Employment Considerations During Pregnancy and the Postpartum Period

ABSTRACT: In the United States, it is common for women, including mothers and pregnant women, to work outside the home. Working during pregnancy is generally safe. For those in high-risk occupations or with medically complicated pregnancies, work accommodations often can allow for continued safe employment. The major employment issues concerning pregnant women include pregnancy-related discrimination, work accommodations that allow continued employment, job-protected leave, and wage replacement while on leave. Workplace discrimination related to being pregnant and pregnancy-related harassment, including discrimination in the hiring process, is prohibited by federal and state law. There is no federal law guaranteeing comprehensive accommodations for pregnant and postpartum workers. Current federal and state laws provide protection for some pregnant women, but not others, because of eligibility requirements and state-by-state differences. By writing appropriate notes to employers, obstetrician–gynecologists and other obstetric care providers can be instrumental in obtaining accommodations for their patients who are able to continue working. Accommodations that allow a woman to keep working are the most reliable way to guarantee pay, benefits, and job protection. Obstetrician–gynecologists and other obstetric care providers also can assist pregnant women and their partners by providing them with information and resources that might help them better understand their employment rights. However, in cases for which potential job discrimination has occurred, accommodations are denied, extended medical leave is necessary, or when other complex employment questions arise, legal assistance should be obtained.

Recommendations
The American College of Obstetricians and Gynecologists makes the following recommendations:

- Working during pregnancy is generally safe. For those in high-risk occupations or with medically complicated pregnancies, work accommodations often can allow for continued safe employment.
- By writing appropriate notes to employers, obstetrician–gynecologists and other obstetric care providers can be instrumental in obtaining accommodations for their patients who are able to continue working. Accommodations that allow a woman to keep working are the most reliable way to guarantee pay, benefits, and job protection.
- Medical leave is finite and is often unpaid or partially paid. Women typically are expected to return to work or risk losing their jobs after medical leave has been used. Obstetrician–gynecologists and other obstetric care providers can play a valuable role in informing women of potential effects on income or job security, particularly when extended leave is medically indicated.
- Obstetrician–gynecologists and other obstetric care providers also can assist pregnant women and their partners by providing them with information and resources that might help them better understand their employment rights. However, in cases for which potential job discrimination has occurred, accommodations are denied, extended medical leave...
Employment laws and leave programs are complex and vary from state to state. If a pregnant woman cannot work for medical reasons, she, or her partner, or both, may be entitled to partially paid or unpaid job-protected leave. By educating themselves regarding laws and leave policies, obstetrician–gynecologists and other obstetric care providers can help their patients obtain the necessary accommodations and medical leave or help them identify resources to address pregnancy-related job discrimination.

### Employment Issues for Pregnant Women and Parents

The major employment issues concerning pregnant women include pregnancy-related discrimination, work accommodations that allow continued employment, job-protected leave, and wage replacement while on leave. After delivery, the issues center on lactation accommodations and leave for physical recovery, bonding, and caring for the child. (For federal and state laws related to these issues see Table 1 or the For More Information section.)

### Table 1. Federal Laws That Protect Pregnant Workers and Their Partners*

<table>
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<th>Federal law(s)</th>
<th>Pregnancy Discrimination</th>
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<th>Job Protection for Pregnancy or Family Leave</th>
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<tr>
<td>Federal Pregnancy law(s)</td>
<td>Americans with Disabilities Act and Pregnancy Discrimination Act (limited circumstances)</td>
<td>“Break Time for Nursing Mothers Law,” part of Affordable Care Act</td>
<td>Employers must provide reasonable break time and a private space (not a bathroom) to express breast milk for up to 1 year after birth</td>
<td>Family and Medical Leave Act (FMLA)</td>
<td>None</td>
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| Benefits | Prohibits pregnancy-related discrimination, including in hiring; right to accommodations if other workers are offered them; prohibits compelling a pregnant woman to take leave if she is capable of doing her job | Requires employers to provide reasonable accommodations for pregnancy-related impairments so long as they do not cause undue hardship to the employer | 12 weeks of unpaid, job-protected leave and continued health benefits for prenatal care appointments, serious medical conditions, birth, care of newborn, adoption, foster care, or to care for ill family member |

| Eligibility | 15 or more employees | 15 or more employees | Most hourly and some salaried employees are covered. Consult the Fair Labor Standards Act. | 50 or more employees, employed for 12 or more months and 1,250 or more hours in the past 12 months |

| How to use | File a claim with the Equal Employment Opportunity Commission. Legal assistance recommended. | Medical certification note to employer outlining work restrictions and potential accommodations | Employee requests of employer | Employee requests leave at least 30 days in advance, if able. Employer may request medical certification. |

Pregnancy Discrimination

Workplace discrimination related to being pregnant and pregnancy-related harassment, including discrimination in the hiring process, is prohibited by federal and state law. Nonetheless, cases of pregnancy discrimination reported to the U.S. Equal Employment Opportunity Commission are increasing (3). Exemplar cases include women who were fired after divulging that they were pregnant, pregnant women who were held to higher standards than other workers (such as being tested to ensure they are capable of doing their jobs), women who were forced to take leave because they were pregnant, or who were pressured to stay home for the health of their fetus.

The Pregnancy Discrimination Act requires that pregnant employees be treated the same as nonpregnant employees who are similar in their ability or inability to work and makes it illegal to compel a woman to take medical leave because of pregnancy if she is capable of continuing her job. It is also illegal to terminate a woman’s employment for being pregnant; yet, nearly one third of allegations to the U.S. Equal Employment Opportunity Commission claim termination occurred solely because of the employee’s pregnancy (3). If a patient reports possible pregnancy-related job discrimination, it is recommended that she consult with an employment law attorney or free legal aid service (see the For More Information section).

Accommodations for Pregnancy and Lactation

Accommodations are work modifications that allow a person to continue to safely perform the essential functions (primary duties) of the job, thereby allowing continued pay and benefits. Examples related to pregnancy include taking additional rest breaks; having a stool or chair available for sitting; avoiding potentially dangerous activities, such as climbing a ladder; or working flexible hours to attend prenatal appointments. A national survey of pregnant working women showed that although 53% felt the need to change their job duties, 37% never requested such changes. Furthermore, of those who did request accommodation, at least 9% were denied (4).

There is no federal law guaranteeing comprehensive accommodations for pregnant and postpartum workers. Current federal and state laws provide protection for some pregnant women, but not others, because of eligibility requirements and state-by-state differences. Under the Americans with Disabilities Act, the definition of disability was recently expanded to include less-severe, temporary impairments, such as those that are pregnancy-related. This expansion entitles pregnant women to work accommodations as long as those accommodations do not create an undue burden for the employer. In addition, federal law and some state laws require employers to provide reasonable break time and a private space (not a bathroom) to pump breast milk.

The Pregnancy Discrimination Act entitles pregnant and lactating workers to the same accommodations offered to other workers with similar limitations arising out of a temporary disability. Yet, even with these protections in place, legal rights to accommodations for pregnancy and lactation remain patchwork and incomplete. By writing appropriate notes to employers, obstetrician–gynecologists and other obstetric care providers can be instrumental in obtaining accommodations for their patients who are able to continue working (see Box 1). Accommodations that allow a woman to keep working are the most reliable way to guarantee pay, benefits, and job protection.

Box 1. How to Write a Work Accommodation Note

1. Only suggest a work restriction or modification when medically necessary. Start as small as possible and scale up to give the employer more flexibility for accommodations.

2. Try to determine whether the requested job modification limits an essential function (eg, a typist must be able to type). Discuss possible accommodations to request and the risks of requesting (eg, if an accommodation to an essential function is requested that cannot be provided, the employer may place employee on medical leave. If she is not eligible for medical leave, she may be terminated).

3. Specifically state the work restriction (eg, “Due to her pregnancy-related condition, it is medically advisable that Ms. Xyz not stand for prolonged periods [more than 2 hours continuously] without a break or without an opportunity to sit”). Avoid general statements, such as “no physical activity” or “decreased stress.” Do not request “light duty,” as this has a specific legal definition, and not all employers have a light duty option. Asking for light duty may lead to a denial of the accommodation, leaving medical leave as the only option.

4. It is not necessary to suggest an accommodation but this can be helpful to the employer and employee. Be as specific as possible (eg, “I recommend the following reasonable accommodation: Providing a stool or a 15-minute break every 2 hours”). Avoid general statements, such as “no physical activity” or “decreased stress.” Do not request “light duty,” as this has a specific legal definition, and not all employers have a light duty option. Asking for light duty may lead to a denial of the accommodation, leaving medical leave as the only option.

5. State that your patient is able to continue to work (eg, “Ms. Xyz is able to continue working with a reasonable accommodation”).

6. State the expected duration of the modification (which can be extended).

Job-Protected Leave for Pregnancy and Bonding

Job protection and continuation of health benefits (without pay) while on leave are afforded under the federal Family and Medical Leave Act (FMLA) as well as a number of state laws. However, because of eligibility criteria, only approximately 60% of workers in the United States are eligible for FMLA protection (see Table 1 or the For More Information section) (5). In particular, workers with less than 1 year of employment are ineligible, and to be covered by the FMLA a worksite must be part of a firm with at least 50 employees. However, individual company policies may provide leave for pregnancy, even for newly hired employees. In practice, even workers eligible for FMLA protection may not be able to afford unpaid leave or must cut their leave short because of financial or workplace pressure (5).

The FMLA guarantees that an employee must be able to return to her previous or a similar job with the same pay, benefits, and working conditions. It affords 12 weeks of total leave, which may be used for prenatal appointments, pregnancy-related medical conditions (including those related to miscarriage or pregnancy loss), physical recovery, and infant bonding. Once FMLA leave time has been used, the employee is expected to return to work. The FMLA does not guarantee continued pay while on leave. Therefore, in states that do not have additional protections, working as long as possible during pregnancy allows for more time off postpartum and for continued income, which is important for many women. The FMLA also allows time off for parents to care for an adopted or foster child.

A few states currently offer variations on the FMLA for pregnancy disability leave, or family leave, or both. Physicians and patients should be aware of state laws regarding pregnancy leave protections and eligibility requirements, provisions for pregnancy accommodation, and workplace breastfeeding rights. Up-to-date lists of pertinent laws in each state are available at www.abetterbalance.org/know-your-rights and www.dol.gov/wb/maps/.

If there are complications during pregnancy or the postpartum period that require more than 12 weeks of leave, leave can be further extended under the Americans with Disabilities Act as a "reasonable accommodation" provided it does not create an undue hardship for the employer (6). Importantly, medical leave is finite and is often unpaid or partially paid. Women typically are expected to return to work or risk losing their jobs after medical leave has been used. Therefore, obstetrician–gynecologists and other obstetric care providers can play a valuable role in informing women of potential effects on income or job security, particularly when extended leave is medically indicated. If feasible and medically appropriate, an accommodation that allows a woman to continue working is a better option for job protection.

If a woman is expected to need extended leave because of a medical condition, consultation first with her employer and, if necessary, with an attorney or free legal aid service is suggested (see the For More Information section).

Income Replacement During Leave

In a 2014 United Nations Survey of 185 countries, only Papua New Guinea and the United States did not have national paid maternity leave policies (7). Although government agencies and many large companies offer paid leave to their employees, many women, especially those who work for smaller companies or in low-wage jobs, are not provided with paid maternity leave. For example, a Bureau of Labor survey showed that only 42% of private-sector workers reported access to paid personal medical leave and only 14% had access to paid family leave (8). Furthermore, Hispanic workers, lower-wage earners, and workers with less than a college education have less access to paid leave (9). Paid leave has been shown to increase the proportion of women, especially low-income women, who return to work after giving birth and is associated with higher rates of female employment (10).

Paid parental leave (additional leave for bonding beyond recovery from childbirth) has been linked in observational and geographic ecologic studies with better health for women and their infants, including lower rates of mental health symptoms (11), higher rates of breastfeeding and childhood immunizations (12) and, in some European studies, lower infant mortality (13). The American College of Obstetricians and Gynecologists’ policy on paid parental leave is available at www.acog.org/-/media/Statements-of-Policy/Public/92 ParentalLeaveJuly16.pdf?dmc=1&ts=20170419T1540420564.

Some states offer partial income replacement for pregnancy disability through payroll deduction-funded disability programs. Benefits vary by state and change frequently. Online sources for up-to-date state benefits can be found at www.abetterbalance.org/know-your-rights (6) and www.nationalpartnership.org/research-library/work-family/paid-leave/state-paid-family-leave-laws.pdf (7) (see also the For More Information section). Importantly, these programs provide wage replacement but do not guarantee job protection during the disability period; job protection is guaranteed through the FMLA, or state laws, or both, and must be requested from the employer separately. Income replacement for leave taken to bond with a new child is currently available only in a few jurisdictions.

If a woman is terminated because of issues related to pregnancy, childbirth, or lactation, she may be eligible for unemployment benefits, depending on state laws. Consultation with an employment lawyer or free legal aid service is recommended (see the For More Information section).
Safety of Work During Pregnancy

Multiple studies confirm that it is generally safe for a woman with an uncomplicated pregnancy to work throughout most of the pregnancy without adverse effects for the woman or her infant (14–16). However, accommodations may need to be made for women who work in occupations in which they are exposed to teratogenic toxins (eg, pesticides and heavy metals), in very physically demanding professions, and in jobs that have an increased risk of falls or injuries (especially as the pregnancy progresses and the woman's center of gravity shifts). Women with complicated pregnancies also may need work modifications to continue to work safely. For example, a woman with gestational diabetes may need additional break time as well as a private space for glucose testing and snacking. Evidence on the safety of specific working conditions is summarized in the following sections.

Toxic Occupational Exposures in the Workplace

Although more than 100,000 compounds are used in diverse occupational settings, very few have been sufficiently studied to draw conclusions about potential reproductive harms (17). Exposures that generally are believed to pose a risk of fetal anomaly, miscarriage, or other adverse pregnancy outcomes include the following: heavy metals (eg, lead, mercury, and arsenic), all classes of pesticides and certain herbicides, specific solvents (eg, toluene and benzene), ionizing radiation, and certain chemotherapeutic agents (eg, methotrexate) (17–21). The U.S. Occupational Safety and Health Administration regulates exposure to chemicals and radiation in workplaces. Patients who work with chemicals should do so with adequate ventilation and protective gear, such as gloves and masks. Even if it is unknown whether a specific chemical poses risks to pregnancy or lactation, if a patient is bothered by it, an accommodation can be requested. For patients who want more information about risks of a specific chemical, they may obtain the chemical's safety data sheet (formerly material safety data sheets), which includes basic information about the risks of exposure during pregnancy. Further information on workplace exposures is available at CDC-NIOSH: www.cdc.gov/niosh/topics/repro/specificexposures.html.

Miscarriage

Results of studies that examined the association of workplace activities with miscarriage are mixed. A meta-analysis of predominantly retrospective cohort and case-control studies showed an increased risk of miscarriage or stillbirth with night work compared with day shifts (relative risk, 1.51; 95% CI, 1.27–1.78) (22). The single prospective study showed no effect but only included miscarriages after 12 weeks of gestation (23). Working more than 40 hours per week was associated with a modest increased risk overall (relative risk, 1.36; 95% CI, 1.25–1.49), but the association was not significant when limited to higher quality studies. No increased risk was found for mixed shift work, lifting more than 100 kg/day (220 lb), or standing more than 6 hours per day. However, a recent large retrospective cohort study of occupational lifting from Denmark showed elevated risk of miscarriage associated with extensive lifting (24). The hazard ratio was 1.38 (95% CI, 1.10–1.74) for a total weight load per day of 101–200 kg (approximately 220–440 lb) and 2.02 (95% CI, 1.23–3.33) for a daily load greater than 1,000 kg (approximately 2,200 lb) as compared with nonlifters.

A second meta-analysis focused on shift work (25). All studies included in the analysis were retrospective and had adjustment for confounders. Night shifts were associated with early spontaneous pregnancy loss (adjusted odds ratio, 1.41; 95% CI, 1.22–1.63), defined by spontaneous loss of pregnancy before 25 weeks of gestation.

It is difficult to draw definitive conclusions from these studies because of their methodological issues, including substantial variation in the definitions of exposures, incomplete control of confounding, and potential for recall bias. At most, there appears to be a slight to modest increased risk of miscarriage with night shift work and extensive occupational lifting, although these levels of increased risk could also be attributed to bias and confounding.

Preterm Birth

Three recent meta-analyses that examined preterm birth concluded that there is a slight to modest increased risk of preterm birth associated with some work conditions (15, 16, 26). For example, a systematic review and meta-analysis found a statistically significant association between preterm delivery and standing and walking at work for more than 3 hours a day (odds ratio [OR], 1.3; 95% CI, 1.1–1.6), lifting and carrying more than 5 kg (11 lb) (OR, 1.3; 1.05–1.6), or physical exertion at work (OR, 1.4; 95% CI, 1.2–1.7) (16). A 2013 systematic review and meta-analysis found a statistically significant association between preterm delivery and working more than 40 hours a week (OR, 1.2; 95% CI, 1.1–1.3), standing more than 4 hours a day (OR, 1.2; 95% CI, 1.1–1.3), and shift work (usually defined as either shift or night work, OR, 1.1; 1.0–1.3) (15). On the other hand, another study found no association between shift work and preterm delivery but did find a slight increased risk among those who worked more than 40 hours a week (OR, 1.3; 1.0–1.5) (26). In all three studies, the odds ratios were lower when the meta-analyses were restricted to higher quality studies.

Although small but significant associations were found for certain workplace activities, it is questionable whether these results were due to bias and confounding or to an actual effect. All studies included in the analysis were observational, and most were retrospective. Furthermore, studies had differing definitions of work conditions, failed to control for important confounders, and often assessed occupational exposure after delivery, which could lead to recall bias. In addition, in most...
Physically Demanding Work

Physically demanding work such as heavy lifting, excessive repetition, awkward postures, and prolonged periods of sitting or standing is associated with low back pain and musculoskeletal disorders in the general population (27). Accommodations that have been shown to mitigate the effects of prolonged standing in the nonpregnant population include floor mats, sit-stand workstations, compression stockings, and supportive shoes (28). Low back pain and musculoskeletal disorders may be exacerbated by physical changes associated with pregnancy. Although the effectiveness of these accommodations has not been specifically studied in pregnancy, it is reasonable to consider such accommodations in symptomatic pregnant women. In addition, falls are the leading cause of occupational injury among the general population (19). Pregnant women are at an increased risk of falls because of joint laxity and a shifting center of gravity. Thus, consideration of accommodations for some pregnant women whose work may be associated with an increased risk of falls may be warranted with advancing gestational age.

Lifting, in particular, poses a risk of musculoskeletal injury and low back pain. The National Institute of Occupational Safety and Health recommends limits for lifting in the workplace and has recently made recommendations specifically for pregnant workers (29). Recommended weight limits are given for nine lifting zones (based on the height of the lift and distance from the body), three lifting patterns (infrequent, repetitive short duration, repetitive long duration), and two gestational phases (less than 20 weeks versus 20 weeks or more) (see Fig. 1). For an ideal lift (defined as a two-handed lift with no twisting and starting at 71–132 cm [28–52 in] above the ground), the recommended weight limit is 16 kg (36 lb) for women in the early gestation period who have an infrequent lifting pattern and 12 kg (26 lb) for women in the later gestation period who have an infrequent lifting pattern. For women in the early gestation period and those in the later gestation period who have a repetitive, short-duration lifting pattern (less than 1 hour at a time followed by a minimum of 1 hour nonlifting activity), the recommended weight limit is 14 kg (30 lb) and 10 kg (22 lb), respectively. For women in the early gestation period and those in the later gestation period who have a repetitive, long-duration pattern, the recommended weight limit is 8 kg (18 lb) and 6 kg (13 lb), respectively.

Accommodation Requests

Working during pregnancy is generally safe. For those in high-risk occupations or with medically complicated pregnancies, work accommodations often can allow for continued safe employment. Obtaining work accommodations allows a woman to continue to work and, thus, ensures continued pay, benefits, and job protection. When a patient requests a note for a workplace accommodation, the first step is to determine medical necessity. Many women are concerned that work may be harmful to their pregnancies and reassurance is often sufficient. If work accommodations are medically indicated because of pregnancy complications or specific symptoms, physicians should explore the patient’s duties at work to determine whether accommodation might be possible and offer knowledge and additional resources regarding the potential implications of taking medical leave (eg, it is time limited and often partially paid or unpaid and may affect the availability or length of postpartum leave). Physicians should work with their patients to determine their essential job duties. The physician and patient should decide together whether it is possible to propose reasonable accommodations that would allow the patient to continue to perform her essential job functions. Employers also may be able to suggest accommodations. For example, an administrative assistant may have a few duties that involve lifting, but lifting is not an essential component of her work and could reasonably be accommodated by the employer. However, if the patient has a job that involves heavy lifting as an essential function and she is unable to lift, the employer may be unable to provide an accommodation (unless another less strenuous job is available). In such a case, the patient may need to take medical leave or risk being terminated if she is not eligible for leave.

The way in which medical certification notes are written can affect whether an employee is able to be accommodated and, thus, continue working (see Box 1). Pregnant@Work, a state-specific, online note-writing resource, was developed by the University of California’s Hastings Center for WorkLife Law to assist medical providers in writing legally appropriate work accommodations letters: www.pregnantatwork.org (see the For More Information section).

Obstetrician–gynecologists and other obstetric care providers also can assist pregnant women and their partners by providing them with information and resources that might help them better understand their employment rights. However, in cases for which potential job discrimination has occurred, accommodations are denied, extended medical leave is necessary, or when other complex employment questions arise, legal assistance should be obtained. Local resources, in the form of social work referral, also can be provided. There are several toll-free legal hot-lines available, some of which also provide free or low-cost legal services (see the For More Information section).
Figure 1. Provisional recommended weight limits for lifting at work during pregnancy. *This task duration category can encompass multiple hours of lifting in one work day provided that each continuous lifting period is less than 1 hour and followed by a minimum of 1 hour of nonlifting activity before lifting resumes. Modified from MacDonald LA, Waters TR, Napolitano PG, Goddard DE, Ryan MA, Nielsen P, et al. Clinical guidelines for occupational lifting in pregnancy: evidence summary and provisional recommendations. Am J Obstet Gynecol 2013;209:80–8. ⇩
For More Information

The American College of Obstetricians and Gynecologists has identified additional resources on topics related to this document that may be helpful for ob-gyns, other health care providers, and patients. You may view these resources at www.acog.org/More-Info/Employment Considerations.

These resources are for information only and are not meant to be comprehensive. Referral to these resources does not imply the American College of Obstetricians and Gynecologists’ endorsement of the organization, the organization’s website, or the content of the resource. The resources may change without notice.

References


22. Bonde JP, Jorgensen KT, Bonzini M, Palmer KT. Miscarriage and occupational activity: a systematic review and meta-analysis regarding shift work, working hours,


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