Protecting Pregnant Women’s and Caregivers’ Rights at Work

TOOLKIT

for Advocates & Organizers
About ERA

Founded in 1974, Equal Rights Advocates (ERA) is a national civil rights organization protecting and expanding economic and educational access and opportunities for women and girls. Through our campaign approach—incorporating public education, legislative advocacy, and litigation—ERA seeks to assist women and girls throughout a life-long continuum: ensuring equality in their educational experience, combating sex discrimination in employment, and advocating to make workplaces more hospitable to working families. ERA has been a pioneer in advancing gender equity at work and in schools for decades. From ensuring the passage of the Pregnancy Discrimination Act and the Family and Medical Leave Act, to arguing seminal gender rights cases before the United States Supreme Court, ERA is known for being the home of visionary leaders, unflinching advocates, and hard-nosed litigators for justice. ERA is one of the only advocacy organizations nationally that directly represents women workers in impact litigation from its initial stages all the way to the Supreme Court.

For more information on ERA’s projects or to get legal help, visit our website at www.equalrights.org
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ERA’s Tools for Gender Justice Project

ERA has a long history of engagement in community legal education and Know Your Rights training, and decades of experience providing direct legal services to thousands of low-wage workers through our national free Advice & Counseling service. Through this experience, we have learned that, 50 years after the passage of civil rights laws designed to ensure equal employment opportunity and equal pay, far too many working women – especially low-wage workers, women of color, and immigrants – continue to face significant obstacles to fair pay and just working conditions, including:

- Less pay than men for the same or comparable work;
- Exclusion from higher-paying, traditionally male-dominated jobs and occupations;
- Chronic and/or egregious sexual harassment in the workplace;
- Discrimination and penalties for taking time off due to pregnancy and family caregiving responsibilities;
- Retaliation for speaking about pay, or for exercising their legal rights; and
- Deprivation of earned wages (wage theft).

Through our Tools for Gender Justice project, ERA seeks to expand the movement for gender justice, advance gender equity in the workplace, and improve the economic status of women workers by: (1) increasing workers’ centers’ capacity to engage low-wage women workers; (2) informing and expanding ERA’s direct legal services and impact litigation on behalf of low-wage women workers; and (3) integrating gender-conscious advocacy into the wage justice movement.

With these goals in mind, ERA’s Tools for Gender Justice toolkits focus on three of the major barriers to workplace justice and economic security facing low-wage women workers across the country:

- Sexual harassment;
- Pregnancy and caregiving discrimination; and
- Pay discrimination and unequal pay based on sex.

Each toolkit provides information, resources, and general tips designed to help leaders and organizers of low-wage workers improve their own understanding of workers’ rights, employers’ legal obligations, and potential legal avenues for relief. Each toolkit also includes guidance on addressing and seeking remedies for retaliation that is so often faced by workers when they seek to exercise, or vindicate employers’ violations of, their rights. Through dissemination of these toolkits, ERA hopes to strengthen advocates’ and organizers’ capacities to educate, engage, and empower women workers, thereby increasing women’s participation and leadership in organizing campaigns and advocacy efforts. By building awareness of and promoting greater attention to gender (in)justice issues in the workplace, we seek to help workers hold low-road employers accountable for violations of their legal rights, and improve their ability to act collectively in order to change the conditions and practices that impede economic justice and advancement for working women.
The materials in this toolkit are intended to provide information and guidance to advocates from workers’ centers and membership organizations, community-based organizations, and unions when they assist their members who have experienced sexual harassment in the workplace and/or retaliation for reporting it.

The toolkit provides:

- information about the legal rights of employees who are pregnant or have family responsibilities (mothers, fathers, and other family supporters);
- practical information on how employees can obtain leave and/or workplace accommodations;
- information on what you can do if an employee’s legal rights have been violated; and
- resources for further legal information and other services.

This toolkit is intended to provide general information only, not legal advice. We strongly recommend that any employee whose rights may have been violated speak with an attorney in her state, or contact one of the resources listed at www.equalrights.org/legal-help/other-resources in this toolkit.

ERA’s free Advice and Counseling service can assist callers in many languages. Workers can reach the Advice and Counseling service in two ways:

**Telephone: (Toll-free) 1-800-839-4372**

**Online: www.equalrights.org/legal-help**

Because this toolkit is designed to reach a national audience, it focuses on the protections afforded by federal law. However, most states also have their own laws prohibiting discrimination against employees, some of which may be broader or more protective than the federal laws discussed here.
Discrimination Against Pregnant Women and Caregivers in the Workplace: The Legal Backdrop

Labor force participation of mothers and other caregivers has increased dramatically over the last three decades, and women have become more likely to work continuously over their life cycle. At the same time, many women and an increasing number of men have been treated unfairly at work because they were pregnant or had family caregiving responsibilities.

Through our legal advice and counseling hotline, Equal Rights Advocates hears from hundreds of women and men each year facing discrimination and violations of their rights. Women are far too often refused employment, paid less, laid off, fired, demoted, or otherwise treated unfairly at work when they give notice of their pregnancies or become caregivers. They are often denied or discouraged from taking time off or seeking a workplace accommodation when they need one. Women and men are also penalized at work when they care for family members. This unfair treatment takes a huge toll on the health and economic well being of workers and their families.

When Maya, a server at a national restaurant chain, became pregnant and started showing, her supervisor began cutting her schedule and complaining about her appearance. Eventually her supervisor took her off the schedule, told her that customers did not want to look at a pregnant server, and advised her to come back after she had the baby. As a result, Maya lost three months of pay, she could not afford rent and lost her housing, and the stress took a toll on her and her baby's health.

What Maya’s employer did was illegal. But stories like Maya’s go unreported because the victims of workplace discrimination may be too burdened with looking for a new job and providing care for their growing families, or they may fear that speaking up will cost them their jobs. What happened to Maya is also happening to employees in every industry, and in every state of the country.

ERA designed this toolkit to equip advocates and organizers with the information they need to educate pregnant women, new parents, and caregivers about their rights. Armed with this knowledge, employees can in many cases prevent harm before it occurs, or pursue justice when their rights are violated.

Several federal laws specifically protect pregnant or caregiving employees from discrimination and other unfair employer actions.
Legal Protections For Pregnant Women and Caregivers in the Workplace

Protection against discrimination on the basis of sex, pregnancy or pregnancy-related disability

Title VII of the Civil Rights Act of 1964 (Title VII) prohibits employers with 15 or more employees from taking adverse employment actions against employees on the basis of their sex or pregnancy.¹ “Adverse employment action” means anything that negatively affects a worker’s terms or conditions of employment, such as termination (being fired) or lay-off, demotion, harassment, reduction of hours, reduction in salary or wage rate, refusal to hire, failure to promote, or failure to provide benefits provided to other employees.

- **Sex discrimination:** Employers often make assumptions about the ability of mothers or female caregivers to commit themselves to work, yet they do not make the same assumptions about fathers. On the other hand, sometimes employers provide workplace flexibility to women while denying the same flexibility to men, based on the assumption that men do not or should not take on caregiving responsibilities. Actions based on these assumptions are sex discrimination and likely violate Title VII.

- **Pregnancy discrimination:** Employers are prohibited from taking action against an employee because the employee is pregnant, gave birth, or has medical conditions related to pregnancy or childbirth. For example, employers cannot force a pregnant employee on leave or fire her simply because the employer does not believe the workplace is fit for a pregnant employee. Additionally, employers cannot refuse to provide pregnant employees opportunities for advancement because they assume that the employee will no longer be committed to the job.

¹ Title VII also protects employees against discrimination on the basis of race, color, national origin and religion.
Protection against discrimination on the basis of sex, pregnancy, or pregnancy-related disability

The Americans with Disabilities Act (ADA) prohibits employers who have at least 15 employees from discriminating against or failing to provide a reasonable accommodation to “qualified” employees because of the employee’s disability, perceived disability, or association with a person with a disability. Determining whether a worker will be considered “qualified” and whether the “disability” in question falls within the meaning of the ADA is complicated, but it is important to know that some pregnancy-related health conditions could be considered “disabilities” under the ADA.

Generally, a “disability” under the ADA is defined as a physical or mental impairment that substantially limits one or more “major life activities,” such as sitting, standing, or lifting. Pregnancy in itself is not a “disability,” but pregnancy-related medical conditions could be. For example, if a doctor has diagnosed a pregnant worker with a health condition like gestational diabetes, preeclampsia, hyperemesis, that is related to pregnancy or childbirth, then she may be considered “disabled” and entitled to protection against discrimination under the ADA. However, it is less clear whether an employee who has a normal and healthy pregnancy, but has been advised by her doctor not to lift more than a certain amount of weight while she is pregnant, would be considered “disabled” under the ADA.

Scenarios that might indicate discrimination on the basis of sex, pregnancy, or disability:

- Employer makes negative or stereotypical statements about an employee’s protected status (e.g., pregnancy, motherhood or fatherhood)
  - Example: “You can’t be a good mom and do a good job at work too.”
  - Example: “You’re pregnant again?”

- Close timing between when an employer finds out about the employee’s protected status and a negative action is taken against the employee
  - Example: An employee is taken off the schedule shortly after giving notice of her pregnancy.

- The employer treats other similarly situated employees better
  - Example: A working mom is fired for being ten minutes late, but another employee, who does not have parenting responsibilities, regularly comes in ten minutes late, without being disciplined or fired.
  - Example: A promotion becomes available and it is given to a male employee who just became a father instead of a better-qualified female employee who just became a mother.
Accommodations at work for pregnancy-related conditions

Employers who are covered by the ADA must provide “reasonable accommodations” to their employees with disabilities. As explained above, the definition of “disability” is complicated, but some pregnancy-related health conditions would likely qualify, which means that some pregnant workers have the right to “reasonable accommodation” for their pregnancy- or childbirth-related disabilities.

- **What is a “reasonable accommodation”?** A “reasonable accommodation” is an adjustment or modification of a person’s job duties, schedule, or working conditions that allows a qualified employee to work safely.

**Examples of a reasonable accommodation for employees with pregnancy-related disabilities could include:**

- Transfer to a light duty position
- Relief from heavy lifting duties
- Providing more frequent or longer rest or meal breaks
- Providing a sitting stool or chair
- Providing protective equipment from hazardous chemicals
- Allowing her to carry a water bottle on the premises
- Allowing her to reduce her schedule or take leave from work

An accommodation is considered “reasonable” so long as it does not pose significant or “undue” hardship on the employer. There is no hard and fast rule about whether an accommodation requested is reasonable or would impose an undue hardship on the employer. However, some important factors in determining whether or not an accommodation is reasonable include:

- The period of time the employee needs the accommodation;
- Whether or not the employer has granted similar accommodations to other employees with similar job duties in the past;
- How the requested accommodation impacts the job duties that the employee can and will fulfill; and
- How difficult (or easy) it would be for the employer to find or assign other workers to the job duties or tasks that the disabled employee could not/would not do.
Accommodations at work for pregnancy-related conditions

- **Lactation (breastfeeding) accommodation:** The Fair Labor Standards Act (FLSA), which is the federal law governing minimum wage and overtime requirements, requires certain covered employers to provide employees with lactation accommodation, which is the break time they need to express milk for the year after giving birth. These employers must provide a private space (other than a bathroom) to express milk.
  - Most employers are subject to the requirements of the FLSA, but some – like agricultural employers – are not covered by the law. Whether an employer is covered depends on the type of business it is and how much revenue the employer generates annually. In addition, some workers are “exempt” from (not protected by) the minimum wage, overtime, and lactation/break time requirements of the FLSA.
  - For more information about who is covered by the lactation and break requirements of the law, see the U.S. Department of Labor’s Wage and Hour Division Fact Sheet here: http://www.dol.gov/whd/regs/compliance/whdfs73.htm.

- **Same accommodations provided to other disabled, but non-pregnant, employees:** Under Title VII, employers must provide pregnant employees with workplace accommodations if they provide those accommodations to other similarly situated but non-pregnant employees. For example, if an employer relieves an employee who injured his back from his heavy lifting duties, the employer should provide the same accommodation to a pregnant employee who has the same position and duties.

**Time off for pregnancy or family care**

The Family and Medical Leave Act (FMLA) requires certain employers to give employees with serious health conditions or family caregiving responsibilities up to 12 weeks of unpaid, job-protected leave per year.

- An employee is generally covered by the FMLA if:
  1.) The employer has 50 or more employees within a 75-mile radius of the employee’s worksite (or if the employer is a government agency);
  2.) The employee has worked for the employer for a total of at least 12 months; and
  3.) The employee has worked for the employer for at least 1,250 hours within the past year (averaging around 25 hours per week for one year).

*Note: An employee can ask his or her employer if he or she is covered by FMLA, but employers do not always give the correct answer.*
Time off for pregnancy or family care

- An employee can take up to 12 weeks\(^2\) of FMLA leave per year for the following reasons:
  1. The employee cannot work due to his or her own serious health condition,\(^3\) including a condition related to pregnancy or childbirth;
  2. To provide care to a parent, child, or spouse\(^4\) with a serious health condition (such as taking them to doctor’s appointments, administering medicine, or providing physical or psychological assistance); or
  3. To bond with a newborn child, a newly adopted child, or a newly assigned foster child (mothers, fathers, and primary caregivers can take such bonding leave).

- With certain limited exceptions, when an employee requests or takes FMLA leave, her employer must:
  1. Tell the employee whether or not he or she is qualified for FMLA leave and provide notice to the employee of his or her FMLA rights.
  2. Grant the FMLA leave if the employee is qualified for the leave.
  3. Continue providing health insurance benefits to the employee while the employee is out on the leave.
  4. Return the employee to the same or comparable position upon returning from FMLA leave. (Note: a “comparable position” is one which has equivalent job duties and responsibilities, pay and opportunities for promotion.)
  5. Restore the employee’s seniority and other benefits to the level the employee had before taking FMLA leave.

- The FMLA does not require employers to pay employees while they are out on FMLA leave. However, an employee may be able to use any paid leave (such as sick time or vacation time) while she is taking FMLA protected leave, if she receives and has accrued such benefits.

- Employer may not discourage an employee from taking leave that he or she is entitled to take.

- The Americans with Disabilities Act (ADA) requires employers to provide reasonable accommodations to qualified employees with disabilities. If a pregnant woman qualifies as “disabled” and is covered by the ADA — or an equivalent state law — she may be entitled to leave as a reasonable accommodation for her (pregnancy- or childbirth-related) disability.

- Title VII also requires employers to provide pregnant employees with time off if they provide time off to other similarly situated employees with temporary disabilities.

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\(^2\) If the leave is taken for a medical reason (of the employee or a family member), the employee can take the leave intermittently or all at once, in whatever periods or chunks of time are medically appropriate and consistent with the employer’s timekeeping system. So, for example, an employee can take a half-day of FMLA leave for a doctor’s appointment, work a reduced schedule if recommended by a doctor, or take twelve weeks of FMLA leave to recover from a surgery, if medically advised.

\(^3\) A “serious health condition” generally involves one of the following: (a) An overnight hospital stay; (b) A medical condition that disables a person from working for more than three days and that involves treatment by a health care provider; (c) A chronic health condition that involves treatment by a health care provider; or (d) A terminal illness.

\(^4\) This includes same-sex spouses. Some state laws parallel to FMLA also include domestic partners.
Retaliation

When an employer penalizes an employee for engaging in “protected activity,” which includes asserting her rights or opposing a practice that is against the law (such as discrimination), it is called “retaliation.” Retaliation is illegal under federal law.

Some examples of protected activity in the area of pregnancy discrimination and family-medical leave include:

- Requesting family or medical leave under the FMLA
- Taking family or medical leave under the FMLA
- Requesting reinstatement into the same position after returning from FMLA leave
- Requesting accommodation or leave, if the employee has a reasonable belief that she may have a right to accommodation or leave (either under the ADA or Title VII)
- Receiving an accommodation (either under the ADA or Title VII)
- Complaining to an employer, the government, a union, or a lawyer about a violation of rights (such as discrimination or failure to grant leave), if the employee has a reasonable belief that his or her rights were violated
- Seeking or obtaining a remedy for a violation of rights, if the employee has a reasonable belief that his or her rights were violated

Other protections

An employee may also be entitled to accommodation, leave or other protections under her employer’s policy, a contract she has with the employer or a collective bargaining agreement. Additionally, many state laws also require employers to provide accommodation or leave to pregnant or caregiving employees. An employee should check her state laws to determine whether or not they cover family or medical leave at work. Resources and information on state law can be found in Appendix G.
Factors that Could Impact a Worker’s Legal Claim

**Warning Signs**

The following are facts that could weaken an employee’s potential discrimination claims under Title VII and the ADA:

- The employer has treated other employees who are not pregnant or are caregivers of the opposite sex the same as the employee.
- The employer has treated other employees who are pregnant or are caregivers of the same sex well, even though it has not treated the employee well.
- The person who made the negative decision or took the adverse action against the employee did not know she was pregnant or had family caregiving responsibilities at the time the decision was made.
- The employee had negative performance reviews, write-ups, or had faced other disciplinary or performance-related action before the employer took action against her.
- The employer can point to a legitimate business reason that it took action against the employee, such as that the employee was not qualified for a position, another employee was more qualified, the employee did not perform well, or the employee was insubordinate.
- The employer has never provided the type of accommodation requested to any other employee.
- The employee’s pregnancy-related restrictions prevented the employee from being able to perform major aspects of her job.\(^5\)
- The employee has already used his or her 12 weeks of FMLA leave.
- The employee wants to take leave to care for a family member that is not a parent, child or spouse, or the employee’s family member does not have a serious health condition.

\(^5\) Written job descriptions can be relevant in determining what the major aspects or “essential functions” of the job are.
Red Flags

The following facts would prevent an employee from making a successful federal discrimination or FMLA claim.

The employer is too small to be covered by federal law.
- For discrimination claims under Title VII/the Pregnancy Discrimination Act, the employer must have 15 or more employees.
- For FMLA claims, the employer must have 50 or more employees within a 75-mile radius of the employee’s worksite.

The employee has not worked enough months or hours to be covered by FMLA.
- The employee must have worked for the employer for at least 12 months and worked at least 1,250 hours within the past 12 months.

Claim is barred due to statute of limitations.
- Every legal claim has a deadline within which it must be undertaken, called a statute of limitations. Even if the worker you are assisting does not desire to sue her employer, if she wishes to pursue a claim under Title VII, there is a statute of limitations within which she will have to file a complaint (or charge) with Equal Employment Opportunity Commission (EEOC), the federal agency charged with investigating claims of workplace discrimination. She has either 180 or 300 days after the last act of discrimination to file an EEOC charge, depending on the state in which the discriminatory issue arose. If an employee fails to file a charge with the EEOC before the 180 or 300-day deadline, she will be barred from enforcing her rights or filing a lawsuit under Title VII.
- The rules for filing a claim under the FMLA are different from those of Title VII. Unlike Title VII, the FMLA does not contain an administrative exhaustion requirement, which means that a worker may, but does not have to, file a complaint with the local office of U.S. Department of Labor Wage & Hour Division if she believes her FMLA rights have been violated. If she chooses to go that route, the complaint should be filed within a reasonable time after the employee discovers that his or her FMLA rights have been violated. An employee also has the right to file a private lawsuit under the FMLA in any federal or state court of competent jurisdiction. The FMLA is subject to a statute of limitations. This means that, generally, suit must be filed within two years after the last action that the employee believes was in violation of the FMLA, or three years if the violation was willful. (It is up to the court to rule whether the alleged violation occurred and, if so, whether it was willful.)
- Employees who are pregnant, have recently given birth, or have family caregiving responsibilities at home should consider taking the following steps to prevent harm and prepare for potential legal action.

The worker is an “independent contractor,” not an “employee.”
Employers often deliberately misclassify workers to avoid paying payroll taxes and prevent employees from exercising their rights. Many low-wage workers who have been identified or treated as “independent contractors” are not even aware that they are actually employees, and are entitled to all the rights and protections granted by the laws described in this toolkit, even if their employer says they are not.

Independent Contractors

All of the laws covered by this toolkit confer rights on employees. People who work as independent contractors – that is, people are self-employed or running their own business – are not protected by any of these laws. However, many low-wage workers are misclassified as independent contractors when they are working for someone else and not actually in business for themselves. To determine whether someone is or is not a bona fide independent contractor, labels do not matter; merely calling a worker a “contractor” or saying that she is “self-employed” does not make it true. Sometimes, employers do not bother calling workers anything, but may be treating them as though they are not employees by:

- Paying in cash, with no deductions or withholding for taxes, and/or no wage statements (check stubs)
- Giving workers an IRS Form 1099 instead of a Form W-2 at the end of each year, to report their total compensation
- Paying workers “by the job” instead of by the hour, or other increment of time
- Paying workers only once per month or less often, instead of at least twice monthly

Accommodation and Leave

Seek medical advice

If an employee thinks she may need leave or accommodation relating to her pregnancy or for family caregiving, she should seek advice from a health care provider.

For pregnancy: If the employee is pregnant, she should discuss her job duties with her health care provider as soon as possible, and discuss whether or not she will need an accommodation at work, and what the employee thinks would be reasonable, given, for example, the size of the employer, whether she can get help from co-workers, and/or whether there are other jobs available for which she is qualified. If the employee works in an environment that she thinks may be unhealthy for her while pregnant (e.g., because of physical aspects of the job or high stress), she should tell her health care provider.

A pregnant employee should consult with her health care provider about how much time off she should take in light of her job duties and her health conditions, knowing that this could change as her pregnancy advances. Many pregnant employees can work all the way up to the day they give birth, while others may need to go on a reduced schedule, or even be put on bed rest for weeks or months before their due date. Health care providers often recommend that pregnant employees take leave for up to four weeks prior to their due date and six to eight weeks after birth, but these times can vary. If the employee thinks that her employer will only grant a limited time of leave, she should also discuss that with her health care provider.

For family care: If the employee needs to take leave to care for a seriously ill family member, the employee should find out from the family member and/or the health care provider about the medical need to provide care and the estimated period(s) of leave that the employee may need to take to care for the loved one.

1. Seek medical advice
2. Find out about the employer’s leave and accommodation policies
3. Determine eligibility for leave and accommodation under federal and state laws
4. Provide notice of pregnancy to employer
5. Propose a leave or accommodation plan
6. Request leave or accommodation from the employer
7. Obtain certification from health care provider
8. Try to maintain a positive relationship with the employer and make clear your commitment to work
9. After the leave or accommodation is granted or denied
Accommodation and Leave

2 Find out about the employer’s leave and accommodation policies

Next, the employee should find out about the employer’s accommodation and leave policies, including whether the leave given is paid or unpaid. Employer accommodation and leave policies can typically be found in the following places:

- The employee handbook (often the employer’s leave policies are under sections about disability leave, maternity/paternity leave, family leave, sick leave, vacation or paid time off)
- Packet of information provided when the employee began working for the employer
- The employee’s contract of employment
- The collective bargaining agreement between the employer and the employee’s union
- The employer’s website for employees

If the employee cannot find this information, the employee can ask his or her union, the employer’s human resources department, or a supervisor.

Additionally, the employee should determine the amount of sick and vacation time (if any) that he or she has accrued and will have accrued by the date he or she wants to take leave.

3 Determine eligibility for leave and accommodation under federal and state laws

The employee may not know whether or not she is eligible for accommodation or job-protected leave under federal and state laws. You can consult Appendices B & C of this Toolkit to help determine an employee’s eligibility for leave and accommodation under federal law, or call ERA’s Advice and Counseling Hotline, at 1-800-839-4ERA (4372).

Many state laws provide employees with rights to pregnancy-related accommodations and/or family and medical leave above and beyond what federal law gives. Look to the resources listed in Appendix G of this toolkit to find out more about the state laws that provide additional or different types of leave and accommodation rights.
Accommodation and Leave

Provide notice of pregnancy to employer

It is generally up to an employee when to give an employer notice that she is pregnant. Below are tips that may be helpful to any employee in making that decision.

■ Tips for pregnant job applicants

– Prospective employers should not ask an applicant if she is pregnant or plans to get pregnant soon. If an employer does ask the question, the employee should take note of the question. How the employee responds is up to her: pregnant job applicants are not required to tell prospective employers that they are pregnant. Each individual can choose whether or not to disclose her pregnancy during the application process.

– Even though it is illegal, an employer may nonetheless choose not to hire a pregnant applicant who discloses her pregnancy, and then cite some other (non-discriminatory) reasons for making the hiring decision, which makes it difficult for a worker to know whether she has been discriminated against, or to hold the employer accountable for unlawful discrimination. This is one reason why many women choose to wait until they have received a job offer to disclose their pregnancies. Employers may be less likely to rescind an offer or refuse to let someone work after she discloses that she is pregnant because doing so would so clearly expose them to potential liability under anti-discrimination laws.

■ Tips for pregnant employees

– Pregnant employees are generally not required to give their employers notice of their pregnancies at any time. It is up to each woman to decide whether and when to inform her employer that she is pregnant. Sometimes the employee may want to tell the employer early on to give the employer more time to plan, or so that the employee can work out an accommodation at work. However, if the employee fears that the employer will discriminate or fail to provide opportunities for advancement as a result of telling the employer about her pregnancy, she may choose to wait to give notice until she begins showing, or until she needs to request an accommodation or leave.
Propose a leave or accommodation plan

Pregnant employees should consult with their health care providers to determine how much leave and/or what type of accommodation they may need during and/or after their pregnancy. The more that health care providers know about an employee’s job duties and working conditions, the easier it will be to figure out exactly what kind of accommodation or leave may be needed and for how long. Once an employee informs her employer that she has a pregnancy-related disability and is requesting an accommodation, she should prepare to engage in an “interactive process” – meaning, a dialogue – in which different possible accommodations may be proposed and discussed, and then either adopted or rejected. Before or during this process, it is a good idea to find out what an employer’s policy is with respect to accommodating and granting leave to disabled employees who are not pregnant. The employee should also find out if the employer offers any paid leave benefits for which she is eligible.

Request leave or accommodation from the employer

When? The employee should generally request an accommodation for a pregnancy-related disability as soon as she can, to give herself and her employer the most time to find an arrangement that will work for both. Similarly, family caregiving or medical leave should be requested with as much advance notice as possible -- ideally, 30 days before the leave would begin, since employers can deny FMLA leave if the employee was able to give 30 days’ notice but did not. Of course, an employee may want to request leave more than 30 days in advance, to keep good will between the employee and employer, and to give the employer more time to plan.

To Whom? If the employer has a human resources department, the employee can first go there to discuss her need for accommodation or leave (and/or to give formal notice of her pregnancy) and find out what steps she needs to take in order to get accommodation or leave. If there is no human resources department, the employee can go to the person or manager responsible for handling personnel issues, such as vacation, sick time, scheduling, and hours. The employee can also go to his or her supervisor.

What information should be provided? The employee should let the employer know the purpose of the leave or accommodation (whether it is for pregnancy or childbirth, for the employee’s own health condition, to care for someone with a health condition, or to bond with a new child). For requests related to pregnancy, the employee may want to tell the employer if the request is related to a complication (so that the employer is on notice that the employee may be protected by disability law). The employee should also let the employer know the length of the accommodation or leave the employee needs/hopes to get (or what reduced schedule the employee needs), and when.

For leave requests, the employee should discuss with the employer the potential to get paid while on leave, such as through an employer program, or through the employee’s accrued paid leave, and whether or not the employer will continue health insurance coverage during that time.
Accommodation and Leave

How? Generally, the employee can request the accommodation or leave either verbally or in writing. Although it depends on the specific situation, it is often best for the employee to first talk to the employer, and then confirm the conversation later in writing (e.g., an email). However, if the employer has its own policies in place about requesting accommodation or leave, the employee should make sure to follow the employer policy.

In both the written and verbal request/notice, the employee should be as positive as he or she can, and try to make clear his or her commitment to work.

“Unfortunately, my daughter is really sick and needs to get surgery next month. Her doctor recommended that I take approximately three weeks off to care for her during and after the surgery. I’m hoping to use my accrued vacation time during the three weeks, and return to work immediately after, because I’ll be eager to get back to work. Will that be possible?”

“Unfortunately, I’m suffering from a complication in my pregnancy, and my doctor advised me to avoid lifting more than 15 pounds until my due date in three months. I really would like to keep working for the next two months. Could I work in the administrative office for the next two months as an accommodation for my condition? As you know, I’m skilled in administrative work so I think that would be a great solution.”

“Thank you so much for understanding my family’s situation and my need for time off. To confirm our conversation, I need to take leave from [date] through [date] to care for my sick daughter, and plan to use my paid vacation during that time. Unless there are complications with the surgery I plan return to work in full force on [date]. I will get you a doctor certification by [date]. Thank you again.”

“Thank you so much for understanding my situation. To confirm our conversation, I hope to work in a light duty position in the admin office from [date] through [date] to accommodate a condition related to my pregnancy. I will get you a doctor certification about my lifting restriction by [date]. Thank you again. I really look forward to working at [employer] during this new stage of my life, and to getting back to my old position after I’ve given birth.”

“I really look forward to working at [employer] during this new stage of my life. To confirm, I plan to take leave from [date] to [date] for my pregnancy, childbirth, and to bond with my new baby. I plan to collect disability insurance through [employer]’s program during that time. I will get you the doctor certification you requested by [date]. I plan to return on [date] and really look forward to continuing to advance my career at [employer]. Thank you!”
Accommodation and Leave

**Obtain certification from health care provider**

An employer can require an employee to get certification from a health care provider stating that the accommodation or leave is medically recommended.

If the employer set a deadline for obtaining the certification, the employee should stick to the deadline (though note that an employer cannot require that an employee obtain certification for FMLA leave within less than 15 days). The employee can also tell the employer when the next medical appointment is and ask if he or she can submit the certification that day.

The employee should also find out exactly what needs to be contained in the certification, and make sure to provide that information. If the employee thinks the employer is asking for intrusive and unnecessary information the employee should consult one of the resources listed in Appendix A of this toolkit and talk to their health care provider.

**Try to maintain a positive relationship with the employer and make clear your commitment to work**

Throughout the process, the employee should try to keep a positive relationship with the employer and make the employee’s commitment to working clear. This will encourage the employer to accommodate the employee as best as the employer can, and will reduce the chance of retaliation (which unfortunately does happen, even though it is illegal).

**After the leave or accommodation is granted**

If the employee’s accommodation or leave request is granted, the safest next step for the employee is to confirm the grant in writing, and keep a copy. Sometimes the employer will sign a document granting the leave (such as an FMLA form) or accommodation. The employee can also send a simple email or letter to the employer confirming the leave. Below is sample language in the written confirmation:

"[Positive intro – e.g., Hello __: thanks for your time today.] To confirm, I will be taking FMLA leave and vacation time from [date] through [date] to care for my sick daughter. I will return to work in full force on March 22. Thank you again for understanding my family’s situation."

"[Positive intro – e.g., Hello __: thanks for your time today.] To confirm, I will be taking leave from [date] to [date] for my pregnancy, childbirth, and to bond with my new baby. I will collect disability insurance through [employer]’s program during that time, and will continue to receive health insurance coverage during that time. I plan to return on [date] and really look forward to continuing to advance my career at [employer]. Thank you!"

"[Positive intro – e.g., Hello __: thanks for your time today.] To confirm, I will be transferring to a light duty position from [date] through [date] to accommodate a condition related to my pregnancy. Thank you again for understanding my situation."
Accommodation and Leave

What to do if the leave or accommodation is denied

If an employer denies all or part of the accommodation or leave request, the employee should make sure to understand why the accommodation or leave is being denied. The employee should keep notes about conversations about the accommodation or leave, and should keep notes about any other employees who were granted similar accommodations or leaves. The employee can always appeal to the employer again once the employee understands the situation better (for example, the employee could request a different accommodation, or could point out that others were granted similar accommodations or leaves). The employee can also retain an attorney to get legal advice.

If the employee thinks the employer is unlawfully denying the accommodation or leave, the employee should consider taking the steps outlined in the next section of this toolkit.
What to Do When an Employee’s Rights are Violated

Keep Notes
The employee should start keeping notes about the following:

- All communications with the employer regarding the accommodation or leave (including, time, place, what was said, and who was there)
- Change in employer’s attitude since the employee requested or took the accommodation or leave, with concrete examples (including negative comments or complaints about pregnancy or family care, stereotypical comments about pregnancy or family care, or concrete actions the employer took against the employee)
- Change in employer’s attitude since the employer became aware of the employee’s pregnancy, pregnancy-related impairment, or status as caregiver
- Examples of better treatment of employees who are not pregnant or are of the opposite sex
- Accommodations or leave granted to other employees in the past (including how long ago, how long the leave was, for what period of time, what the leave was for, the employee’s job title, and who granted the leave)
- Copies of all written documents about the request for accommodation or leave

Internal Complaint/Talk to Union Representative
If the employee believes that a discriminatory act or a denial of an accommodation or leave was unlawful or that an employer is unlawfully retaliating against the employee for asserting his or her rights, the employee may want to first make an internal complaint.

- **To Whom?** If the employee has a union, the union can be a valuable resource to assert the employee’s rights. The employee should talk to a union representative to see what next steps to take (including potentially filing a union grievance). If the employee does not have a union, if the employee’s union is not helping, or just to cover all bases, the employee should inform the human resources department with the employer, or someone who has authority over the person that acted unlawfully. If the person who acted unlawfully is the owner of the company, the employee can skip to the section on written complaints.

- **What Information to Provide?** For cases involving accommodation or leave, the employee should provide information about what leave or accommodation was requested or received, for what purpose, and the name of the relevant law, employer policy, or provision in collective bargaining agreement. If the employee believes the employer has discriminated against the employee, the employee should state why (for example, other employees were given accommodation or leave, or the employer made a comment showing hostility towards pregnant employees or caregivers).
What to do When an Employee’s Rights are Violated

**Written Complaint**

Often an employee’s situation will be resolved after the employee makes an informal complaint. However, if the situation is not resolved, the employee should make a written complaint to the employer’s human resources department, or to the person that handles personnel matters (in cases of small businesses, this may be the owner of the company).

The complaint can be in the form of an email or a letter, and the employee should keep a copy of the complaint. Examples of written complaints can be found in Appendix D of this toolkit. Below are general tips, which employees may find helpful:

- **Leave or accommodation violations:** The complaint should state the purpose of the accommodation or leave, when the employee requested the accommodation or leave, what unlawful actions were taken, and what laws or employer policies the employee thinks were violated. For cases involving accommodation, the employee should state that the accommodation is needed for a “medical condition related to my pregnancy,” or if the employee was diagnosed with a severe complication, the employee can specify the diagnosis if the employee feels comfortable doing so.

- **Discrimination:** The employee should state what actions were taken against the employee and why the employee believes discrimination occurred (for example, other employees were given accommodations, or the employer made a comment indicating hostility towards pregnant employees).

- **Accuracy:** The employee should make sure that all statements made in the written complaint are accurate, because this complaint could potentially be used as evidence.

- **Statement of Rights:** An employee can also attach a statement of rights to the written complaint. Appendix E contains sample statements of rights.

- **Retaliation:** Federal discrimination and leave laws prohibit covered employers from retaliating against employees for making complaints about violations of the law. However, employers sometimes still retaliate. An employee should talk to an attorney if he or she thinks the employer is retaliating against the employee for making a complaint about his or her rights.
What to do When an Employee’s Rights are Violated

Talk to a lawyer
If the employer responds negatively or fails to respond to the written complaint, the employee should talk to a lawyer about how to negotiate a resolution, file a charge with an enforcement agency, or file a lawsuit. Resources and referrals to help find a lawyer can be found in Appendix G of this toolkit.

Sometimes attorneys can help an employee resolve a complaint with her employer without having to take formal legal action. However, the employee should always be aware of the deadlines to take formal legal action, listed in the section immediately below.

Deadlines
In order for the government to investigate the violation, or for the employee to enforce his or her rights in court, he or she should be aware of the following deadlines:

- **Family and Medical Leave Act:** An employee can make a complaint with the United States Department of Labor (US DOL) if he or she thinks her rights to FMLA leave were violated. The US DOL can then initiate an investigation. However, the US DOL only investigates a small portion of claims each year, and may choose not to file a lawsuit based on the investigation. Thus, an employee will likely have to file a lawsuit to enforce his or her rights. The deadline to file an FMLA lawsuit in court is two years after the violation, or three years if the employer willfully violated the FMLA rights.

- **Title VII & Americans with Disabilities Act:** In order to file a lawsuit in court for a Title VII or ADA violation, the employee must first file a charge with the Equal Employment Opportunity Commission (EEOC), which is the federal agency tasked with enforcing both laws. The deadline for filing a charge can be either 180 days or 300 days after the violation occurs. In states that have their own laws covering pregnancy and disability discrimination, the deadline is 300 days. In states that do not have such laws, the deadline is 180 days. For federal employees, the deadline is 45 days. An employee should consult with an attorney in his or her state to find out the deadline in his or her state. An employee may also file a charge with an administrative agency without the assistance of an attorney. For sample EEOC charges, see Appendix F of this toolkit. However, it is recommended that the employee get an attorney if possible. Again, resources and referrals for finding attorneys are in Appendix G of this toolkit.

- **Fair Labor Standards Act:** An employee must file a complaint in court within two years of the FLSA violation, or three years if the violation was willful.

- **Other Laws:** There are also deadlines associated with filing a claim for violation of collective bargaining agreement, contract, or state laws. An employee should consult with an attorney to find out the deadlines for filing claims under these other laws.

Can’t Afford a Lawyer? Don’t Fret!

Many employees cannot afford to pay lawyers expensive hourly fees. Don’t fret! Employees can often arrange a “contingency fee” agreement with a lawyer, which means the employee only needs to pay the lawyer if the lawyer is able to help the employee recover money from his or her employer, in which case the employee only needs to pay the lawyer a proportion of the money recovered, and no more. Additionally, even if an employee cannot find an attorney, he or she can still file a complaint with the Equal Employment Opportunity Commission, which can conduct an investigation at no cost to the employee.

Can’t Afford a Lawyer? Don’t Fret!

Many employees cannot afford to pay lawyers expensive hourly fees. Don’t fret! Employees can often arrange a “contingency fee” agreement with a lawyer, which means the employee only needs to pay the lawyer if the lawyer is able to help the employee recover money from his or her employer, in which case the employee only needs to pay the lawyer a proportion of the money recovered, and no more. Additionally, even if an employee cannot find an attorney, he or she can still file a complaint with the Equal Employment Opportunity Commission, which can conduct an investigation at no cost to the employee.
What to do When an Employee’s Rights are Violated

What kind of relief can an employee seek if her rights are violated?

When an employee’s rights are violated, the employee and the employer are generally free to resolve the situation the way they choose. If a dispute about discrimination or leave between the employee and employer is not resolved informally and reaches court, the following are common remedies:

- Granting the requested leave or accommodation, with job protection;
- Compensating the worker for losses and expenses she incurred as a result of the violation (including wages or other benefits she lost as the result of being fired or forced out on unpaid leave);
- Compensating the worker for emotional distress suffered as a result of the violation;
- Compensating the worker for economic expenses and emotional distress that the employee will suffer in the future as a result of the violation;
- Reinstating the employee into the job or position she held before the violation occurred;
- Promoting or increasing the pay of the employee, or other actions to put the employee in the position she would have been in had the violation not occurred;
- Requiring or getting the employer to agree to provide training to employees about their rights and post notice of their rights;
- Providing the employee with a positive or neutral reference to potential future employers;
- An official, public finding by the court that the employer violated the employee’s rights.
Appendix A

Intake Questionnaire: Pregnant or Caregiving Employees

1. Employment information
   - Employer name:
   - City of work site:
   - Employer size
     - Number employees:
     - 50+ employees within 75 miles of worksite?
   - Employee position and duties:
   - Does the employee work full time or part time?
     - Has the employee worked 1,250 hours in past year
       (average 24 hours/week)?
   - Employee work hours/schedule:
   - Number months working for employer:
   - Union membership?
   - Did the employer take any negative action against the employee (e.g.,
     termination, demotion, discipline, harassment, failure to hire)?
     - When was the negative action taken?
     - Did employee complain (when, how, to whom)?

2. Pregnancy and Childbirth
   - Due date / date of birth:
   - Date of notice to employer of pregnancy (if applicable):
     - To whom was notice given?
     - Employer reaction?
     - Different treatment since notice of pregnancy (details)?
   - Medical restrictions (describe)?
     - Does employee want to work with restrictions?
     - Does employee want a workplace accommodation?
       Desired accommodation:
       - Has employee requested an accommodation (when)?
       Accommodation granted/denied (when)?
       - Has employer provided accommodation to other employees (for whom,
         when, type of accommodation)?
       - Does employer have an accommodation policy (for pregnancy? injury? disability)?
       - Different treatment since employee gave notice of medical restriction /
         requested accommodation (details)?
   - Leave taken or desired? Y / N
     - Medical leave (when/for how long)?
     - Non-medical maternity leave (when/for how long)?
     - Leave requested (when)?
     - Leave granted/denied (when, by whom)?
     - Different treatment since leave was taken or requested?
   - Accommodation needed/provided for pumping milk (details)?
   - Comments by employer/supervisor about pregnancy or having kids (what
     said, by whom, when)?
   - Employer treatment of other pregnant employees:
Intake Questionnaire: Pregnant or Caregiving Employees

3. Family Responsibilities

- Does employee have family responsibilities (e.g., parent, or other provider of care)?
- Does employer/supervisor know that employee has family responsibilities?
- Different treatment since employer found out about employee’s family responsibilities?
- Comments by employer/supervisor about family responsibilities or being a mother/father/parent?
- Leave planned or desired to care for family member?  Y / N
  - Is the family member a parent, child, or spouse?  Y / N
  - Does the family member have a medical condition (details)?
  - What type of care will be/was provided?
  - Leave requested (when)?
  - Leave granted/denied (when, by whom)?
  - Different treatment since leave was taken or requested?
- Different treatment of female versus male caregivers (e.g., mother versus father)?

4. Employee’s desired resolution:
Appendix B

Federal Laws Protecting Pregnant and Caregiving Workers

How Many Employees?

- Under 15
  - Contract Rights

- 15 - 49
  - Contract Rights
  - Title VII
  - ADA
  - FLSA (maybe)

- 50+ (within 75 miles from work site)
  - Contract Rights
  - Title VII
  - ADA
  - FLSA (maybe)
  - FMLA

Contract Rights

Written or oral assurances made by employer can become a contractual obligation. Provisions of a Collective Bargaining Agreement can also be a contractual obligation.

*Exceptions: This is not required for exempt employees that do not work for the federal government, or to employers with fewer than 50 employees, if providing the accommodation would be too difficult.

To preserve a claim of discrimination, a person must file a complaint with the Equal Employment Opportunity Commission within 180 days of the discriminatory act, or 300 days if state law also prohibits pregnancy discrimination.

Title VII

Employers cannot discriminate against employees based on the employee's pregnancy, or stereotypes about the caregiving roles about males versus females.

Employers must provide at least the same leave and accommodation benefits to pregnant women as those granted to employees who are temporarily disabled.

To preserve a claim of discrimination, a person must file a complaint with the Equal Employment Opportunity Commission within 180 days of the discriminatory act, or 300 days if state law also prohibits pregnancy discrimination.

ADA (Americans with Disabilities)

Employers cannot discriminate against employees based on the employee's pregnancy, or stereotypes about the caregiving roles about males versus females.

Employers must provide at least the same leave and accommodation benefits to pregnant women as those granted to employees who are temporarily disabled.

To preserve a claim of discrimination, a person must file a complaint with the Equal Employment Opportunity Commission within 180 days of the discriminatory act, or 300 days if state law also prohibits pregnancy discrimination.

FLSA (Lactation Accommodation)

Employers must provide reasonable break time and private space to express milk.*

*Exceptions: This is not required for exempt employees that do not work for the federal government, or to employers with fewer than 50 employees, if providing the accommodation would be too difficult.

To preserve a claim for a FLSA violation, a person generally must file action in court within 2 years of the violation.

FMLA (Family and Medical Leave Act)

Up to 12 weeks of self-care (including for pregnancy), family care and bonding leave, within one year. No penalty for asserting, requesting, or taking this leave.

To preserve a claim for a FMLA violation, a person generally must file action in court within 2 years of the violation.
Appendix C

Family and Medical Leave Act (FMLA)

Does the FMLA cover me?

To be covered:

1. You must work for a COVERED EMPLOYER, which means:
   - An employer with 50 or more employees within 75 miles of your worksite; OR
   - The federal, state, or local government

2. You must be an ELIGIBLE EMPLOYEE, which means you:
   - Worked for the employer for at least 12 months total; AND
   - Worked at least 1,250 hours in the past 12 months

3. You must need leave for a COVERED REASON, which can be:
   - Medical leave for a condition related to pregnancy or childbirth;
   - Medical leave for your own serious health condition;
   - Medically recommended leave to care for a child, parent, or spouse with a serious health condition; OR
   - Leave to bond with your child who was born, adopted or assigned to you in foster care within the past year

What benefits do I have if I am covered?

1. TWELVE WEEKS of unpaid leave during a 12 month period
   *Medical leave can be taken in small increments of time, as needed
   *You may be able to use earned/accrued paid time off during this period

2. Continuance of HEALTH INSURANCE BENEFITS during the leave period

3. The right to RETURN TO THE SAME OR COMPARABLE POSITION after the leave
   *Unless you are a “key employee” or would have been laid off/demoted/ transferred for reasons other than that you took the leave

4. The same SENIORITY AND OTHER BENEFITS you had before you took the leave

5. PROTECTION FROM RETALIATION for inquiring about, requesting or taking the leave

TIPS:

- Ask your employer if you are covered (though employers sometimes make mistakes)
- Give your employer at least 30 days’ notice of your need for leave, if possible
- Provide medical certification, if your employer requests one, in a timely manner
- Confirm everything in writing!
Appendix D

Sample Internal Complaint

Sample Written Complaint about Failure to Grant Leave

Dear [name of supervisor or HR representative]:

On [date] I requested [# days/weeks/months] of leave to [purpose of leave: e.g., bond with my newborn child/care for my seriously ill mother/recover from a pregnancy-related condition]. You told me that the office was too busy and I could not take the leave. I believe that I am entitled to the [# days/weeks/months] of leave under the Family and Medical Leave Act [and/or the Americans with Disabilities Act]. Please advise me accordingly.

Sincerely,

[Name]

Sample Written Complaint about Failure to Grant Pregnancy-Related Accommodation

Dear [name or supervisor or HR representative]:

On [date] I requested [accommodation: e.g., a light duty position] to accommodate a significant complication related to my pregnancy. My doctor advised me to get [accommodation: e.g., a light duty position] to allow me to continue working without jeopardizing the health of my pregnancy. You told me that you do not have any light duty positions open for me and that you do not want to set a precedent for providing light duty positions for employees that were not injured on the job. However, I was told that you previously had accommodated other workers who were not injured on the job. I believe that I am entitled to [accommodation: e.g., a light duty position] under the Americans with Disabilities Act and the Pregnancy Discrimination Act. Please advise me accordingly.

Sincerely,

[Name]

Sample Written Complaint about Discrimination/Retaliation

Dear [name or supervisor or HR representative]:

I have been a loyal and hardworking employee for my three years at [employer]. On [date], [name of supervisor] told me that I was up for a promotion. I was extremely excited, as I am confident that I am qualified for the position, and that I would excel if given a more significant leadership role at [employer]. I made my interest in the promotion clear. On [date], I gave you [name of supervisor] notice that I was pregnant. Since then, [name of supervisor] has made several comments about how mothers should not be in leadership roles in the workplace. On [date] I was told that I was passed up for the promotion. I believe that I was passed up for the promotion because of my pregnancy, in violation of the Pregnancy Discrimination Act. I would like to be reconsidered for the promotion, as I think I am highly qualified for the promotion, and I will continue to be qualified for the promotion and committed to my work at [employer] after I give birth.

I appreciate your consideration of this.

Sincerely,

[Name]
Appendix E

Sample Notice of Employee Rights
Familial Status Discrimination and
FMLA Coverage

To Whom It May Concern:

Equal Rights Advocates is a national non-profit firm that was founded in 1974 to advocate on behalf of women and girls seeking equality in education and employment. We have successfully done so through impact litigation, public education and free advice and counseling of women nationwide.

Title VII of the Civil Rights Act of 1964 (Title VII) is a federal law that forbids employers from firing, failing to hire, or discriminating against an employee with respect to her “compensation, terms, conditions, or privileges of employment” because of the employee’s sex, among other characteristics. This means that the employers cannot treat an employee worse than other employees based on gender stereotypes, such as what their roles are or should be in their families.

The Americans with Disabilities Act (ADA) also prohibits employers from discriminating against employees on the basis of their relationship with disabled individuals. This means that an employer cannot treat an employee who is associated with an individual with a disability worse than other employees because of the association.

Under the federal Family Medical Leave Act (FMLA), an eligible employee may take up to 12 weeks of job protected leave to care for an immediate family member with a serious health condition, or for the birth, adoption, or foster care assignment of a child. Under the FMLA, an employee is entitled to continue to participate in the employer’s group health plans while on leave. Additionally, an employee who returns to work is “entitled to no less seniority than the employee had when the leave commenced, for the purpose of layoff, recall, promotion, job assignment, and seniority-related benefits such as vacation.”

Retaliation by an employer against an employee who exercises or complains about her rights under Title VII, the ADA, and the FMLA is a separate and additional legal claim under these laws.

We hope this information is useful to you.

Sincerely,

Equal Rights Advocates
Sample Notice of Employee Rights
Familial Status Discrimination

To Whom It May Concern:

Equal Rights Advocates is a national non-profit firm that was founded in 1974 to advocate on behalf of women and girls seeking equality in education and employment. We have successfully done so through impact litigation, public education and free advice and counseling of women nationwide.

Title VII of the Civil Rights Act of 1964 (Title VII) is a federal law that forbids employers from firing, failing to hire, or discriminating against an employee with respect to her “compensation, terms, conditions, or privileges of employment” because of the employee’s sex, among other characteristics. This means that the employers cannot treat an employee worse than other employees based on gender stereotypes, such as what their roles are or should be in their families.

The Americans with Disabilities Act (ADA) also prohibits employers from discriminating against employees on the basis of their relationship with disabled individuals. This means that an employer cannot treat an employee who is associated with an individual with a disability worse than other employees because of the association.

Retaliation by an employer against an employee who exercises or complains about her rights under Title VII and the ADA is a separate and additional legal claim under these laws.

We hope this information is useful to you.

Sincerely,

Equal Rights Advocates
Sample Notice of Employee Rights
Pregnancy Discrimination

To Whom It May Concern:

Equal Rights Advocates is a national non-profit firm that was founded in 1974 to advocate on behalf of women and girls seeking equality in education and employment. We have successfully done so through impact litigation, public education and free advice and counseling of women nationwide.

Title VII of the Civil Rights Act of 1964 (Title VII) is a federal law that forbids employers from firing, failing to hire, or discriminating against an employee with respect to her “compensation, terms, conditions, or privileges of employment” because of her sex, among other characteristics. Pregnancy discrimination is a form of sex discrimination and is prohibited under Title VII. This means that an employer cannot treat an employee worse than other employees (such as forcing her out on leave, harassing her, or denying her access to opportunities for advancement) simply because she is pregnant.

Retaliation by an employer against an employee who exercises or complains about her rights under Title VII is a separate and additional legal claim under this law.

We hope this information is useful to you.

Sincerely,

Equal Rights Advocates
Appendix E

Sample Notice of Employee Rights
Pregnancy Discrimination and Accommodation

To Whom It May Concern:

Equal Rights Advocates is a national non-profit firm that was founded in 1974 to advocate on behalf of women and girls seeking equality in education and employment. We have successfully done so through impact litigation, public education and free advice and counseling of women nationwide.

Title VII of the Civil Rights Act of 1964 (Title VII) is a federal law that forbids employers from firing, failing to hire, or discriminating against an employee with respect to her “compensation, terms, conditions, or privileges of employment” because of her sex, among other characteristics. Pregnancy discrimination is a form of sex discrimination and is prohibited under Title VII. Title VII requires employers to treat pregnant employees at least as well as they treat other temporarily disabled, non-pregnant employees. This means that an employer must provide workplace accommodations to pregnant employees if the employer provides similar workplace accommodations to non-pregnant employees with similar limitations.

Additionally, the Americans with Disabilities Act (ADA) prohibits employers from refusing to provide reasonable accommodations (including periods of leave) to employees with disabilities. The ADA was recently amended to broaden the definition of disability, and now includes impairments related to pregnancy. The Equal Employment Opportunity Commission has determined in its interpretive guidance that 20 pound lifting restrictions that last several months can be a qualifying disability.

Retaliation by an employer against an employee who exercises or complains about her rights under Title VII and the ADA is a separate and additional legal claim under these laws.

We hope this information is useful to you.

Sincerely,

Equal Rights Advocates
# Appendix F

## Sample EEOC Charge

<table>
<thead>
<tr>
<th>Charge of Discrimination</th>
<th>Charge Presented to:</th>
<th>Agency(ies) Charge No(s):</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td><strong>X</strong> FEPA</td>
</tr>
<tr>
<td></td>
<td></td>
<td><strong>X</strong> EEOC</td>
</tr>
</tbody>
</table>

**State or local Agency, if any**

Name (indicate Mr., Ms., Mrs.)

Home Phone (Incl. Area Code)

Date of Birth

Street Address

City, State and ZIP Code

**Name**

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

**Name**

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

**DISCRIMINATION BASED ON** (Check appropriate box(es).)

- RACE  
- COLOR  
- SEX  
- RELIGION  
- NATIONAL ORIGIN  
- RETALIATION  
- AGE  
- DISABILITY  
- OTHER (Specify below.)

**DATE(S) DISCRIMINATION TOOK PLACE**

Earliest  

Latest  

CONTINUING ACTION

**THE PARTICULARS ARE** (If additional paper is needed, attached extra sheet(s));

On [date] I requested [accommodation: e.g., a light duty position] to accommodate a significant complication related to my pregnancy. My doctor advised me to get [accommodation: e.g., a light duty position] to allow me to continue working without jeopardizing the health of my pregnancy. [Employer name] refused me [accommodation: e.g., a light duty position], even though it had previously granted the same accommodation to other non-pregnant employees. [Employer name] also made comments to me indicating that it does not want pregnant women working on the job. [Employer name] then fired me because I complained about pregnancy and disability discrimination.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

**NOTARY – When necessary for State and Local Agency Requirements**

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

**SIGNATURE OF COMPLAINANT**

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month, day, year)

Date  

Charging Party Signature
Appendix G

Resources for More Information and Referrals for Attorneys

Below are resources to agencies and organizations that handle issues affecting pregnant and caregiving workers:

A. State and Federal Enforcement Agencies (to file complaints)
B. National Public Interest Organizations (to get free information on laws)
C. Attorney Referrals (to get representation)
D. Resources on State Laws (to get information on state laws that may be applicable)

State and Federal Enforcement Agencies

An employee can contact a state or federal enforcement agency to find out more about their rights under state or federal law or to file a complaint with enforcement agencies.

U.S. Equal Employment Opportunity Commission (EEOC)

An employee can begin the complaint process by calling the EEOC at 1-800-669-4000, or by visiting a field office (to see a list of the field offices, go here: www.eeoc.gov/field/index.cfm).

Web Resources:
General website: www.eeoc.gov
Information about charge filing process: www.eeoc.gov/employees/charge.cfm
Information about federal discrimination law: www.eeoc.gov/laws/types/index.cfm
Online Assessment System: https://egov.eeoc.gov/eas/

U.S. Department of Labor (DOL)

An employee can begin the complaint process by calling the DOL at 1-866-4-USA-DOL.

Web Resources:
General website: www.dol.gov
Information about filing a complaint: www.dol.gov/wecanhelp/howtofilecomplaint.htm
Information about family and medical leave under FMLA: www.dol.gov/whd/fmla/
Information about lactation accommodation under FLSA: www.dol.gov/whd/nursingmothers/
Information about whether an employee is covered by the FLSA: www.dol.gov/compliance/guide/minwage.htm

State Enforcement Agencies

An employee can locate the agency that enforces his or her state rights against discrimination at the following websites. Please note that we do not monitor these websites and cannot guarantee their accuracy:

www.eeocoffice.com
http://www.workplacefairness.org/stateagencies

http://www.eeocoffice.com
Resources for More Information and Referrals for Attorneys

National Public Interest Organizations
An employee can get more information about their rights from the national public interest organizations listed below. These organizations have legal information on their websites, and also have informational hotlines that an employee can call for free advice.

Equal Rights Advocates (based in California)
Equal Rights Advocates Office
180 Howard Street, Suite 300
San Francisco, California 94105
Toll-free Advice & Counseling Hotline: 1-800-839-4372

Web Resources:
Information about laws protecting women and caregivers: www.equalrights.org/about-era/publications/

Legal Aid Society – Employment Law Center (based in California)
Legal Aid Society – Employment Law Center
180 Montgomery Street, Suite 600
San Francisco, CA 94104
Toll-free Workers’ Rights Hotline: 1-866-864-8208

Web Resources:
Fact sheets and self-help tools related to workplace leave and discrimination: www.las-elc.org/factsheets.html

Center for WorkLife Law (based in California)
University of California – Hastings College of the Law
Center for WorkLife Law
200 McAllister Street
San Francisco, California 94102
Family Responsibilities Discrimination Hotline: (415) 703-8276

Web Resources:
Information about family responsibilities discrimination: http://worklifelaw.org/frd/

A Better Balance (based in New York)
A Better Balance Office
80 Maiden Lane, Suite 606
New York, NY 10038
Families at Work Legal Clinic Hotline: (212) 430-5982

Web Resources:
Information about the rights of working families: www.abetterbalance.org/web/news/resources

Legal Momentum (based in New York)
Legal Momentum Office
395 Hudson Street
New York, NY 10014

Web Resources:
Resources for More Information and Referrals for Attorneys

National Partnership for Women & Families (based in Washington, DC)
National Partnership for Women & Families Office
1875 Connecticut Avenue, NW, Suite 650
Washington, DC 20009
(202) 986-2600

Web Resources:

National Women’s Law Center (based in Washington, DC)
National Women’s Law Center Office
11 Dupont Circle, NW, #800
Washington, DC 20036
(202) 588-5185

Attorney Referral Resources
The following resources can help an employee find information about attorneys in her area.

American Bar Association (ABA)
The ABA is a national professional organization of attorneys. The ABA provides referrals to attorneys to anyone in the United States, through its local branches. To find local branches in specific geographical areas, an employee can go to the ABA’s website: www.abanet.org/legalservices/findlegalhelp/home.cfm.

National Employment Lawyers Association (NELA)
The NELA is a national professional organization of employment law attorneys who represent employees. An employee can look on NELA’s website to find a directory of employment law attorneys by geographic location at no cost: www.nela.org/NELA/.

Equal Rights Advocates (ERA)
If the employee does not have internet access, she can always call the Equal Rights Advocates toll-free Advice & Counseling Hotline to get referrals to employment attorneys in her geographic area. The phone number for the Hotline is: 1-800-839-4372.

Resources with Information on State Laws
Below are resources that you or an employee can check out to learn about what state laws protect him or her. Please note that we cannot guarantee the accuracy of the contents of these resources, and you should always use your own discretion when relying on it.
