

Navigating Your Right to Pregnancy Accommodations

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As many women work late into their pregnancies, comprehensive laws on workplace pregnancy accommodations are needed to ensure that the welfare of a mother and her child are protected. *The New York Times* recently published an article titled, "[Miscarrying at Work: The Physical Toll of Pregnancy Discrimination](#)," that recounts the disturbing experiences of pregnant women who were *legally* denied critical accommodations under federal law. Fortunately, New York laws provide greater protections and rights to pregnant women than those provided under federal law. This article gives an overview of the standard and types of accommodations afforded under the federal, New York State and New York City pregnancy accommodation laws.

Pregnancy Accommodations Under Federal Law

Under federal law, pregnant women are entitled to accommodations under the [Pregnancy Discrimination Act](#). The Supreme Court decision in [Young v. United Parcel Service \("UPS"\)](#) heightened the standard for asserting a claim under the Pregnancy Discrimination Act. In order to bring a claim under the Pregnancy Discrimination Act, a pregnant woman must show that her employer offers accommodations to non-pregnant employees that are "similar in their ability or inability to work," and the employer did not have a legitimate reason to refuse to accommodate her. However, if a company has a rule against taking frequent breaks for all employees, then the company can permissibly deny a pregnant woman's request for frequent breaks to alleviate the strains of pregnancy.

In addition to the Pregnancy Discrimination Act, a pregnant woman may be able to seek accommodations under the Americans with Disabilities Act ("ADA"), which was expanded in 2008 to make clear that a physical impairment that substantially limits an individual's ability to lift, stand or bend, such as typical pregnancy-related conditions, are ADA-covered disabilities.

Pregnancy Accommodations under New York State Law

The New York State Human Rights Law ("NYSHRL") requires employers with four or more employees to provide reasonable accommodations to women who have what is referred to as a "pregnancy-related condition." A pregnancy-related condition is defined as "a medical condition related to pregnancy or childbirth that inhibits the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques." In comparison to the Pregnancy Discrimination Act, the NYSHRL offers a higher degree of protection to pregnant workers by treating pregnancy-related conditions as temporary disabilities.

Types of accommodations under the NYSHRL include:

- modifications to the manner in which work is performed;

- reassignment to a more suitable position;
- a modified working schedule;
- more frequent breaks; and
- time off for medical visits and to recover from childbirth.

Pregnancy Accommodations Under New York City Law

In 2013, New York City enacted its version of the [Pregnant Workers Fairness Act](#), which amended the New York City Human Rights Law (“NYCHRL”) to affirmatively require employers to accommodate “the needs of an employee for her pregnancy, childbirth or related medical condition,” without regard to whether the employee’s limitation qualifies as a disability. The amendment aims to reduce the health and safety risks of expecting mothers by requiring employers to more liberally grant accommodations to pregnant employees. For example, a pregnant woman seeking a reasonable accommodation under the NYCHRL is not required to provide medical confirmation of her pregnancy, childbirth or any related condition, unless she is seeking an absence away from work beyond the presumptive six-to-eight-week recovery period following childbirth.

Under the NYCHRL, a pregnant employee can obtain accommodations ranging from small adjustments to scheduling and breaks to a transfer to an alternate position if one is available – so long as the employer cannot demonstrate that providing the accommodation would impose an “undue hardship” on the employer’s business. The NYCHRL also goes further to provide accommodations related to fertility treatment, abortions and miscarriages. Another unique aspect of the NYCHRL is that it requires employers to engage in a “cooperative dialogue” with employees about accommodations. A more detailed discussion of the cooperative dialogue requirement can be found [here](#).

Anti-Retaliation Provisions

Pregnant employees should not be afraid to make an accommodation request. The accommodation laws discussed above make it unlawful for an employer to retaliate against or penalize an employee for seeking or receiving an accommodation.

An employee who feels like her right to a pregnancy accommodation has been violated should promptly consult an attorney. Wigdor LLP has extensive experience representing employees in connection with pregnancy accommodation claims. If you believe that your right to an accommodation has been violated, or your employer retaliated against you for making an accommodation request, the attorneys at Wigdor LLP would be happy to speak with you about your rights.

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