy. You should ask your employer to transfer you to another job or department or to take other steps to protect you from the hazard, if you think that would be preferable to a transfer.

What does my employer have to do if I request a transfer or protective measures?

If you are pregnant and you or your employer have a reasonable belief that continued employment in your present position would harm you or your fetus, and you notify your employer in writing of your pregnancy and request a transfer, your employer must make a reasonable effort to transfer you to another, suitable, temporary position, which may be available. In addition, whether or not you are pregnant, if you request it,

your employer must take reasonable steps to protect you from substances that it has informed you may cause birth defects or harm your reproductive system or fetus. This might include a job transfer or might be something other than a job transfer, such as providing you with protective clothing, modifying your job duties, moving your work station, etc.

If I ask for a transfer, can my employer request that a doctor confirm that my job is dangerous for me?

The law does not require an employee to provide medical confirmation. If your employer has a policy concerning a doctor's note for transfers during a period of temporary disability, it should use the same policy for pregnancy.

What if my employer wants to transfer me, but I don't want the transfer?

So-called sex-specific fetal protection policies have been held to violate federal law. This means that you cannot be forced to transfer unless your employer's policy on transfer is directed equally to both men and women. You also have the right to challenge a transfer at the Commission on Human Rights and Opportunities (CHRO). [C.G.S. 46a-60(a)(7)(F)]

What if I am concerned about my working conditions, but not about a particular substance?

If you are pregnant and you are concerned that your working conditions might cause injury to you or your fetus, you can request a transfer, and your employer must transfer you if there is an available job.

Some employers have a procedure for obtaining "light duty" when temporary medical restrictions make it impossible for an employee to perform her regular job. This might include transferring to a less strenuous job or changing one's job slightly to accommodate the temporary disability. If your employer has such a light duty policy, it must treat pregnancy at least as well as any other temporary disability.

What can I do to protect myself if there is a situation that poses an immediate threat and my employer refuses to act?

If you reasonably believe there is a real danger of death or serious injury and the situation is so urgent that there is no time to go through regular enforcement procedures, you can take action after your employer refuses to correct it. You can inform other employees of the condition and refuse to expose yourself to it. Your employer cannot retaliate against you for doing this. However, before you make a decision to walk off the job, you should consult an attorney.

My employer and I agree that my job is hazardous, that there is no way to protect me from the hazard, and that there is no suitable temporary position to which I can be transferred. What can I do?

If you are physically unable to do your regular job, you may choose to begin your pregnancy disability leave. Alternatively, if you want to and are able to work, but not at that particular job or for that employer, you can choose to look for other work and also apply for unemployment benefits.

Protecting Your Rights: Informal Measures

Find out what your employer's policies are.

Your employer's policies must be non-discriminatory. This means that if your employer has a disability policy, it must treat pregnancy-related disabilities at least as well as other kinds of disabilities. If your employer has a non-medical leave policy, it must provide leave for the care of children on the same terms as it provides leave for other non-medical reasons. Therefore, you should find out what the standard policies of your employer are. The employee's handbook, your supervisor, the personnel department, or your union contract or union representative can tell you. If you are a union member, your contract must also be in compliance with the law. Remember, no matter what your employer's policies are, if your employer has three or more employees, you are entitled to a reasonable pregnancy disability leave. You

may be entitled to a family leave as well, depending on the size of your employer, the length of your employment, etc.

If you intend to ask your supervisor or the personnel department about these policies, it may be a good idea to take a friend along as a witness. Make a list of questions you want to ask. Take notes on the answers, as you may get confusing or different answers. Your friend will be a witness in case there are any disputes later on. If possible, try to get the answers to your questions in writing.

Some questions to ask are:

- Does the employer/contract have a temporary disability policy? What is it? Is it in writing?
- Does the employer/contract have a family leave policy? What is it? Is it in writing?
- Are temporary disability/family leaves paid or unpaid?
- Is there a time limit on temporary disability leaves?
- Are fringe benefits (such as insurance coverage, pension, social security) continued during disability leave and/or family leave?
- What sort of medical proof is required for temporary disability leaves?
- What is the procedure for obtaining a transfer to “light” or less hazardous work? Is medical documentation required?
- What is the procedure for taking a leave and returning from a leave? Who should be notified? Does notice have to be in writing?
- Is there a procedure to follow if you have a complaint? Is it in writing? Are there time limits?

If the answers to any of these questions indicate unfair or discriminatory practices, or if you are not sure but suspect that something might be wrong, contact CWEALF, The Permanent Commission on the Status of Women (PCSW), or an attorney and discuss the situation.

Notify the company in writing.

Notify the company in writing of your pregnancy, your intentions to continue working as long as possible, your intentions to return to work after the delivery, and your request for family leave and disability leave. If you ask for a transfer or protective measures, do so in writing. Keep copies and ask for the company’s response in writing.

Do not give up your rights voluntarily.

In no case should you give up your rights voluntarily. Your employer cannot ask you to sign a paper waiving or giving up your right to insurance or any other compensation should you get hurt on the job while you are pregnant. If you are hurt, call an attorney, or if you are a union member, talk to your shop steward before speaking with your employer.

Do not resign.

If your employer is discriminating against you because you are pregnant and you are thinking of quitting, call CWEALF, PCSW, or an attorney before you resign. You are usually in a better position to protect your rights if you have not left your job voluntarily. Even if you have quit, however, it is still possible to claim a violation of your rights.

Keep notes.

If you think you have been or are being discriminated against, keep notes of conversations and events, noting names, dates, witnesses, etc., while your memory is still fresh. This can be very useful later on if you have to pursue a grievance procedure or go to court. Since you may need to disclose the notes later, do not keep them in a personal journal.

Do not delay.

If you think you have been the victim of discrimination, find out what your rights are and what steps you should take as soon as possible. Internal grievance procedures often have short time limits. If you decide to file an administrative complaint you will also be faced with time limits and should file within 180 days of when you knew or should have known that you have been a victim of discrimination.

Legal Measures Available to Fight Pregnancy Discrimination

As stated in previous sections of this booklet, a pregnant woman's right to work free from discrimination is protected by federal and state law. If you become the victim of pregnancy discrimination, you will have many options available to you to exercise your rights ranging from an informal grievance procedure through your employer or union, to suing your employer in court. Resolving the conflict through a company or union grievance procedure can often be the least expensive and least stressful option available. If there is no internal procedure to resolve discrimination, you may wish to contact an attorney or union steward before going to your employer, just to be sure you know what your rights are and how best to protect your interests. If you eventually decide to go through the legal system, you must first file an administrative complaint.

Filing Complaints with the CHRO and EEOC

The Connecticut Commission on Human Rights and Opportunities (CHRO) is the state agency responsible for enforcing state anti-discrimination laws. The Equal Employment Opportunities Commission (EEOC) is the federal administrative agency responsible for enforcing federal anti-discrimination laws. These are the agencies with which you can file a pregnancy discrimination charge. Remember that a certain situation may violate the pregnancy discrimination acts and the family and medical leave acts. For violation of the state and federal FMLA, there is a different procedure, which is discussed below.

Anyone can file a discrimination complaint with the CHRO and EEOC. You do not need an attorney and it does not cost money. However, you may wish to consult an attorney and/or have an attorney present during the CHRO hearing.

How CHRO/EEOC Work

You file both your CHRO and your EEOC complaints at the CHRO office. If your employer has 3-14 employees, you are only covered by the state law, so only the CHRO has jurisdiction over your complaint. If, however, your employer has 15 or more employees, you are covered by both state and federal law; normally the CHRO investigates both your federal and state law claims.

Your federal and state complaints, including affidavits, must be filed with CHRO within 180 days of the act of discrimination. The 180 days begins to run when an employee knows or should have known that she or he is the victim of sex discrimination.

For example, suppose your supervisor tells you on January 1 that you will be fired on February 1. If you have reason to believe on January 1 that the decision to fire you might be because you are pregnant, the 180 days begins to run on January 1, not February 1.

Thus you will have 180 days from January 1 to file your complaint with the CHRO. Remember: 180 days is not always six months, so be sure to count the days correctly.

If you are covered only by state law and you miss the 180-day deadline, you will have lost your right to claim a violation of state law. If, however, your employer has 15 or more employees, you can still claim a violation of your federal rights if you file with CHRO and EEOC within 300 days of the discriminatory act. However, you should not wait 300 days.

If you miss the 180 days, you should file within 240 days because the EEOC is not allowed to take a complaint until 60 days after it has been pending with the CHRO unless the CHRO dismisses it before then. While this may sound confusing, it is very important that you comply with these deadlines. If you do not file on time, you will lose your opportunity to exercise your rights and obtain a remedy through the legal process. Once you file with the CHRO and/or the EEOC, you can either follow through on the administrative process or go to court.

Filing a State Court Lawsuit

You may also bring a private lawsuit against your employer, with your own attorney, in state court, once you obtain a release from the CHRO. (See C.G.S.46a-100, et seq.)

You can request a release after your complaint has been pending with the CHRO for 210 days. The CHRO must act on your request within 10 days. The CHRO may turn down your request if your case has already been scheduled for a public hearing or it may delay acting on the request for 30 days if it believes it can resolve the complaint within that time. Otherwise, it must grant the release. You must file in court within 90 days of receiving your release from CHRO and within two years of the date you filed your CHRO complaint.

If your complaint is also covered by federal law, you will have the option of going to federal court instead of state court.

Filing a Federal Court Lawsuit

Under federal law, you may bring a private lawsuit against your employer, with your own attorney, in federal court. You must wait 180 days after filing with the EEOC and must receive a “right to sue” letter from the EEOC. See 42 U.S.C. 2000e-5(f)(1). You must file your federal lawsuit within 90 days of receiving the “right to sue” letter.

If the EEOC dismisses your claim, you will automatically receive a “right to sue” letter. You have the right to file a private lawsuit whether or not the EEOC finds in your favor or is still investigating your claim. Once you have received a private “right to sue” letter, you have 90 days to file a lawsuit. Again, do not miss this deadline.

Private Lawsuits-As described above, you have the right to file a lawsuit in either state or federal court after you have filed your administrative complaint. Although you are legally entitled to pursue such a suit without an attorney, it is extremely difficult and rarely done. If you are considering a lawsuit, it is best to consult an attorney as promptly as possible.

Federal Employees

If you are a federal employee, you are protected under federal laws but the procedure for filing a complaint is somewhat different than outlined above. You are not covered by state laws or enforcement procedures. Much of this procedure is set out in the Code of Federal Regulations (C.F.R.) and requires a thorough review.

Legal Options Available Under The Family And Medical Leave Acts

Federal Law

The federal FMLA contains very liberal enforcement procedures. Anyone who has knowledge that an employer is violating the FMLA can report it to the U.S. Department of Labor, Wage and Hour Division, Employment Standards Administration. This means that an employee’s family member, friend, or union may file reports on their behalf. In addition, the employee may also file a report, or may file a private lawsuit in state or federal court. However, your right to file a lawsuit will terminate if the U.S. Department of Labor (U.S. DOL) decides to file a complaint against the employer.

A report of an FMLA violation under the federal law must be filed with the U.S. DOL or a lawsuit must be filed in court, within two years of the violation, or within three years if the violation was what the law terms “willful.” As with any lawsuit, we strongly recommend that you consult with an attorney before beginning.

A report to the U.S. DOL needs to be put in writing and should include a full statement of the facts of the violation with relevant dates. It does not have to be in any particular form.

The U.S. DOL, after investigating your report, can either issue an administrative order requiring your employer to comply with the law, or go to court to seek an injunction preventing further violations of your rights under FMLA, or file a lawsuit.

If the lawsuit is filed, whether by you or by the U.S. DOL, an employer who is found liable for violating the FMLA can be ordered to pay all back wages owed, or to pay other economic damages up to a sum equal to 12 weeks of wages. The employer can also be ordered to hire, reinstate or promote you if appropriate. If the court finds that the employer acted in bad faith because it had reasonable grounds for believing that what it was doing was in violation of the Act, the court can order additional damages. If you have hired an attorney to file a private lawsuit, you may recover attorney’s fees and costs.

State Law

If you believe that your employer is in violation of Connecticut’s FMLA, or if you believe that your employer has discharged or discriminated against an employee in retaliation for exercising your rights under the Act, you can file a complaint with the Connecticut Department of Labor, Wage and Workplace Standards Division. If the action of which you are complaining is related to pregnancy disability leave, you may also file a complaint with the Commission on Human Rights and Opportunities (CHRO). (See Filing with the CHRO/EEOC.)

The Connecticut Department of Labor (CT DOL) can provide you with complaint forms for an FMLA complaint. You should file your complaint within 180 days of your employer’s violation. Unlike many other such procedures, Connecticut’s FMLA regulations allow you to file after the 180 days if you have “good cause” for filing late. “Good cause” means any circumstances which, in the opinion of the Commissioner, would prevent a reasonably prudent individual in the exercise of due diligence from timely filing a complaint. DOL Regulations Sec. 31-51ee-3(d). The safest course, however, is to file within 180 days, which is less than six months.

When you have filed your complaint, the CT DOL will investigate it, and will provide notice to your employer that the complaint was filed. The employer has 21 days from the mailing of the notice to respond to your complaint. During the investigation process, the CT DOL may try to effect an informal resolution.

Where informal resolution is not reached, the CT DOL will either (1) notify you and your employer that there is insufficient reason to believe the FMLA has been violated, or (2) issue a complaint against the employer. If the CT DOL issues a complaint, there is usually a pre-hearing conference at which there is an effort to mediate a settlement between you, your employer, and the CT DOL. If there is no mediated settlement, an attorney representing the CT DOL will actually prosecute the case against your employer. You have the right to your own attorney during the hearing, but you are not required to have one.

If the CT DOL decides not to issue a complaint, you have 21 days to request a hearing before the Commissioner. Whether you are requesting a hearing, or the Division investigator has requested it, the Commissioner has the power, if he or she finds in your favor, to order that the employer comply with the law, and may also order that it offer monetary compensation for losses that directly resulted from the employer’s actions.

Unlike the federal FMLA, the state law does not provide for a right to file a private lawsuit. See generally, DOL Regulations Sec. 31-51ee-1, et seq.

As with pregnancy discrimination, you do not need a private attorney for most of the procedures described above, but you may choose to hire one to assist and advise you. An attorney will be able to advise you whether a private lawsuit, an appeal, or the negotiation of a settlement is worth the time and effort. An attorney can help you make strategy decisions about how to pursue your case. Also, an attorney will be able to advise you about important filing deadlines.

In general, attorneys are paid a fee but may be willing to negotiate a payment plan with you. Only you can decide whether you can and should pay for an attorney's legal advice. Certain Connecticut agencies may be able to help you. CWEALF and the Connecticut Bar Association have attorney referral lists.

Conclusion

This booklet is not the last word on pregnancy discrimination or family and medical leave. Laws change, and so do the court's interpretations of these laws. Employers also change, and women and men should continue to put pressure on their employers to provide better pregnancy coverage and child rearing options.

Glossary

Many non-lawyers using this book may find the references to court cases, legislation and legal doctrines confusing. The following glossary will, we hope, make researching legal issues somewhat less difficult. All of the materials described below can be found in any law school library, or in the State Library in Hartford. Some materials, such as Connecticut laws and regulations, may be available in your local public library.

Connecticut Materials

Laws passed by the Connecticut Legislature are called Public Acts, and are integrated into the Connecticut General Statutes which are organized into sections. For instance, the Connecticut Family and Medical Leave Act for state employees was passed in 1987 as Public Act 87-291; it is found in the Connecticut General Statutes beginning at C.G.S. 5-248a, where "C.G.S." indicates Connecticut General Statutes, "5" is the numerical section of the statute, and "248a" is the number of the law within that section.

In addition to state laws, there are also Connecticut Regulations that are issued by each administrative agency and that set out the agency's rules. These rules, intended to guarantee that state agencies function fairly and consistently, must be in accordance with the Connecticut Uniform Administrative Procedures Act, which is found at C.G.S. 4-166, et seq. The regulations of the Commission on Human Rights and Opportunities (CHRO) are found at CHRO Regulations Sec 46a-54-a, et seq. The regulations for Connecticut's FMLA are found at Department of Administrative Services (DAS) Regulations 5-228b-1 (state employees) and Dept. of Labor (DOL) Regulations 31-51ee-1 (private employees).

Interpretations of the law are made by the courts. Court decisions are organized into "reports," which are the volumes of cases decided by a particular court and arranged chronologically. For instance, a case cited as 206 Conn. 150 (1988) will be found in the Connecticut Reports at volume 206, page 150, and was decided in 1988.

Federal Materials

Federal law is embodied in the United States Code (U.S.C.) and is divided into titles by subject matter and then into sections. Thus, the federal law prohibiting certain kinds of employment discrimination is found beginning at 42 U.S.C. 2000e, where title "42" of the U.S. Code deals with Health & Welfare, and "2000e" is the number of the law within that title. Just to make matters more confusing, however, that same statute is usually referred to as "Title VII", which refers to the fact that it is also the seventh section of the Civil Rights Act of 1964. The federal Family and Medical Leave Act can be found beginning at 29 U.S.C. 2601, where title "29" of the U.S. Code deals with labor, and "2601" is the number of the law within that title.

As with the state law, there are numerous regulations relating to these statutes, which are found in the Code of Federal Regulations (C.F.R.). The regulations for the federal FMLA were recently issued and begin at 29 C.F.R. 825.100. They are lengthy but important to an understanding of these laws.

Resources

Connecticut Women's Education and Legal Fund (CWEALF)
135 Broad Street
Hartford, CT 06105
Main: (860) 247-6090
Fax: (860) 524-0804

Information and Referral Service
Toll Free (800) 479-2949
Greater Hartford (860) 524-0601
Monday – Friday

Permanent Commission on the Status of Women (PCSW)
18-20 Trinity Street
Hartford, CT 06106
Voice: (860) 240-8300
Fax: (860) 240-8314

U.S. Department of Labor, Women's Bureau
Regional Office
J.F.K. Federal Building
Government Center, Room E-270
Boston, MA 02203
Voice: (800) 518-3585
Fax: (617) 565-1986

Connecticut Department of Labor
200 Folly Brook Road
Wethersfield, CT 06109
Voice: (860) 566-2121

Connecticut Bar Association
101 Corporate Place
Rocky Hill, CT 06067
Voice: (860) 721-0025
Commission on Human Rights and Opportunities (CHRO)

Capital Region
1229 Albany Avenue
Hartford, CT 06112
Voice: (860) 566-7710
Fax: (860) 566-1997
TDD: (860) 566-7710

Southwest Region
1057 Broad Street
Bridgeport, CT 06604
Voice: (203) 579-6246
Fax: (203) 579-6950
TDD: (203) 579-6246

West Central Region
Rowland Government Center
Waterbury, CT 06702
Voice: (203) 805-65

Fax: (203) 805-6559
TDD: (203) 805-6579

Eastern Region
Room 210 100 Broadway
Norwich, CT 06702
Voice: (860) 886-5703
Fax: (860) 886-2550
TDD: (860) 886-5707

Equal Employment Opportunity Commission (EEOC)

EEOC Regional Office
1 Congress Street
10th Floor Room 1001
Boston, MA 02114
Voice: (617) 565-3200