



Pregnant at Work

A GUIDE & TOOLKIT

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A Letter from Our Founder

My name is Julian Burns King and I am a mother, a Harvard-educated attorney, and activist for the rights of new parents.

My work and personal life converged when my first daughter was born. My legal practice, which previously focused on class actions, permanently changed because of my own struggles as a new parent.

Since then, I have grown as a mother and advocate. I now channel my past disappointments and frustrations into motivation to create change in the workplace, particularly for new and expecting mothers.



State and federal law provide real, meaningful protections to pregnant and lactating working mothers. **But employers simply have not caught up.** Their indifference causes thousands of women and families pain every single day.

This is **illegal**. It is **preventable**. Employers cannot force us to choose between economic security and our aspirations as parents to our children. They cannot pressure us to give up our breastfeeding goals. They cannot push us out of the workforce and makes us abandon our career plans. This indifference or outright hostility against pregnant and working mothers is just one of the many reasons that a small wage gap becomes a huge chasm once we have children.

Things can and should be better for working mothers. My mission is to make that happen. To accomplish that goal, I am providing you with this toolkit, which contains a detailed explanation of your rights and practical tips to assert them, based on the dozens of questions I receive from working women every day. What you are doing is not easy, and your boss may not understand or care. This toolkit should help you understand that you **do** have rights, you **can** speak up for yourself, and **you are not alone** in this struggle.

Julian Burns King

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First, Know the Facts

This toolkit starts with two pages of hard truths. Are you ready?

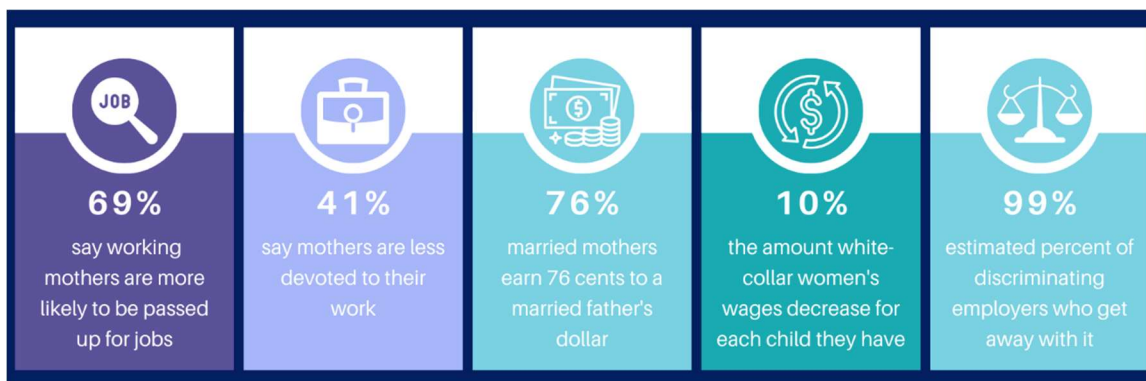
The hard truth is that pregnancy discrimination is **everywhere**. It affects every industry. It affects those who make minimum wage and those who make hundreds of thousands of dollars a year. It affects hourly workers and salaried workers. It affects those who work for men and those who work for women. It happens to people who expect it and people who do not.

Pregnancy discrimination takes many forms, including blunt trauma (like being unexpectedly fired right before you are supposed to have job-protected leave, and losing health insurance for yourself and your family) or death by a thousand cuts (like being sidelined from projects, having your salary cut, returning to bad performance reviews, and being asked to leave a year later).

I start with the hard truths not to scare you. Your employer may be a genuinely good employer—they exist—and your career may flourish while you are pregnant and afterwards. I hope for you that is the case—but sadly it is not the experience of many working mothers.

I start with the hard truths because it is always best to **be informed** and to **protect yourself**. Many clients thought they could “handle it” themselves, only to watch, devastated, as their careers went sideways. They are resilient, ferocious, and recovering. But many of them probably wish they had read this general advice about interacting with HR and documenting their requests for accommodations and leave.

With that in mind, here are the hard truths.



The Motherhood Penalty

The motherhood penalty is a term coined by sociologists to explain the wide chasm in employment outcomes between mothers and fathers. The motherhood penalty is real. Men get raises when they have children, but women do

not: **mothers working full time earn approximately 71% to 76% of what fathers earn.** Mothers are perceived to be less committed, less competent, less productive, and therefore less deserving of high wages.

Americans *admit* to being hugely prejudiced against working mothers. A different study found that 41% of employed Americans perceive working moms to be less devoted to their work and 38% judge them for needing flexible schedules. The same study found that a shocking 72% of working parents agree that women are penalized in their careers for starting families, while men are not.

Pregnancy Discrimination

Pregnancy discrimination is real, and it disproportionately impacts women of color and low-wage workers. Between 2011 and 2015, Black women filed 28.6% of EEOC pregnancy-discrimination charges, despite making up only 14.3% of the female labor force. Women in lower-wage industries like food services, health care, and social assistance, and retail likewise filed a disproportionate number of EEOC charges.

Many women clearly perceive that pregnancy discrimination is real. 21% of women would be worried to tell their boss they were expecting a child—a figure that has *almost doubled* since 2014. Women are becoming more nervous to tell their boss about their pregnancy because they know the consequences it may have on their careers. But where is pregnancy discrimination's #metoo moment?

Failure to Accommodate

The law provides robust protections to pregnant and breastfeeding mothers. Many employers simply do not care. They deny women light duty, deny schedule changes for prenatal appointments, deny breaks to use the restroom, and deny other requests for pregnancy-related accommodations. Often, employers do not even try to accommodate these requests. **At least 250,000 women a year are denied requests for accommodations during their pregnancy.**

Things are even worse for women who return to work while breastfeeding, particularly for lower-wage workers. **Most women (58%) report that breastfeeding at work is a challenge. 38% report that their employer did not provide a private space, other than a bathroom, for them to pump. 39% reported that employers failed to offer reasonable breaks to express milk.**

Employers' indifference and obstruction has a real effect on women's choices: almost half of respondents said that their plans for employment had impacted their decisions relating to breastfeeding.

A Quick Run-Down

I start with a quick run-down of the laws that protect you. These will be discussed in more detail below, but they are relevant to the discussions in this toolkit, so basic familiarity is useful.

In California, there are numerous laws that protect your right to work while pregnant. These laws are strong and, when enforced, very effective at protecting you from discrimination, retaliation, and failure to accommodate. Unfortunately, they are enforced too little, so employers still think they can make a “business decision” and “get away with it.” Often, they are right.

Know Your Rights

The Right to Be Free from Discrimination and Retaliation



The California law that protects you is the Fair Employment and Housing Act (FEHA). It is more expansive than the federal Pregnancy Discrimination Act (PDA), but both laws protect you from discrimination because of your pregnancy, your gender, and your status as a new or expecting mother.

This means that your employer cannot fire you, demote you, force you to take leave, deny you promotions, deny you assignments, or otherwise treat you differently because of your pregnancy. FEHA applies to all employers with more than five employees, except for certain religious and non-profit employers.

The Right to Be Free from Harassment

FEHA also prohibits harassment. Your co-workers and supervisors cannot harass you for being pregnant or breastfeeding. Most often, this takes the form of unwanted and uncomfortable commentary about your pregnant body or about breastfeeding. It can also take the form of generalized negative commentary about pregnant women being lazy, spacey, incompetent, or your pregnancy being an “excuse.”

It can take more subtle forms as well: for example, if you are continually written up for missing work when you are nauseous, or if you are written up for leaving early to see your doctor due to a miscarriage scare, this can constitute harassment if it happens in conjunction with other hostility.

The Right to Reasonable Accommodations Under the PDDL

California's Pregnancy Disability Leave Law (PDDL) applies to all workers at employers with more than five employees. Importantly, there is no eligibility period; you do not need to have been employed for a specific length of time to be eligible. The PDDL makes California among the few states to offer paid leave and job protection to the vast majority of pregnant women. As a pregnant worker, the PDDL is your best friend.

So what does the PDDL do? It gives you the right to partially paid, job-protected leaves of absence for your pregnancy-related disabilities and requires your employer to try to accommodate your medical needs.

A "pregnancy-related disability" includes things like serious morning sickness, hyperemesis gravidarum, gestational diabetes, etc.; it also includes basic pregnancy-related medical restrictions, like prohibitions on heavy lifting, standing for hours on end, or being around chemicals/radiation. Put differently, it is broader than the common usage of the term "disability." If you have a work restriction due to your pregnancy, it probably applies to you.

Your employer must engage in the "good faith interactive process" to accommodate your medical needs. This can include providing you with a modified work schedule, additional absences, modified duty, additional equipment, extra breaks, or even an extended leave of absence.

PDL is partially paid at 60 to 70% of your weekly wages during a "base period," up to a weekly cap. You apply to payment for PDL through the EDD, the same State agency that administers unemployment and disability benefits.

The Right to Intermittent Leave Under the PDDL

Under the PDDL, you have the right to up to four months of "job-protected" leave. ("Job-protected" leave means you must be restored to your position or, in limited circumstances, to a comparable position.) PDL is partially paid through the state's disability leave program, up to a weekly cap.

You can use this leave "intermittently," which means "not all at once." If, for example, you must check into a hospital for a night early on in your pregnancy because you are bleeding, and are put on a short bedrest, you can use PDL for this time off—and *your employer must let you*. Similarly, you may use PDL to take an "early" maternity leave if medical complications require it. You can also use PDL to attend



doctor's appointments if your employer will not let you take time off to attend appointments.

The Right to Leave Under CFRA/FMLA



The California Family Rights Act (CFRA) applies to all employees who have worked 1,250 hours within the prior 12-month period. Like the PDL, CFRA now applies to all employers with more than five employees, as of January 1, 2021—a huge and recent win for working women at smaller employers in California.

Leave under CFRA is unpaid. It “stacks” with leave under the PDL, meaning you may be entitled to up to four months (under the PDL) *plus* 12 weeks (under CFRA). This means that workers at most employers (over five people) can take up to approximately seven months of job-protected leave—four months of PDL and three months of CFRA

leave.

The Right to Paid Family Leave

California's New Parent Leave Act allows new parents to apply through the EDD for up to eight weeks of partially paid leave to bond with a new baby. PFL is not “job-protected,” but you can use CFRA leave, which is unpaid, and apply for PFL at the same time. This means that up to eight weeks of your CFRA leave can be paid through the State's PFL program. (Your partner is likely eligible for PFL as well, and they, too, cannot be retaliated against for using it.)

The Right to Leave Under Paid Sick Leave Laws

Under California law, most employers must provide at least three days of paid sick leave per year. Employees earn at least 1 hour of sick leave for every 30 hours worked. Employers are required to allow employees to use paid sick leave after 90 days of employment.

Many cities in California have local paid sick leave laws that require employers to provide additional days of paid sick leave, including Los Angeles, San Francisco, San Diego, and many more.

Why is this important to you as a pregnant worker? It allows you to take paid leave for short-term, pregnancy-related medical needs without applying for payment through the EDD (which is how you are paid under the PDL). Using paid sick leave should be simple and painless if you have it available.



Sharing the News

When you should be afforded the time and space to process this monumental life change, you may be losing sleep dreading the inevitable conversation with your boss. You may wonder what your job will do without you, or if you will be replaced. Indeed, many women are terrified to tell their employer about their pregnancy—more now than at prior points in history.

Do not be afraid: be informed. Here is what you need to know.

When to Tell Your Boss You're Pregnant

Tell Your Employer *Before* You Share the News with Co-Workers

Ultimately, the decision about when to tell your boss about your pregnancy comes down to what you are comfortable with. But from a legal perspective, earlier is almost always better when it comes to protecting yourself from discrimination and ensuring your medical needs are accommodated.

First, tell HR or your supervisor *before* you share the news with any co-workers who might gossip about your pregnancy. If your employer learns of your pregnancy before you formally notify them, you give them a chance to create a record to justify any later adverse employment actions before you can prove they knew about your pregnancy. (It sounds like a conspiracy theory, but we have seen it happen too many times not to warn you about it.)

Tell Your Employer as Soon as You Need Accommodations or Foresee the Need for Accommodations

Even though it may be awkward, you should tell HR or your supervisor about your pregnancy if *anything* about your pregnancy is affecting or might affect your job performance. Rather than just calling in sick, missing work, or allowing your job performance to change without explanation, you should always tell your employer that you are pregnant. Your disclosure triggers your employer's duty to try to accommodate you and requires them to disclose your rights under the PDL. By sharing the news, you now have the right to the intermittent leave and accommodations discussed above.

Again, it may be uncomfortable to share intimate news with your employer earlier than with some family or friends, but disclosing your pregnancy gives you the legal protections women have fought so hard to earn. I strongly encourage you to share the news early, even if it defies your parents' conventional wisdom.

What to Say to Your Boss About Your Pregnancy and How to Say It

Keep it Constructive

Most women's blogs recommend sharing the news in person or by phone. You know your workplace best: you should do what is comfortable for you. Legally, it does not matter how you share the news.

When you disclose your pregnancy, whether in writing or in person, you should share your due date and ask for any critical information like who to talk to about benefits or maternity leave.

You are under no obligation to present a "transition plan" or explain to your boss how they will cover for you during leave. If you think this will be helpful, feel free to do so. Just remember that you have a lot on your plate and this is not your legal obligation: it is your *employer's* legal obligation. (Again, conventional advice on women's blogs is wrong.)

Confirm the News in Writing

Whether you initially have an in-person conversation or not, you should **always confirm news of your pregnancy in writing.**



Hi [Name],

Thanks so much for talking today. I just wanted to confirm that we discussed that I am pregnant and expecting a baby in [month/year]. I was hoping you could send a copy of the company's leave policy and any notices I should receive about my rights to leave. Also, if there is someone else I should direct my questions about pregnancy-related accommodations or leave, please let me know.

I appreciate it!

[Your Name]

This can be as simple as a follow-up email to HR saying, "Thanks for talking today. As we discussed, I'm pregnant and have a due date of [due date]." Include any additional items you have questions about, such as leave rights or accommodations.

Request Information About Your Leave and Accommodation Rights

In California, your employer is required to provide notice to you of your rights under the PDL in three separate ways: first, in an employee handbook (if you have one) or at the time of hire; second, by posting required notice in a conspicuous location at your worksite; and third, by providing required notices *again* when you disclose your pregnancy.



Many employers do not do this, so many employees do not know they are entitled to intermittent leave. As discussed above, the PDL is your best friend as a pregnant worker, and you need to understand your rights to assert them.

After you talk to your boss and nail down who to speak to about your benefits, you should immediately request information about your rights under any applicable statutes and company policies. This will allow you to plan and assert yourself.



Hi [Name],

I am just following up regarding my maternity leave. Will you please provide any information about how I go about applying for maternity leave or getting my leave approved? I would like to be proactive so we are not dealing with this at the last minute or in the event of any medical emergency.

Thank you!

[Your Name]

A Note About Dealing with HR and Making a Record

For many women, maternity leave is one of the first major personnel issues they have faced at work. Sometimes women are not comfortable talking to HR and wonder whether HR is there to help them. Sometimes they have had bad experiences with HR and would rather avoid unproductive conversations.

First, you're right to wonder whether HR is "on your side." The answer is: no. HR is on the company's side. But when it comes to leave and pregnancy, HR wants to protect the company from lawsuits, so it should want to do things right. Think of HR as a not-that-trustworthy acquaintance who occasionally gives you great information but requires you to be on guard.

You need to make sure you always **make a record** of your conversations with HR. Why?

First, any competent HR department will be keeping a record of their conversations with you. If you do not make your own record, you let them control the story— and they will use it to cover for the company.

Second, you want to be able to prove that you requested accommodations, that you complained about harassment or discrimination, etc. This is much easier if you have a written record that a conversation occurred. Too many times, an employer has denied knowing an employee was pregnant or requested accommodations—because the employee didn't inform the employer in writing, making it easy for the employer to lie. Do not let this happen to you.

Finally, making a record is an opportunity for you to look good if there is eventually a dispute. If you keep your communications thoughtful, constructive, and professional, you look like a good employee who was trying hard to navigate a confusing situation, and your employer looks like they were negligent or malicious in refusing to accommodate you or retaliating against you.

Talking to HR can be daunting. But as you've seen, discrimination happens—even to women who are certain their employers will be understanding. That is why you should protect yourself.

I have included sample emails throughout this toolkit to help you. You should always tweak them so they are accurate based on your pregnancy and medical needs. You should also feel free to make them sound more "you."

Just keep in mind the rules of talking to HR: keep it thoughtful, professional, and constructive. You got this!

Working While Pregnant

If you work at an employer with more than five employees, you have the right to reasonable accommodations because of your pregnancy. Reasonable accommodations can include temporary transfer to a less strenuous or hazardous position, “light duty,” breaks to sit down, a stool, modified equipment or uniforms, etc.

Your employer is required to accommodate you if it is not unduly burdensome for their business. They must engage in an “interactive process” to determine if accommodations are possible.

You have the right to continue working for as long as you can work safely. Your employer cannot force you to take leave early if there is any other reasonable accommodation that would address your pregnancy-related work limitations.

Your employer also must take reasonable steps to protect you from discrimination, harassment, or retaliation on account of your pregnancy.

How to Request Accommodations

Regardless of how you choose to initially request accommodations, you should always reiterate your request in writing. You should follow all the general rules about communicating with HR or your supervisor about your pregnancy discussed [above](#). Some sample emails are included below.



Hi [Name],

My doctor advised that I should not lift more than 15 pounds at work due to my pregnancy. I am currently working with five other people on the assembly line, so if one of them can help with the heavier parts we handle, I think this should be manageable. My co-workers have said they are fine with helping me.

Thank you in advance for your assistance.

[Your Name]

There are no magic words, but you should mention “**pregnancy**” and “**accommodation(s)**” to be safe. You want your email to trigger the employer’s legal duty to accommodate you; if you are too vague, your employer may

not understand that you are seeking a pregnancy-related accommodation. For example, if you are suffering from serious nausea, you should make sure your employer knows this is related to your pregnancy.

In your correspondence, be **specific** about what accommodations you need. Are you asking for a modified work schedule? Approximately 10 minutes of additional break time every two hours? Time to attend doctor's appointments? A place to sit down when your feet swell?



Hi [Name],

I have been diagnosed with gestational diabetes associated with my pregnancy. *[Note: you do not have to disclose a diagnosis, and can omit this if you are uncomfortable.]*

My doctor advised me to take additional breaks to do my blood tests and eat snacks to keep my blood sugar high. Please confirm that this is okay. I would also appreciate it if you would let me supervisors know you have approved this request for my next shift.

I also now have a “high-risk” pregnancy because of this diagnosis and will be required to go to additional appointments for monitoring. I will let you know when I have appointments as soon as they are scheduled.

I would be happy to work longer shifts other days if needed to finish my work.

Thanks and I appreciate your assistance. Please let me know what you need from me.

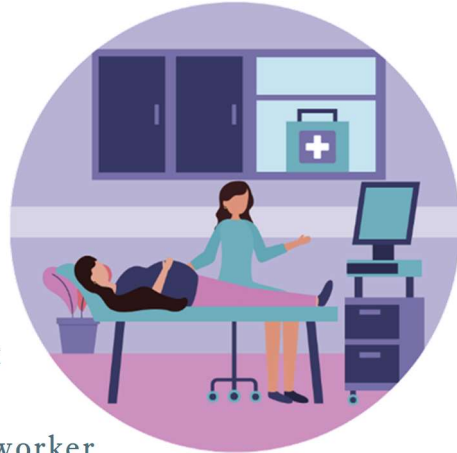
[Your Name]

You should also be **constructive** about how the accommodation can be managed and why it is “reasonable,” since that is the legal standard.

Your employer cannot require you to share the diagnosis or specific condition that requires the accommodation. As a practical matter, employers are often more inclined to accommodate when they understand why accommodations are needed; if the information is not embarrassing to you, it often makes sense to include it. But if you do not trust your employer to keep your condition confidential or simply want to maintain your privacy, you do not have to provide this information.

How to Make Sure You Get Time Off for Doctor's Appointments

You generally have a right to the accommodation of limited time off to attend your regular prenatal appointments. You may use PDL for this time. If you have accrued sick leave, your employer can require you to use it for time off for doctor's appointments.



You cannot be required to find a replacement worker as a prerequisite to taking time off for doctor's appointments.

When possible, you should provide your employer notice as soon as your appointments are scheduled. Provide notice in writing. If there is an electronic system for requesting time off, make sure to note that the time is for pregnancy-related doctor's appointments. If you do not receive a record of these requests, you should take a screenshot. You want a written record of every request for pregnancy-related accommodations, including doctor's appointments.

A Note About Doctor's Notes

People often ask whether their employer can require a doctor's note for time off. The answer: it depends.

Your employer can require medical certifications for time off under the PDL or CFRA. Your employer must provide you a copy of the certification form they would like your doctor to use. They also must give you at least 15 days to return the certification. Your employer **cannot** ask for specific information about your medical condition.

But what if you are using regular sick days? Can your employer require a note for that? The agency that enforces the law has advised that requiring a note may unreasonably interfere with your right to use paid sick leave. For example, if you have morning sickness, you do not need to go to a doctor for a diagnosis, and it would be burdensome to require you to contact your doctor or even pay for a doctor's visit.

If you are being targeted with requests for doctor's notes, while other employees can take regular sick time without providing notes, your employer is treating you differently as a pregnant woman. This is illegal.

How to Deal with Discrimination

Once you share your pregnancy, things may change at work. Maybe a co-worker makes lewd comments about your pregnant body or leers at you. Maybe your boss has re-staffed your projects or denied you a raise or bonus. Maybe you have been written up for going to doctor's appointments even though you gave advance notice. These are just examples. If you are being harassed or discriminated against, you should report it internally and in writing.

A Note About "Complaints"

If you are reporting discrimination or harassment at work, this is a "complaint" (even if it is informal). You should make your complaint in writing to HR or, if your employer does not have HR, to a supervisor.

When you make your report, there are a few rules to keep in mind.

Keep it focused. Don't list every problem you've ever had with the employer; focus on the specific issues relating to your pregnancy. If you don't know which conduct to include, talk to a lawyer.

No legal buzzwords. Don't use legal terminology you don't fully understand. For instance, people love to say they are experiencing a "hostile work environment." This is a legal term of art that describes illegal harassment and it is quite a heavy burden to prove. Instead, focus on the specific conduct that you believe *created* hostility. For instance, "My supervisor has commented multiple times that, since I got pregnant, I am lazy," is a much more effective complaint than the (often wrong) legal conclusion that you are experiencing a "hostile work environment."

Be constructive. Identify what you would like to see changed. Maybe you would like your co-worker to be told to stop harassing you or you believe you should be allowed to transfer so you do not have to report to someone who demeans you every day. Your complaint should offer constructive solutions so *you* look like the reasonable one.

Avoid threats. Employers hate to hear that you'll sue them or hire a lawyer. You might be surprised to learn that juries hate to hear it, too, and often think threats to hire a lawyer make it look like you are a "cooking up" a lawsuit, when all you are doing is trying to solve a problem at work. As in the rest of our lives, threats are often unproductive when trying to solve a workplace problem.

It is important to know that you cannot be retaliated against for reporting unfair treatment.

All Things Maternity Leave

Maternity leave is the time you take off from work before or after having a baby. California has some of the best maternity leave laws in the country, although there is still significant room for improvement. Most women are entitled to a total of approximately seven months of “job-protected” leave. This means you cannot be fired during leave or because of your leave. These seven months are comprised of multiple types of leave under several different laws. Here is a summary.

Know Your Rights



As of January 1, 2021, most California employers with more than five employees must provide leave under **both** the PDL and CFRA. Altogether, most women in California are entitled to up to **seven months** of leave when they give birth. This is made up of several different types of leave.

Pregnancy Disability Leave

You are entitled to up to **four months** of partially paid leave under the State PDL program. Your employer cannot impose additional requirements to take this leave, such as a minimum length of service. You are entitled to PDL even if you work part-time.

Your doctor determines exactly how much PDL you need. Most doctors certify women for disability leave between two and four weeks before their due date, and for at least six weeks after pregnancy (for vaginal births with no complications) and eight weeks after birth (for cesarean sections). Many doctors regularly certify women for additional PDL.

You can apply for payment during PDL through the EDD, which administers disability and unemployment benefits in California. The application portal is available [here](#). Your weekly benefit amount is 60 to 70 percent of wages earned 5 to 18 months before your claim start date, up to a weekly cap. The EDD provides a benefit calculator [here](#).

CFRA Leave

You also are entitled to an additional **12 weeks** of job-protected leave under CFRA if you have worked for at least 1,250 hours in the past year.



Your employer does not need to pay you for CFRA leave. However, employees who have earned at least \$300 from which SDI deductions were withheld during the 5 to 18 months before the claim start date are entitled to up to eight weeks of partially paid leave through the EDD's Paid Family Leave program. The EDD automatically sends you an application for PFL payments once your PDL benefits expire when you are certified to return to work. As with PDL, your weekly benefit amount is 60 to 70 percent of wages earned 5 to 18 months before your claim

start date, up to a weekly cap. The EDD provides a benefit calculator [here](#).

You are not required to take CFRA leave all at once. For instance, we have clients who have chosen to take CFRA leave after a premature baby was discharged from the NICU, or after their partner returned to work following leave.

A Note About Paternity Leave

This toolkit is not written for partners, but it is worth noting that most of the time, your partner is likely eligible for leave. Research shows that paternity leave pays huge dividends in terms of economic equality for women, so I encourage your partner to make use of it.

Like you, your partner may be eligible for CFRA leave: 12 weeks of unpaid leave, provided they have worked for their employer at least 1,250 hours in the past year. They also are eligible for paid family leave through the state PFL program. They cannot be retaliated against for taking paternity leave.

Additional Leave as a Reasonable Accommodation

If you are suffering from a pregnancy-related medical condition—for instance, post-partum depression or anxiety—that requires additional unpaid leave, your employer is required to engage in the good faith interactive process to attempt to accommodate you.

Your Health Insurance While on Leave

Under both the PDL and CFRA/FMLA, your employer must continue to cover their regular portion of your health insurance premiums while you are on leave, whether your leave is paid or unpaid. They can require you



to pay your normal contribution, but no more. If your employer suspends your health insurance while you are on leave, they are “interfering” with your leave rights in violation of State and federal law.

Planning for Leave

You must give your employer at least 30 days’ notice of your planned leave dates. If you have a medical emergency that requires you to take PDL early, you should provide notice as soon as practicable.

It is not your obligation to ensure your duties are covered while you are on leave. However, helping your employer plan for leave is generally appreciated and can help prevent resentment and discrimination.



Hi [Name],

I am following up with more information about my plans for maternity leave.

Currently, I have been classified as having a “high-risk” pregnancy and my doctor would like to take me off work beginning four weeks before my due date of June 6, 2021. My leave will run for approximately 22 weeks (4 weeks before my due date, plus six weeks of disability leave after my daughter is born, plus 12 weeks of CFRA leave after my disability leave is over). The exact dates may change based on when I give birth and if I have any medical issues that require additional disability leave.

I will provide a certification as you requested when my doctor actually takes me off work before my pregnancy. I understand from you that you require a certification for me to return to work.

Please let me know if there is anything you need from me or if you have any questions.

[Your Name]

Reinstatement & Returning from Leave

Your employer is required to reinstate you to the same position you had before taking PDL. You cannot be demoted. You may request this guarantee in writing.

The only exception to this is a genuine reduction in force or another reason that is unrelated to your leave. For example, your employer does not have to reinstate you if they eliminated your entire department.

Breastfeeding at Work

An increasing number of State and federal laws protect your choice about how to feed your baby. Nonetheless, a recent survey found that a third of mothers stopped breastfeeding because they returned to work, and 19% were pressured by their employer to stop.

This is illegal. You cannot be forced, directly or indirectly, to choose between breastfeeding and work.

Know Your Rights

Location & Amenities



Erin Murphy, a senior executive at Glencore, shared her account of pumping milk in a supply closet with the New York Times.

You are entitled to a room or other location—**other than a bathroom**—to pump. The room or space must be truly **private**. It must be clean and free of hazardous materials. It must be in “reasonable proximity” to your work area.

It must have an electrical outlet. You must be provided with ready access to a refrigerator and sink with running water.

Break Time

You are entitled to enough break time to accommodate your and your baby’s needs. **Your employer cannot require medical documentation about your need for breaks to pump.**

If you are a non-exempt employee, you must be paid for regular rest breaks. Additional breaks may be unpaid.

If you are an exempt employee, your employer cannot cut your pay or take deductions for breaks.

No Retaliation

Your employer cannot demote you, reduce your schedule, deny you a promotion, or worse, terminate you, because they are annoyed that you are pumping at work, taking “too many” breaks, or took maternity leave.

No Harassment

Your co-workers and supervisors cannot harass you for breastfeeding. That means no “jokes” by immature or malicious co-workers. (No, you are not a cow, the size of your breasts is not their business, and you are *not* just trying to get out of work assignments.)

How to Request Accommodations

Before you take leave, ask your employer’s HR representative or your supervisor for information about your right to lactation accommodations at work.



Hi [Name],

As we discussed, I will be taking leave for my new baby around [date] unless my medical needs change. I am planning to breastfeed my baby, as recommended by the CDC. I wanted to be proactive and discuss the accommodations that I will need when I return.

First, what room should I pump in? [Ask about any concerns you have – Can you confirm whether there is an electrical outlet or refrigerator? How will we ensure that the room is private or that I can use it when I need to?

Second, what breaks will I be provided to pump? Will my supervisors be told that I am allowed to take additional breaks?

Thank you so much for your help with this.

[Your Name]

Your employer should answer your questions and give you peace of mind that you will be accommodated when you return to work.

If your employer indicates they will not comply with the law or that you will be denied accommodations, confirm this failure in writing. If this happens, you should contact an employment attorney to discuss your options.

How to Complain About Being Denied Accommodations

What if you return to work, and your employer simply refuses to accommodate you? Or what if they promise they *will* accommodate you, but do not understand that it is urgent? Often, employers do not understand how breastfeeding works and assume they can “deal with it” another day.

First, you can make clear that your need for accommodation is urgent. Depending on the severity of your employer’s failure to accommodate, you can make clear that you will not work until legally compliant accommodations are granted.



Hi [Name],

As you know, I just returned this morning from maternity leave. I am breastfeeding my newborn baby. When I came to work today, I asked my supervisor where I would be allowed to pump and whether I would be able to take additional breaks (my baby is very young and I need to pump every two hours or so). He said that he didn’t know where I could pump and that I couldn’t take these breaks because there was no one to cover for me. This morning I had to pump in the bathroom’s sink area because that is the only place there is a plug, and other women came in while I was pumping. Needless to say this is very uncomfortable.

I cannot work full shifts without pumping and I should not be forced to pump in the public part of the women’s bathroom. It is not sanitary and it is not private.

I would like to work my scheduled shift tomorrow but I need to know that this will be addressed, otherwise, I cannot come in.

Thank you in advance for your help with this.

[Your Name]

Unfortunately, while you have legal rights, not much can be done to force your employer to comply with the law if they are intent on ignoring it. You may find yourself in a situation where you must choose between breastfeeding and working.

Of course, this choice is yours and yours alone. The law exists so you will not be put in this challenging situation and forced to make choices between your economic security and your choices with respect to your baby.

You should know that if you resign, you may still be able to pursue a wrongful termination case based on your employer's failure to accommodate you. This is called a "constructive discharge" and is explained in the accompanying Note.

A Note About "Constructive Discharges"

"Constructive discharge" is a legal term that means you can bring a wrongful termination claim even though you are the one who technically said "*I resign.*"

A constructive discharge occurs when the employer creates such intolerable working conditions that a reasonable employee in your shoes would resign rather than endure them. This is a high standard, but one that is met when you are not accommodated for a serious medical issue or if the lactation accommodations provided are so non-compliant that it would be unreasonable to use them.

For example, we have worked with women who were told to pump in chemical closets or in semi-public spaces where they could be walked in on at any time. This has caused them stress and reduced their milk supply. They felt they had no real choice but either quit breastfeeding or quit work.

If you are thinking of resigning because your employer has not accommodated you, because you are being discriminated against or harassed, or because you are being denied leave, you should talk to an employment lawyer to help you best preserve your right to bring claims if you choose to do so. Otherwise, you may give up the right to recover lost wages.

What if My Employer Broke the Rules?

Even if you do everything to protect yourself, you may still be a victim of pregnancy discrimination, retaliation, or harassment. As the statistics at the beginning of this Toolkit show, you are not alone.

You also are not powerless. The civil justice system exists to hold companies accountable. By speaking up, you help protect the next woman and family that follows in your footsteps.



How to Pursue Justice

Talk to Pregnancy Discrimination Attorney



If you believe you have experienced discrimination, harassment, or retaliation based on your pregnancy, or if you have been denied your right to leave, you can contact a pregnancy discrimination attorney.

You should choose an attorney with a specific focus on pregnancy discrimination. They will be familiar with the complicated leave laws at play, the common medical issues that arise, and the damage that pregnancy discrimination does to the families suffering from it.

My office provides free case reviews for all potential pregnancy discrimination clients. If I have earned your trust, you can contact us at 213-465-4802 or email me directly at julian@kingsiegel.com.

Success Stories

While it is impossible to say how much your claim is worth without more information, pregnancy discrimination and harassment verdicts and settlements can be significant. Here are some success stories.



A class action lawsuit alleging that Walmart systematically denied pregnant women accommodations, including transfer to less strenuous positions, resulted in a **\$14 million** settlement. Walmart also changed its policies in response to the lawsuit.



A jury awarded a Tucson, Arizona firefighter **\$3.8 million** after she was harassed for pumping at work and reassigned to short-term positions after requesting accommodations.



Humana settled a pregnancy discrimination case brought by one of its regional directors for **\$500,000**. She alleged that her boss made negative comments about her baby and fired her after she returned from leave.



UPS paid **\$2.25 million** to settle a lawsuit that alleged UPS underpaid its pregnant employees and denied them accommodations.

Make Change

Women have legal tools to end the motherhood penalty and pregnancy discrimination. These tools are worthless if people do not step up to enforce them. This can be as simple as forcing HR to designate a place to pump. It could mean sharing your story on social media or calling your legislative representatives and demanding a national paid leave law. It may mean filing a lawsuit.



Whatever it means to you, I am grateful that you are in this fight, and please do not hesitate to contact me if you need help. **You are not alone.** Let's make things better for working mothers like you.

Disclaimers & Legal Stuff

While I sincerely hope this information helps you and I do not expect business in return for preparing it, this toolkit is technically attorney advertising because I invite you to call me, and the Bar requires that I disclose this to you.

I am responsible for the content of this toolkit. If you have questions, comments, or just want to talk, you can reach us at the contact information below or in the footer of each page.

I am licensed to practice in California and New York. This toolkit only covers California law because I live in California and primarily practice here. (If it is popular, maybe New York is forthcoming!) I am not qualified to answer questions about leave or discrimination laws in any state besides California or New York. Leave laws are often state or even locality-specific and you should contact an attorney who is knowledgeable in your geographic area. (For example, San Francisco requires certain employers to provide additional paid leave beyond the PFL discussed in this toolkit.)

This advice is general in nature. You should talk to an attorney regarding your specific situation. My firm requires a signed engagement agreement before we represent you. This information does not create an attorney-client relationship.

I really, truly wish you the best with your pregnancy and your new family. This is an exciting time—enjoy it!

Lawyers for Pregnancy Rights

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