

Abortion, Pregnancy Loss & Your Rights at Work: Frequently Asked Questions

Have questions about your legal rights at work related to abortion, miscarriage, or stillbirth? This fact sheet can help.

We understand it doesn't always feel safe to assert your rights at work, especially when it comes to abortion and pregnancy loss. Even though you have legal rights, your employer may not follow the law and it can be a struggle to figure out how to protect yourself and your job. We hope this information is useful as you think through your options.

This factsheet is not legal advice. Because the laws around abortion are changing quickly and are different in every state, you may want to speak with a lawyer about your individual rights. *For information about your rights at work, contact the Center for WorkLife Law's free helpline at 415-703-8276 or email hotline@worklifelaw.org. For information about your general legal rights about seeking abortion care, visit If/When/How at <https://www.reprolegalhelpline.org/sma-know-your-rights/> or call their legal helpline at 844-868-2812.*

Can my employer fire or harass me because I had an abortion or experienced pregnancy loss?

In most circumstances, it is illegal for your employer to fire, harass, or penalize you at work because you experienced a miscarriage or stillbirth, or because you had an abortion, are thinking about having one, or decided against having one. This applies in all states, including states that have abortion bans and restrictions. If your employer has 15 or more employees, taking actions against you may violate the Pregnancy Discrimination Act. It may also violate the Americans with Disabilities Act if your abortion or pregnancy loss is caused by or related to your disability. Even if your employer has fewer than 15 employees, you may still have protections under the laws of the state, city, or county where you work.

Do I have to tell my employer about my abortion or pregnancy loss?

It is your choice whether to tell your boss and coworkers. If your employer has 15 or more employees, depending on the circumstances, it could be illegal for your boss to ask you for details about how your pregnancy ended, and you should never be forced to answer that question. Some states have privacy laws that apply to smaller employers. While it may be illegal to penalize you or harass you because you had a miscarriage, stillbirth, or abortion, some employers will break the law. The risk may be greater in states with limited access to reproductive care. Read on to learn more about what to do if that happens.

If you are requesting time off work, depending on your employer's policies and the laws that apply, you may be required to provide a doctor's note explaining why you need leave. Read on to learn what information you are required to provide.

Can I take time off work for abortion or pregnancy loss?

You may have a right to take time off work to receive care related to an abortion, miscarriage, or stillbirth, as well as the time you need to recover or care for yourself afterwards. This includes time off that you may need to access care, such as attending appointments and time to travel out of state. There are several laws that may require your employer give you time off:

The Family and Medical Leave Act gives covered employees a right to take up to 12 weeks off work. To determine if you are covered, visit www.dol.gov/agencies/whd/fact-sheets/28-fmla. If you are covered, your employer cannot fire you, change your pay or job duties, or take any other negative action against you because you took time off for abortion or pregnancy loss, or because you asked to take time off. It may also be illegal for your employer to refuse to give you time off, or to try to convince you to not to take time off for an abortion or pregnancy loss. Your employer is not required by the FMLA to pay you during your time off but must allow you to use any vacation or sick pay you have available. Your employer must continue your health insurance benefits during your leave.

The Pregnancy Discrimination Act may give you a right to time off, especially if other people working for your employer have been allowed to take time off for other health or personal reasons. For example, an employer cannot prohibit you from using **your available sick days or other paid or unpaid time off (“PTO”)** for abortion or pregnancy loss. Even if your employer does not have a written policy, they may be required to give you time off for your reproductive health needs if they have given people time off for other reasons, like doctors’ appointments, serious health conditions (heart attack, cancer, etc.), or mild sickness like cough and cold. The Pregnancy Discrimination Act applies only to employers with 15 or more employees, but many states have similar laws that cover smaller employers.

The Americans with Disabilities Act (ADA) may also give you a right to take time off if your pregnancy termination or loss was due to a covered medical condition (for example, depression, lupus, preeclampsia, renal disease). The ADA applies only to employers with 15 or more employees, but most states have similar laws that cover smaller employers. For your state’s laws, visit <https://www.workplacefairness.org/disability-discrimination-state-law>.

The state, city, or county where you work may require your employer to provide:

- **Paid sick days:** To find out if you have a right to paid sick days, visit <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-sick-days/current-paid-sick-days-laws.pdf>.
- **Family and medical leave:** Some states may have laws that are like the national FMLA, but cover more employees.
- **Paid leave:** Some states provide *paid* leave benefits, like short-term disability, for medical leave related to pregnancy or disability.
- **“Reasonable accommodations” for reasons related to pregnancy, which can include time off needed for abortion and pregnancy loss:** To find out if you have a right to time off as a reasonable accommodation, visit www.pregnantatwork.org/pregnantemployees. Leave under a “reasonable accommodation” law does not have to be paid, unless your employer pays other employees when they take leave.

Employer policies: some employers provide time off for health needs, and some employers have short-term disability insurance that provides income during time off for disability or pregnancy-related leave.

How do I protect my privacy when I ask for time off?

Requesting time off from work for abortion or pregnancy loss can be challenging when you want to keep your reproductive health information private. Every situation is different, and there is not one best way to request time off. However, if you are worried about asking your direct supervisor, you may want to think about asking the Human Resources department instead (if you have one). Human Resources staff are more likely to be familiar with any laws that may require them to keep your medical information confidential, and laws that prohibit discrimination against employees because of abortion, miscarriage, or stillbirth. On the other hand, Human Resources may be more likely than your direct supervisor to ask for medical documentation.

You may also want to say, in writing if possible: “Please keep this private, protected medical information confidential, and do not share it with my coworkers, supervisor, or anyone else who does not have a legitimate reason to know it. If you need to share it beyond Human Resources for any reason, please contact me first. Please keep this information separate from my general employee records, as may be required by state and federal law. Thank you for protecting my privacy.”

For more, see “Do I have to tell my employer about my abortion or pregnancy loss?” above. Also see “What information am I required to provide to my employer when I ask for time off?” to understand what medical information your employer can request from your healthcare provider when you ask for leave.

What information am I required to provide to my employer when I ask for time off?

It depends on what laws give you a right to take leave in your state.

If you have sick days available under state/local law or your employer policy, this may be your best option for protecting your privacy, because under the laws of many states, your employer cannot require you to provide a doctor’s note or to explain why you need to use sick days.

Under other laws, like the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA), your employer can deny your leave request if your healthcare provider does not provide information explaining why you need time off work. More information about the details your employer can request and how to respond will be available by late August 2022 at www.pregnantatwork.org/MedicalInfoPrivacy.

If you must tell your employer about your abortion or pregnancy loss in order to get time off work, and you decide to do so, it is best to wait for your employer to directly ask you for medical information. If you provide private health information without your employer asking you for it, in many cases the employer is not legally required to keep it confidential. For this reason, it is a good idea to ask for time off for a “doctor’s appointment,” “health issue,” or “medical emergency.” It is possible your employer will allow you to take time off without asking for more information. It is also possible that your employer will ask for a doctor’s note explaining why you need leave or ask you to fill out FMLA paperwork.

Even if your employer asks for health information, doctors and medical staff may *not* tell your employer about your pregnancy or abortion without your permission. If you are requesting time off and want your

healthcare provider to share only certain information, clearly tell them (in writing, if possible) what they can and cannot share with your employer.

For more information about what information your employer must keep confidential, see “Can my employer tell others about my abortion or pregnancy loss?” You or your healthcare provider can also contact the Center for WorkLife Law’s free legal helpline to learn more about what your employer is allowed to request (see below).

Can my employer tell others about my abortion or pregnancy loss?

A law that applies in all states, the Americans with Disabilities Act (ADA), requires employers with 15 or more employees to keep your health information confidential when it is provided in response to an employer request for medical information. This applies whether you have a disability or not. In addition, the Family and Medical Leave Act requires your employer to keep confidential the medical information you provide as part of a request for FMLA leave. This means that Human Resources staff is not allowed to tell your coworkers or supervisor that you had an abortion, miscarriage, or stillbirth when you provide that information in response to an employer request or as part of asking for FMLA leave. Additionally, your FMLA paperwork must be kept separately from your general personnel file. Some states have additional privacy protections.

Even with these legal protections, you should always be careful to not volunteer private health information to your employer, even to your Human Resources department, without being directly asked for it. Information you provide without being asked may not be considered confidential. Instead, make your initial request by asking for time off for a “doctor’s appointment,” “health issue,” or “medical emergency.” For more, see “What information am I required to provide to my employer when I ask for time off?”

Finally, it is important to keep in mind that employers and Human Resources staff may not always follow the law about when to keep health information private. Additionally, although it would be illegal to share legally-protected confidential health information with your coworkers or supervisor, your employer may be allowed to turn over health information when requested by law enforcement authorities as part of a criminal investigation or if required by a court order or subpoena as part of a lawsuit.

See “How do I protect my privacy when I ask for time off?” above for more, including how to ask your employer to keep your medical information confidential.

What if I need changes at work following miscarriage, stillbirth, or abortion?

Some employees need changes at work following their pregnancy loss or abortion. For example, you may need to use the bathroom more often, limit how much you can lift, take more breaks, or avoid driving or operating heavy machinery while on medication. You may need changes to help meet mental health needs, like a shifted or flexible schedule, rest breaks, telework, or a redesigned workspace. These changes are often called “reasonable accommodations.” If you aren’t able to make these changes on your own, or if your employer is concerned that you aren’t able to do your job as usual, you may need to request a reasonable accommodation. Most states have laws that require employers to provide pregnancy-related

accommodations, and accommodations may also be available under the Pregnancy Discrimination Act or the Americans with Disabilities Act. For more, visit www.pregnantatwork.org/accommodations.

Can my family member take time off work for my abortion?

Your spouse, parent, or other family member may have a right to take time off from work to go with you to your abortion, or to care for you afterwards, if they are covered by the FMLA or a state/local law that provides sick days or family and medical leave. Whether your family member can take this time off and how long is different from case to case—contact us for help understanding your rights.

Can my family member take time off work for my miscarriage or stillbirth?

Your spouse, parent or other family member may have a right to take time off work to accompany you while you seek medical treatment for your pregnancy loss, and to care for you afterwards if they are covered by the FMLA or a state/local law that provides sick days or family and medical leave.

If your family member experiences mental health challenges in the wake of a miscarriage or stillbirth, they may be eligible for time off to attend to their own health needs under the FMLA, the Americans with Disabilities Act, or state and local laws. Whether your family member can take this time off and how long is different from case to case—contact us for help understanding your rights.

Do I have the same rights if I work for a religious organization?

In many circumstances, workplace protections for abortion and pregnancy loss do not apply to religious organizations. Contact the Center for WorkLife Law’s free helpline for more information.

What can I do if I think my employer is treating me unfairly or has broken the law?

If you are being harassed or have been treated unfairly because of your pregnancy, miscarriage, stillbirth, or abortion in a way that impacts your pay, job duties, or mental health, you may be experiencing illegal discrimination. Or your employer may have broken the law if they tried to prevent you from taking time off that you had a right to take, penalized you for taking time off, or refused to make “reasonable accommodations” that you had a right to receive for your abortion or pregnancy loss.

You may be able to file a complaint yourself or with the help of a lawyer with the Equal Employment Opportunity Commission (EEOC), the equal opportunity office or labor agency of the state/city where you work, or the Department of Labor’s Wage and Hour Division. Which office to contact will depend on your situation. There are often short deadlines for making complaints and filing lawsuits. Contact the Center for WorkLife Law’s free legal helpline (below) for more information and connections to local resources.

How can I get more information about my legal rights?

For information about your workplace rights, contact the Center for WorkLife Law’s free legal helpline at 415-703-8276 or email hotline@worklifelaw.org.

For information about your general legal rights about seeking abortion care, visit If/When/How at <https://www.reprolegalhelpline.org/sma-know-your-rights/> or call their legal helpline at 844-868-2812.