

HOW TO FILE A COMPLAINT

If you believe that you have been discriminated against because of your pregnancy, or denied a reasonable accommodation for a disability relating to pregnancy or childbirth, you can file a complaint with the New York State Division of Human Rights.

A complaint must be filed with the Division within one year of the alleged discriminatory act. For more information or to make an appointment, contact the regional office nearest to your home or place of employment, or visit our website at WWW.DHR.NY.GOV.

SOME EXAMPLES:

You've always received satisfactory reviews and raises in your job. You inform your boss that you are pregnant and begin receiving negative job performance reviews and are put on probation. You believe this is due to your pregnancy. What are your options?

If you believe that the negative performance reviews and probation are based upon the disclosure of your pregnancy, you may file a complaint with the Division of Human Rights.

You return to work after maternity leave and discover that your position has been filled. You are offered a position junior to the one you had previously held. What are your rights?

If your employer has a policy of holding jobs for employees on leave for reasons other than pregnancy, then the Human Rights Law requires that your employer treat you similarly. You may also have rights to your former position as a reasonable accommodation to your pregnancy, as time off for recovery is generally considered a reasonable accommodation to a temporary disability under the Human Rights Law.

You are in the seventh month of your pregnancy, and your employer is pressuring you to take maternity leave. You want to continue working and feel capable of continuing. Must you take maternity leave?

Employers are prohibited from requiring a pregnant worker to take maternity leave unless the employee is unable to perform activities involved in the job in a reasonable manner. The employer is obligated to consider whether a reasonable accommodation would permit you to continue working.

PREGNANCY DISCRIMINATION IN THE WORKPLACE

NEW YORK STATE DIVISION OF HUMAN RIGHTS

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Are you pregnant and employed?

Pregnancy discrimination is considered sex discrimination under the New York State Human Rights Law. Pregnancy can also be considered a temporary disability under the Human Rights Law. It is against the law to terminate an employee or refuse to hire an applicant because she is pregnant or because of a condition relating to her pregnancy, or to discriminate in the terms, conditions, and privileges of employment because of pregnancy or childbirth.

The Human Rights Law prohibits employers from requiring a pregnant worker to take mandatory maternity leave unless the employee is prevented by the pregnancy from performing the essential activities involved in her job in a reasonable manner. If, during the pregnancy, an employee is absent from work due to a pregnancy-related condition and recovers, her employer may not require her to remain on leave until the baby's birth if she is physically able to return to work.

A pregnant employee cannot be treated differently from others with temporary disabilities and must receive the same fringe benefits (e.g., seniority accrual, sick leave, and medical coverage) received by employees out of work due to disabilities not related to pregnancy. An employer must consider reasonable accommodations to enable a pregnant employee to perform her job in a reasonable manner. An employer may only require such medical documentation as to fitness to work as is required of other employees.

The Law requires that an employer's health and disability insurance plans treat pregnancy like all other short term disabilities (e.g., broken leg, heart attack, etc.). Employers providing medical insurance must cover the medical costs of pregnancy to the same extent that they cover other medical expenses.

Employers are required to hold jobs for women absent due to pregnancy or childbirth as long as they do so for employees who take leave for other reasons. Time off for recovery is generally considered a reasonable accommodation for a temporary disability. Accumulated sick leave and applicable vacation leave may be used to cover the period a pregnant worker is unable to work.

You may also have disability and child care leave rights under the Federal Family and Medical Leave Act.

RETALIATION FOR FILING A COMPLAINT IS UNLAWFUL

The Human Rights Law prohibits an employer from retaliating against an employee for filing a complaint of discrimination with the employer or otherwise opposing employment practices that are discriminatory.

Retaliation is also prohibited after the filing of a complaint with the Division, during the time the complaint is pending, or at anytime thereafter.

Retaliation claims can be filed and adjudicated as separate and independent complaints.