



WORKPLACE RIGHTS FOR PREGNANT AND NURSING MOTHERS

Legal Aid Society – Employment Law Center



LEGAL AID SOCIETY – EMPLOYMENT LAW CENTER WORK & FAMILY PROJECT

- Non-profit legal aid organization
- Founded in 1916
- Since 1983, the LAS-ELC's Work and Family Project has advocated to protect the employment rights of working families
- LAS-ELC provides legal advice and information through a toll-free helpline, direct representation, policy advocacy, and public education and outreach



PREGNANCY DISABILITY LEAVE (PDL)

- Women who work for an employer with five or more employees are entitled to:
 - Reasonable accommodations
 - Job-protected leave
 - Up to four months while disabled by pregnancy, childbirth or a related medical condition
- Employers must continue health care benefits during pregnancy disability leave.




STATE DISABILITY INSURANCE (SDI)

- If a worker pays in to the state disability insurance program (usually through paycheck deductions), then she may be eligible to receive partial wage replacement while temporarily disabled by pregnancy, childbirth or a related medical condition.




FAMILY & MEDICAL LEAVE ACT (FMLA)

- FMLA provides 12 weeks of job-protected time off for:
 - Employees who have worked for the employer for 1 year or more; AND
 - 1250 hours or more in the year before the leave begins;
 - AND who work for an employer with 50+ employees; to
 - Care for their own serious health condition;
 - Care for a family member's serious health condition; or
 - Bond with a new child.
- FMLA time may run concurrently with job-protected leave under PDL

CALIFORNIA FAMILY RIGHTS ACT (CFRA)



- Similar to FMLA, CFRA provides up to 12 weeks of job-protected time off to eligible employees.
- However, job-protected time off under CFRA does NOT run concurrently with time under PDL thus allowing eligible California employees 12 additional weeks of job-protected leave to bond with a child after they recover from pregnancy disability.

PAID FAMILY LEAVE (PFL)

- Workers who pay in to SDI are also eligible to receive up to 6 weeks of partial wage replacement while taking time off from work to care for a close family member with a serious health condition or to bond with a new child.
- PFL doubled the median duration of breastfeeding for all new mothers who used it.
- PFL can be used intermittently.



DISCRIMINATION

DFEH v. Acosta Tacos,
(Cal. FEHC 2009)

- Marina Chavez was fired for breastfeeding her newborn, premature baby in her car during her lunch break.
- "Breastfeeding is an activity intrinsic to the female sex."
- Firing someone because of lactation is sex-based discrimination under California law.

EEOC v. Houston Funding II, Ltd., (S.D. Tex. Feb. 2, 2012):

- Donnicia Venters was denied reinstatement after asking if she could use a back room to pump milk.
- "Firing someone because of lactation or breast-pumping is not sex-based discrimination."
- The EEOC stated it will likely appeal the decision.



CALIFORNIA LAW

In 2001, California passed laws requiring lactation accommodation for breastfeeding mothers at work.
Cal. Lab. Code §§ 1030 - 1033

BREAK TIME

- Employers are required to provide a reasonable amount of break time for lactating employees to express milk.
- Time used to express milk may be used concurrently with other break time provided.
- Employers must provide additional break time if needed, but the additional time may be unpaid.
- Employers are not required to provide additional breaks if break time would constitute a serious disruption to the employers' operations.



PRIVATE LOCATION

- Employers must provide a private space, other than a bathroom, near the employee's workspace where breastfeeding mothers may express milk.



FEDERAL LAW

The Patient Protection and Affordable Care Act went in to effect in 2010 and requires lactation accommodations at work.
29 U.S.C. § 207(r)

FEDERAL REQUIREMENTS

- An employer must provide reasonable break time for a non-exempt employee to express breast milk for one year after her child's birth.
- The employer must provide a private location, shielded from view. Bathrooms are not permissible lactation rooms. A temporary space may be used, if otherwise suitable.
- An employer with fewer than 50 employees is not required to provide lactation accommodations if doing so would impose an undue hardship.
- State laws requiring lactation accommodations may be more protective than Federal law.

ENFORCEMENT



- California Division of Labor Standards Enforcement (DLSE)
 - (866) 924-9757
 - www.dir.ca.gov/dlse
- U.S. Department of Labor (DOL)
 - (866) 487-9243
 - www.dol.gov



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www.las-elc.org
Work & Family Hotline
(800) 880-8047

QUESTIONS?