
PREGNANCY AND FAMILY & MEDICAL LEAVE

Connecticut Women's Education & Legal Fund

www.cwealf.org

*Your rights at work: Before, during and after pregnancy, and
Taking time off for family or medical reason*

INTRODUCTION

This goal of this booklet is to educate both women and men with family needs about their legal rights in the workplace. It provides an overview of federal and Connecticut state laws that provide protection to pregnant employees and answers commonly asked questions about pregnancy, family and medical leave laws, and employee rights. It also discusses the legal options open to women who believe they are victims of discrimination because of their pregnancy.

If you have any questions or need an attorney referral, call the Connecticut Women's Education and Legal Fund's (CWEALF) Information and Referral Service at 1-800-479-2949 or 860-524-0601 in the greater Hartford area and see the Resources section at the back of this booklet.

Have Questions? Need Help?

Call 1-800-479-2949

CWEALF's Information & Referral Service

Referrals to attorneys – free initial consultation and some offer lower rates for people with low incomes.

PREGNANCY

Overview of Your Rights

State and federal laws protect you against discrimination related to your pregnancy because pregnancy falls under the categories of sex discrimination and temporary disability.

This means an employer must not:

- Ask you about your pregnancy or your plans to have children;
- Fire you or deny you a promotion because you are or may become pregnant;
- Treat you differently from other employees;
- Fail or refuse to give you a leave of absence for pregnancy/childbirth; or
- Force you to take time off because you are pregnant.

Connecticut law applies to employers with 3 or more employees and federal law applies to those with 15 or more employees.

Can my employer ask if I am or plan to become pregnant?

No. It is illegal for your employer (or a potential employer) to ask you questions about:

- Your plans to have children;
- Your pregnancy;
- Your reproductive health or use of birth control; or
- Your family responsibilities.

The only exception to this rule is if the information is directly related to a qualification needed to complete the job. (This is called a "bona fide occupational qualification.")

Also, your employer may NOT ask you to promise that you will not have children or get pregnant.

Can I be fired for being pregnant?

No, you cannot be fired nor be treated differently for being pregnant. This also applies to your job duties, pay, and benefits.

What if I can't physically do my job while pregnant?

Some employers will offer "light work" duties when employees are disabled due to a workplace injury or temporary disability. This same "light work" may need to be offered to pregnant women as well. Your workplace must treat you the same way that it treats non-pregnant workers who are similar in their ability or inability to work, unless there is a non-discriminatory reason for the difference in treatment. If you have a disability that is caused or exacerbated by your pregnancy, you may also be entitled to reasonable accommodation. In addition, under state law an employer may need to offer you a leave of absence or a transfer if you are not able to safely perform your job because of your pregnancy.

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

You cannot be forced to transfer unless your employer's policy on transfer is directed equally to both men and women. Otherwise it violates federal law. You also have the right to challenge a transfer at the Commission on Human Rights and Opportunities (CHRO) and/or the Equal Employment Opportunities Commission (EEOC).

How do I know if my workplace will be safe for me or my baby?

All employees – pregnant or not – have the right to a safe workplace. Your employer must inform you about unsafe conditions. (For example, substances that the employer should know may cause birth defects or be harmful to you or your unborn baby.)

What should I do if I find out that my workplace is not safe?

You should write a letter to your employer about your concern. Your letter should ask your employer

- To take steps to fix the safety problem; or
- To transfer you to another job or department.

The employer must make a reasonable effort to transfer you to a temporary position if you let your employer know in writing that you reasonably believe that continued employment in your current position will harm you or your unborn baby.

TAKING TIME OFF: PREGNANCY LEAVE



What is pregnancy leave?

Pregnancy leave is an unpaid leave of absence for a reasonable length of time resulting from pregnancy or childbirth. The law treats pregnancy as a temporary disability which means your employer must give you time off to recover. The length of time off that is “reasonable” is usually 6 – 8 weeks, although it depends upon your doctor. The leave can also be taken during your pregnancy if you have complications.

If you want to take more time off to care for your child once you are no longer disabled from the birth, you would need to take family leave (see below).

Will I get paid while I am on my pregnancy leave?

Usually pregnancy leave is unpaid. However, if your employer offers medical insurance, disability benefits, paid leave policies, or other temporary health benefits, they must cover pregnancy and childbirth in the same way they cover other disability situations. (See also “Family and Medical Leave” below.)

Can I use my sick time and vacation time?

Yes. You can use your sick and vacation time as long as your employer allows use of this time for other temporary disabilities.

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

You cannot be forced to use your sick and vacation time UNLESS

- Your employer has a policy that requires all employees to use this time for other temporary disabilities, or
- You are taking your pregnancy leave under state or federal FMLA. (See Family and Medical Leave below.)

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

Yes. As soon as you begin to work for an employer, your right to pregnancy leave begins. However, your right to a leave under FMLA requires that you have been at your job for a certain amount of time (see Family and Medical Leave below.)

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

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

RETURNING TO WORK

Can my employer require a doctor’s note stating that I am able to return to work after pregnancy leave?

Yes, but only if the employer requires it of all temporarily disabled employees.

Does my employer have to give me my job back?

Yes. When you return from pregnancy leave, you must be returned to the job you had before leave, or to a similar

In most cases...

You must get your job back – or a similar one with equal pay, benefits, etc.

position with equal pay, benefits, etc. All service credits like seniority, retirement and fringe benefits have to remain the same as before your leave. There are narrow exceptions to this rule, for example, if things have changed significantly at work, like a department-wide or company-wide layoff.

RETALIATION

Can my employer treat me more negatively after I return to work because of my pregnancy?

No. An employer cannot discriminate or retaliate against you while you are pregnant or after exercising your rights to pregnancy or FMLA leave.

TAKING TIME OFF: FAMILY AND MEDICAL LEAVE

What is family and medical leave?

Both Connecticut and the federal government have laws that give some workers the right to take time off from work to handle certain family or medical matters. These laws are called the Family and Medical Leave Act, or FMLA. The leave may be unpaid, or it may be combined with accrued paid leave (such as vacation or sick leave). Certain eligibility requirements must be met before an employee will qualify for leave under the FMLA.

In addition to time off, **the FMLA offers other protections** including:

- Continuation of health care benefits,
- Protection from being discriminated against or fired for taking a leave,
- Return to the same – or an equivalent— job. (An equivalent job would have the same or similar pay, hours, duties, responsibilities, work conditions, job security, etc.)

An eligible employee may take leave:

- To care for a newly born, adopted, or foster care child
- To care for a spouse, child, or parent with a serious health condition*
- For the employee’s own serious health condition*
- To care for an injured service member, or
- To serve as an organ or bone marrow donor (applies to Connecticut FMLA only)


*Note: A “serious health condition” is an illness, injury, impairment, or physical or mental condition that involves inpatient care and/or continuing healthcare treatment.

Federal FMLA and Connecticut FMLA

Although the federal and state laws are similar, there are some differences in who qualifies and the length of leave allowed. (See chart below.) Generally, the federal FMLA applies to municipalities, local educational agencies and any private elementary or secondary school.

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

For example: If you are an eligible employee who works for a private employer, you could take 16 weeks of leave during the first eligible year under the state law, and then take 12 weeks the second year under the federal law. (Total of 28 weeks in a 2-year period.)

Are you covered by FMLA?		
	<i>Federal FMLA</i>	<i>Connecticut FMLA</i>
# of workers needed at company	50 + workers	75 + workers
# of hours you must have worked	1250 hours in last 12 months	1000 hours in last 12 months
Length of unpaid leave allowed	12 weeks in a 12-month period	16 weeks in a 24-month period
Notes:		
<ul style="list-style-type: none"> • Federal and CT FMLA also allow: 26 weeks of leave to care for an injured service member. • CT FMLA: Employees of State agencies have different guidelines. Contact your human resources. 		

Will I get paid while I am out on leave?

In general, no. These laws are for unpaid leave. In Connecticut, private employers must also allow employees to use up to two weeks of accumulated sick leave in order to get paid while out on family or medical leave to care for a new child or a covered family member with a serious health condition.

If you have a serious health condition, check to see if your company provides a temporary disability insurance policy. This type of insurance will usually provide a portion of your pay while you are out on a medical leave. This usually applies to your own illness only; not to care for a new child or family member.

How do I tell my employer I want to go on leave?

Unless it is an emergency, you must give a 30-day notice. If the leave is unexpected, you should give notice as soon as possible. It is best to give it in writing and include how long you think you will be out and give enough information to show that the leave is an “FMLA-qualifying leave.”

Qualify for both state and federal FMLA?

You can use the most favorable combination of leave.

How can I protect my rights under FMLA?

Informal Measures

What are your employer’s policies?

Temporary Disability

Family Leave

Job Transfer

- What is the leave policy?
- Is it paid or unpaid?
- Do fringe benefits continue during leave? (insurance, pension, social security)
- How do I ask for a leave or a transfer?
- Must it be in writing?
- Who needs to get it?
- Is there a time limit?
- What medical proof is needed?
- If I have a complaint, what is the procedure to follow?

Find out what your employer’s policies are. You can usually get this information from the employee’s handbook or your union contract, or ask your supervisor or union representative for help. See below for questions to ask about policies.

RETURNING TO WORK

What happens when my leave is over?

You are entitled to return to your job when you come back from an FMLA covered leave. If that job is not available, the employer must give you the same or a similar position with the equivalent pay, benefits, seniority, and other terms of employment.

If you are medically unable to return to your position because of a disability related to or exacerbated by pregnancy, you may be entitled to be accommodated for your disability. A reasonable accommodation may include further time off or a transfer to another position, if one is available that you could do. The laws requiring when an employer must accommodate you are complicated and you should seek legal advice if you think you may need an accommodation.

I'm returning to work, but I am still nursing the baby. What are my rights?

You have the right to:

- *Be protected from discrimination.*
It is illegal for an employer to discriminate against an employee for exercising her right to breast feed or express milk while at work.
- *Be provided a private place to breast feed or express milk.*
Employers must make a “reasonable effort” to provide a room or other location that is private, yet close to the employee’s work area. It cannot be a toilet stall.
- *Be given break time in certain cases.*
Federal law requires employers to provide break time to express milk or breastfeed (if the employee is non-exempt). However, Connecticut law does not require employers to provide breaks to employees. But if it normally provides breaks, an employee is free to express milk or breastfeed during her meal or break period.
- *File a complaint.*
If you believe that you have been treated unfairly in regard to your need to express

milk, you can file a complaint with the Connecticut Department of Labor or U.S. Department of Labor.

OTHER OPTIONS FOR PAID TIME OFF

Paid Sick Leave

Connecticut paid sick leave laws require that most employers with 50 or more employees provide certain employees up to 40 hours of paid sick leave each year. The law requires paid sick leave for a wide variety of employees classified as “service workers.” These include many jobs such as food servers, medical assistants, child care workers, receptionists, social workers, home health aides, and several others. (For the full list, visit the CT DOL Division of Wage and Workplace Standards at www.ctdol.state.ct.us/wgwkstnd).

Paid sick leave can be taken for the employee’s, spouse’s or child’s illness, injury or health condition. This includes the time getting a diagnosis and the care and treatment of a physical or mental health condition and for preventive medical care.

If the reason for taking paid sick leave also qualifies for FMLA, then your employer can require you to use FMLA leave at the same time. Remember, FMLA is an unpaid leave of absence and runs at the same time as (concurrently with) other types of paid leave.

Unemployment Benefits

If I am pregnant, can I get unemployment benefits?

You are eligible for unemployment benefits if you are "able and available for work" and making reasonable efforts to find work. Thus, if you are out of work on a pregnancy related medical leave, and unable to work because of or following your pregnancy, you would not be eligible for unemployment benefits. Also, whether pregnant or not, you are *not* eligible if you have been fired from a job for willful misconduct, or if you voluntarily quit your job. For more information, visit the CT Department of Labor website (www.ctdol.state.ct.us/UI-Online).

You should be able to collect unemployment 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 steps to get your job back.
- You lose your job after a pregnancy leave because your employer did 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 that leave).
- You lose your job because a suitable job that you are able to do is not available.
- You leave your job to take care of a seriously ill spouse or child, so long as you are still "able and available" and making efforts to find work. (This illness must be documented by a doctor.)

ARE YOUR RIGHTS BEING DENIED?

Hazardous Workplaces:

If you think your working condition may be harmful, ask your doctor or contact

- Connecticut Coalition on Occupational Safety & Health. 860-953-2674,
- Connecticut State Occupational Health & Safety Administration. 860-263-6900, or
- U.S. Occupational Health & Safety Administration. Toll free 1-800-321-OSHA (6742), TTY 1-877-889-5627.

Family and Medical Leave (FMLA):

To make a complaint, contact the appropriate agency:

Federal FMLA violation:

File a report with the U.S. Department of Labor (or file a lawsuit) within two years of the violation, or three years if the violation is "willful."

Connecticut FMLA violation:

You must file within 180 days of the violation with the CT Department of Labor's Wage and Workplace Standards Division. Complaint forms are available on its website.

Pregnancy discrimination:

To report a claim about pregnancy leave or discrimination based on pregnancy, you may file a complaint with the

- Commission on Human Rights and Opportunities (CHRO) within 180 days, or
- Equal Employment Opportunity Commission (EEOC) within 300 days.

For more information, see our booklet CHRO
Procedures.

RESOURCES

CT Women's Education and Legal Fund

Information & Referral (I & R) Line

1-800-479-2949

860-524-0601 www.cwealf.org

Statewide Legal Services

(information and referrals to free legal aid)

1-800-453-3320

860-344-0380 www.ctlawhelp.org

Children's Law Center

(provides legal advocates to children in very contested family court cases)

1-888-529-3667

www.clcct.org

GLAD (Gay & Lesbian Advocates & Defenders)

1-800-455-GLAD (4523)

617-426-1350

Connecticut Department of Labor

860-263-6000 www.ctdol.state.ct.us

Connecticut Bar Association

860-223-4400

www.ctbar.org

U.S. Department of Labor, Women's Bureau

Region 1

John F. Kennedy Federal Building, Room 525A
Boston, MA 02203

617-565-1988 www.dol.gov

Commission on Human Rights and Opportunities (CHRO) www.ct.gov/chro/

Administrative Office:

1-800-477-5737 or 860-541-3400

TDD 860-541-3459.

NOTE: Complaints must be filed with the regional office that serves the town in which the discrimination took place.

CHRO - Capital Region Office

999 Asylum Avenue, Second Floor

Hartford, CT 06105

860.566.7710

TDD: 860.566.7710

CHRO - West Central Region Office

Rowland State Government Center

5 West Main Street, Suite 210

Waterbury, CT 06702

203.805.6530

TDD: 203.805.6579

CHRO -Southwest Region Office

350 Fairfield Avenue, 6th Floor

Bridgeport, CT 06604

203.579.6246

TDD: 203.579.6246

CHRO -Eastern Region Office

100 Broadway

Norwich, CT 06360

860.886.5703

TDD: 860.886.5707

U.S. Equal Employment Opportunity Commission (EEOC)

Boston Area Office:

1 800-669-4000

TDD 800-669-6820.

EEOC – Boston Area Office

John F. Kennedy Federal Building

475 Government Center

Boston, MA 02203f