

FACT SHEET:

Protecting Individuals from Pregnancy Discrimination

The Department of Labor (DOL) Civil Rights Center's (CRC) Role:

CRC promotes equal opportunity by assessing, investigating, and adjudicating discrimination complaints and conducting compliance reviews to administer and enforce equal opportunity laws. CRC enforces several legal authorities that protect individuals from discrimination, including Section 188 of the Workforce Innovation and Opportunity Act (WIOA), 29 U.S.C. § 3248; DOL's regulations implementing WIOA Section 188 at 29 C.F.R. part 38; Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681 *et seq.*; and DOL's regulations implementing Title IX at 29 C.F.R. part 36. This fact sheet describes the ways these protections cover individuals who are pregnant and/or of childbearing capacity, as well as those affected by pregnancy, childbirth, or related medical conditions. It also briefly outlines some additional pregnancy protections that are not enforced by CRC but may be applicable to covered entities, particularly in their role as employers.

Protection from Discrimination under Section 188 of WIOA:

Section 188 of WIOA applies to recipients of federal funds under WIOA Title I, including, for instance, state workforce agencies, one-stop operators and American Job Centers (AJC), On-the-Job Training employers, and Job Corps contractors and center operators. 29 C.F.R. § 38.4(zz).

- Section 188 of WIOA prohibits discrimination based on sex. WIOA regulations make clear that discrimination on the basis of pregnancy, childbirth, or related medical conditions, including childbearing capacity, is a form of sex discrimination and a violation of the nondiscrimination provisions of WIOA. Under WIOA's implementing regulations, recipients cannot deny individuals who are pregnant, who become pregnant, or who plan to become pregnant opportunities for or access to any aid, benefit, service, or training on the basis of pregnancy. 29 C.F.R. §§ 38.7, 38.8. Recipients may not treat persons of childbearing capacity, or those affected by pregnancy, childbirth, or related medical conditions, adversely in accessing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity.
- In their covered employment practices, recipients must treat people of childbearing capacity and those affected by pregnancy, childbirth, or related medical conditions the same for all employment-related purposes, including receipt of benefits under fringe-benefit programs, as other persons not so affected but similar in their ability or inability to work.
- Pregnancy-related medical conditions include but are not limited to: Lactation; disorders directly related to pregnancy, such as preeclampsia (pregnancy-induced high blood pressure), placenta previa, and gestational diabetes; symptoms such as back pain; complications requiring bed rest; and the after-effects of a delivery including Post Partum Depression.

WIOA regulations also explicitly prohibit harassment based on sex, including harassment based on pregnancy, childbirth, and related medical conditions. 29 C.F.R. § 38.10(b).

Protection from Discrimination under Title IX

Title IX applies to education programs that are recipients of federal financial assistance, including grantees under WIOA and/or the Wagner-Peyser Act. Title IX and its implementing regulations prohibit discrimination based on sex, which includes a prohibition on discrimination or exclusion of any person on the basis of pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom. 29 C.F.R. §§ 36.100, 36.300.

Recipients shall not discriminate against any student, or exclude any student from their education program or activity, including any class or extracurricular activity, on the basis of such student's pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery therefrom, unless the student requests voluntarily to participate in a separate portion of the program or activity of the recipient.

Examples of incidents that could, depending on the circumstances, raise WIOA Section 188 and/or Title IX concerns:

A woman goes to an American Job Center to ask questions about job training opportunities in construction. During a conversation with a staff member about different training programs available, she discloses that she is pregnant and is excited about a training program, such as in construction, because she wants a job that will enable her to support her child. The staff member tells her that construction is not an appropriate career for a young mother, that there is no way she could complete the training before she would have to drop out to give birth, and advises that she should come back after her baby is born to look into an administrative job training opportunity instead.¹

A student in a job readiness class explains to her instructor that she is pregnant and needs to use the restroom often. She also lets the instructor know that she will have to miss a day of class the next week to attend a doctor's appointment. The instructor tells her she needs to get a doctor's note or drop the class as there is a 100% attendance policy. However, the instructor has allowed other students to miss class for medical appointments and has never required documentation.

A pregnant individual receiving unemployment insurance stops receiving benefits in the 39th week of pregnancy. The pregnant individual calls the unemployment insurance system to see what the problem is, and the office explains that the policy is to automatically cut off benefits to any pregnant recipients in their 39th week of pregnancy

¹ While a recipient has a duty to protect the health and safety of participants, it has no extra duty to protect pregnant or potentially pregnant persons from dangerous training or work conditions. Therefore, sex-specific job restrictions with the purpose of protecting a pregnant individual or fetus cannot be justified.

because the unemployment office assumes, after that point, pregnant individuals will stop or are not capable of looking for work, which is required to receive benefits.

A pregnant woman is a participant in a job training program. Once it becomes more obvious that she is pregnant, she is subjected to offensive comments from other participants about her pregnancy multiple times a day, including sexual jokes, inappropriate questions, and lewd comments about her weight and appearance. She brings this to the attention of staff at her program, who tell her that they do not get involved in “interpersonal drama” amongst the participants and that she can always quit the program.

An individual in a job training program recently had a baby and needs to pump breast milk multiple times throughout the workday. She submitted a reasonable accommodation request to be provided with lactation breaks and a clean, private space to express breast milk. Her job training program denied her accommodation request even though other participants have been provided with similar accommodations for other medical conditions. For example, the job training program provides breaks in a private space to diabetic participants who need to eat snacks or give themselves insulin.

An employment agency posts a job announcement that states that it will not accept applications from pregnant individuals or individuals who may become pregnant, because the work is seasonal and primarily based outside.

What can a person do if they experience discrimination based on pregnancy in a program or activity funded by DOL?

Anyone who believes that discriminatory actions have been taken by a covered entity may file a complaint with CRC.

For more [information about filing a complaint](#) or assistance and additional resources, please visit [CRC's homepage](#) or contact CRC by phone at 202-693-6502 or by email at CRCEXternalComplaints@dol.gov. If you are deaf, hard of hearing, or have a speech disability, please dial 7-1-1 to access telecommunications relay services.

Other Pregnancy Protections

There are other legal authorities in place to protect job applicants and employees from pregnancy discrimination that are not enforced by CRC. Below is a brief outline of some of these protections. State law may also provide additional protections and requirements. To the extent these laws are applicable to the workforce development system, more information can be found on the enforcing agency's website.²

² For Job Corps programs, the [Job Corps Policy and Requirements Handbook \(PRH\)](#) contains provisions prohibiting discrimination based on sex, including pregnancy, childbirth, and related medical conditions..

- **The Providing Urgent Maternal Protections for Nursing Mothers Act (PUMP Act):** Enforced by the DOL's Wage and Hour Division, the PUMP Act broadens workplace protections for employees to express breast milk at work.
- **The Family and Medical Leave Act (FMLA):** Enforced by the DOL's Wage and Hour Division, the FMLA provides covered employees with unpaid, job-protected leave for certain family and medical reasons.
- **The Pregnant Workers Fairness Act (PWFA):** Enforced by the Equal Employment Opportunity Commission (EEOC), the PWFA requires a covered employer to provide a reasonable accommodation to a qualified employee's or applicant's known limitations related to, affected by, or arising out of pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an undue hardship.
- **Title VII of the Civil Rights Act of 1964 (Title VII):** Enforced by the EEOC, Title VII protects applicants and employees from discrimination based on pregnancy, childbirth, or related medical conditions and requires covered employers to treat workers affected by pregnancy, childbirth, or related medical conditions the same as others similar in their ability or inability to work. Title VII was amended by the Pregnancy Discrimination Act (PDA) to make clear that discrimination based on pregnancy, childbirth, or related medical conditions is a form of sex discrimination prohibited by Title VII.
- **Americans with Disabilities Act (ADA):** Enforced by the EEOC, the ADA protects applicants and employees from discrimination based on disability and requires covered employers to provide reasonable accommodations to a qualified individual with a disability if the reasonable accommodation would not cause an undue hardship for the employer. Some pregnancy-related conditions, such as gestational diabetes, may be disabilities under the law, but pregnancy itself is not a disability under the ADA.

Please note that this resource does not have the force and effect of law. CRC's enforcement of WIOA stems from WIOA Section 188 and Title IX, as described above, and their implementing regulations.