

# Identifying Pregnancy Discrimination at Work: 10 Questions to Ask Yourself

December 5, 2024 • Legal Updates & Insights

By: Meredith A. Firetog

Pregnant workers and working parents are legally protected by several federal and state laws. Pregnancy discrimination is a form of gender discrimination, which comes with many legal protections; yet some signs of pregnancy discrimination may go unrecognized or manifest as subtle changes that make a big difference in your career growth.

Wigdor LLP specializes in employment law, including racial, gender, and [pregnancy discrimination](#) – and their intersection. Our clients span high-profile, traditional, and unique cases across pregnancy discrimination scenarios. In our experience, we've found 10 key questions to ask to discover indicators of pregnancy discrimination.

## 1. What if they do not provide me with any accommodations?

Pregnancy may require various accommodations, from creating physically comfortable settings to scheduling that allows for rest, hydration, and frequent bathroom breaks. Not being offered reasonable accommodation to ensure your safety and well-being could be a red flag that you are experiencing pregnancy discrimination.

## 2. What if my job responsibilities change unreasonably?

Be aware of changes like being assigned an excessive workload outside your job description or being transferred from a good assignment. Consider whether your responsibilities have been changed beyond their original scope and beyond what is feasible in the time given your physical condition. These additional tasks might include physical activity like heavy lifting, strenuous amounts of work, or unreasonable hours without sufficient breaks. Also consider whether your responsibilities have been diminished or removed following your announcement of your pregnancy.

## 3. What if I am asked about pregnancy or children in a job interview?

Making hiring decisions based on an individual's status as a parent or their pregnancy plans is a clear red flag for pregnancy discrimination. A potential employer should never ask about pregnancy as part of the qualification for a job position. If they act this way before the first day of a job, beware – it might be a

sign of much bigger problems of discrimination.

#### **4. What if I am denied promotions or raises due to pregnancy?**

An unwarranted demotion or unexplained impediment to your career development could be indicative of pregnancy discrimination. The “Mommy Track” has become a phrase used to describe negative career path for mothers who are falsely considered less deserving of professional development and incorrectly perceived as automatically less interested in employment after becoming mothers.

Wigdor has represented multiple “Mommy Track” lawsuits, including a VP’s suit against Deutsche Bank and another against Goldman Sachs in which female employees were deprioritized in comparison to their male counterparts who were deemed “willing to choose work over family.” Employees should not be intentionally excluded from events or opportunities for career growth such as training or conferences. Advancement should be based on positive job performance and not prevented due to gender, pregnancy, or parental status.

#### **5. What if I suddenly lose my health benefits or access to maternity leave?**

Pregnancy should not result in a loss of health benefits or health insurance. According to the Family and Medical Leave Act (FMLA), protected employees can take up to 12 weeks of unpaid leave due to pregnancy. FMLA also protects foster and adoptive parents. Refusing to grant leave or interfering with your ability to take such leave is a direct violation of your rights.

#### **6. What if I am treated differently from my colleagues after a pregnancy announcement?**

If you experience a huge contrast in treatment after sharing your pregnancy news, in comparison to non-pregnant colleagues, this could be pregnancy discrimination. Preferential treatment to others could range from favorable client or project assignments that could impact relationships and future compensation. Creating a hostile environment or targeting harassment toward pregnant individuals or parents is discrimination. For example, in a suit against Bayer Corp., we represented a client who had been named “Working Mother of the Year” and who placed a pregnant woman she supervised in charge of a long-term project. Her bosses reassigned the project to a man “solely because she intended to take her legally protected maternity leave.”

#### **7. What if there is no room at work to pump breast milk,**

## post pregnancy?

Most employers are required to provide break time and a private, functional space for expressing breast milk that does not also serve as a bathroom. In 2022, the Consolidated Appropriations Act included the [PUMP for Nursing Mothers Act](#), which expanded rights for agricultural workers, nurses, teachers, truck and taxi drivers, home care workers, and managers. In our own class action suit against Avon, regarded as “the first suit ever filed in the United States on behalf of women who pump breast milk as a class,” Wigdor Partner Jeanne Christenson noted our client felt “marginalized and penalized” for taking short breaks to express breast milk. She was also teased and mocked for making “milk for her cereal,” which is a plainly inappropriate joke.

## 8. What if I am subjected to negative or demeaning comments or jokes from colleagues?

What your colleagues or supervisors say about your physical appearance, role as a parent, or assumptions about how your work might change for the worse due to a pregnancy are all red flags. Offhanded comments or jokes could be indicative of an overall hostile work environment. Your employer cannot tell you that a lower position would better fit your capabilities due to a pregnancy. They should also never indicate that pregnancy will interfere with your work performance and/or make you less committed to your career. Comments around pregnant women being emotional, irrational, or uncommitted to their jobs are all signs of discrimination.

## 9. What if I see reductions in my salary?

Reducing salary or bonuses based on pregnancy status can be a clear sign of pregnancy discrimination. This could manifest as a sudden or significant reduction in hours, clients, or projects impacting overall compensation. Any of these reductions not tied to your performance are against the law.

## 10. What if I am laid off or fired without cause shortly after a pregnancy announcement?

Anyone who is terminated without cause [according to applicable state and federal laws] because of a pregnancy announcement is likely experiencing discrimination. According to the [U.S. Department of Labor](#), “Retaliation occurs when an employer (through a manager, supervisor, administrator or directly) fires an employee or takes any other type of adverse action against an employee for engaging in protected activity.” Protected activity includes individuals under the FMLA who are able to take up to 12 weeks of unpaid, job-protected leave for pregnancy reasons. The U.S. Department of labor describes “An adverse action is an action which would dissuade a reasonable employee from raising a concern about a possible violation or engaging in other related protected activity. Retaliation can have a negative impact on overall employee morale.” And don’t forget retaliation could include termination, but it could also encompass an unwarranted negative performance review not based on performance.

## Legal Resources

[New York State is leading Prenatal Personal Leave](#) as the first state where employers must pay for prenatal personal leave.

[The Federal Pregnancy Discrimination Act \(PDA\)](#), in combination with the [Pregnant Workers Fairness Act \(PWFA\)](#) and state and city laws including New York's paid prenatal personal leave and New York's Right Nursing Mothers to Express Breast Milk, are designed to protect employees from unfair discrimination due to pregnancy, childbirth, or related medical conditions. If you feel you have been discriminated against, you have the right to file a complaint with the Equal Employment Opportunity Commission (EEOC), which our team can help you file. Not only will this ensure you are protected, it may set a new standard benefitting future employees. Every protected individual deserves a fair, inclusive workplace.

These 10 questions and indicators of pregnancy discrimination are just the start of the conversation around the topic. For more information and to speak with our experienced partners, reach out to Wigdor LLP.