



PREGNANCY DISCRIMINATION IN THE WORKPLACE

WHAT IS PREGNANCY DISCRIMINATION?

Under state law, * it is illegal to refuse to hire an applicant because she is pregnant, or to fire or penalize an employee in the terms, conditions, or privileges of her job because she is pregnant.

It is also illegal to discriminate against a pregnant employee because she requires time away from work because of disability resulting from pregnancy, childbirth, or related medical conditions.

After a woman gives birth, she may need time during work to express breastmilk for her child. No employer shall prohibit an employee from expressing breastmilk during any meal period or other break period required by law to be provided by the employer or required by collective bargaining agreement.**

WHO IS PROTECTED BY STATE LAW?

The law protects pregnant applicants and employees.

WHO IS COVERED BY STATE LAW?

Any government or private employer with one or more employees, except for the federal government.

REASONABLE ACCOMMODATION IN THE WORKPLACE

CAN AN EMPLOYER FIRE, OR REQUIRE A PREGNANT EMPLOYEE TO TAKE LEAVE BECAUSE OF PERFORMANCE PROBLEMS RELATED TO HER PREGNANCY?

Only if the employer first makes every reasonable accommodation to the needs of the employee, and she is still not able to perform her job. Examples of such accommodations may include:

- allowing time off from work for doctor's appointments.
- allowing the pregnant employee to sit, instead of stand, while working.
- excusing from, or providing assistance for, lifting tasks.
- reassigning the pregnant employee to a light duty and/or other vacant position.
- allowing more frequent breaks or rest periods.
- allowing the pregnant employee to take sick leave.

PREGNANCY LEAVE

WHEN SHOULD AN EMPLOYEE ADVISE HER EMPLOYER THAT SHE IS PREGNANT?

This is up to the employee but in any case, as soon as her pregnancy interferes with the ability to perform her job.

MUST THE PREGNANT EMPLOYEE ACTUALLY BE DISABLED TO QUALIFY FOR LEAVE?

Yes. Pregnancy leave is only required when an employee is actually disabled from pregnancy, childbirth or related medical conditions. An employer cannot require a pregnant female to take leave if she is not presently disabled due to pregnancy.

HOW MUCH LEAVE MUST AN EMPLOYER PROVIDE?

An employer must provide leave, with or without pay, for a reasonable period of time. The "reasonable period of time" is to be determined by the employee's physician with regard for her physical condition and the job requirements. Employers may not restrict the length of pregnancy leave if medically required, or deny leave because the employee is on probation.

WHAT NOTICE MUST BE GIVEN TO THE EMPLOYER FOR GOING ON AND RETURNING FROM LEAVE?

The employee should inform her employer as soon as she can determine with reasonable certainty the date and duration of the pregnancy leave. The terms of leave may be modified as the employee's changing medical conditions dictates.

CAN THE EMPLOYER REQUIRE THE EMPLOYEE TO OBTAIN MEDICAL VERIFICATION OF HER INABILITY TO WORK DUE TO PREGNANCY?

Yes. The employer may request a doctor's certificate estimating the length of leave, the commencement date, and the return date.

DOES THE LEAVE HAVE TO BE TAKEN AT ONE TIME?

No. The leave can be taken before or after birth, or at any time the employee is medically unable to work because of pregnancy, childbirth, or related medical conditions.

* Hawai'i Revised Statutes (HRS) Chapters 368 and 378, and Hawai'i Administrative Rules (HAR) 12-46-106,107,108

** HRS § 378-10 (1999)

CAN THE EMPLOYEE REQUEST THE USE OF SICK LEAVE DURING THE DISABILITY PERIOD?

Yes. The employee may use whatever sick leave credit she has in order to receive compensation during her disability period.

CAN VACATION LEAVE BE ADDED TO THE DISABILITY LEAVE TO EXTEND TIME AWAY FROM WORK?

That is up to the employer. Such requests should be answered in the same manner as similar requests from non-pregnant employees.

CAN THE EMPLOYEE COLLECT DISABILITY INSURANCE COMPENSATION DURING PREGNANCY LEAVE?

Yes. Contact the Disability Compensation Division at your state Department of Labor and Industrial Relations office for more information.

RETURN RIGHTS

WHAT ARE THE EMPLOYEE'S RETURN RIGHTS?

The employee is entitled to reinstatement to her original job or to a position of comparable status and pay, without loss of accumulated service credits and privileges.

CAN AN EMPLOYER REQUIRE MEDICAL VERIFICATION THAT AN EMPLOYEE IS ABLE TO RETURN TO WORK?

Yes. The employer may request, prior to the employee's return, a medical certificate from the employee's physician attesting to her physical condition and approving her return to work.

DOES THE EMPLOYEE HAVE TO BE RETURNED TO THE SAME POSITION IF THE TEMPORARY REPLACEMENT IS A MORE SATISFACTORY EMPLOYEE?

Yes. The employee is entitled to return to the same, or comparable, position.

FILING A DISCRIMINATION COMPLAINT

If you believe that you are a victim of illegal discrimination, you can file a complaint, at no cost, with the Hawai'i Civil Rights Commission (HCRC). You must file within 180 days after the discriminatory practice has occurred. Call the HCRC at 586-8636 to speak to staff. During the HCRC investigation, you should be prepared to:

- present specific dates and facts about the alleged discrimination;
- identify documents and witnesses, if any, that substantiate charges in the complaint; and
- keep the HCRC updated as to your whereabouts and any phone number or address change.

INVESTIGATIONS/DETERMINATIONS

The HCRC conducts objective investigations of complaints. Where possible, the HCRC encourages parties to settle complaints through mediation or pre-determination settlements. If the HCRC determines that there is reasonable cause to believe discrimination has occurred, it will attempt to correct the discrimination and obtain relief through conciliation.

If conciliation is not successful, the HCRC holds administrative hearings on the complaint. If after the hearing it determines there is a violation of law, the commission will issue final orders to correct any discriminatory practices and to prevent their recurrence. The HCRC can order remedies such as:

- reinstatement to an employee's job or a comparable position.
- back pay to a complainant who was not reinstated.

A person does not need an attorney to file a complaint or be represented through the HCRC's investigation or hearing procedures. However, individuals and businesses have the right to be represented by an attorney, at their own expense, if they so choose.

FURTHER INFORMATION:

For more information on these and other aspects of discrimination, contact the:

HAWAI'I CIVIL RIGHTS COMMISSION
830 Punchbowl Street, Room 411
Honolulu, Hawaii 96813

Telephone: (808)586-8636
TDD: (808)586-8692
Fax: (808)586-8655
Neighbor Islands call (toll-free):
Kauai: 274-3141 ext. 6-8636#
Maui: 984-2400 ext.6-8636#
Hawai'i: 974-4000 ext. 6-8636#
Lāna'i & Moloka'i: 1-800-468-4644 ext. 6-8636#
E-Mail: info@hicrc.org
Website: www.state.hi.us/hcrc