

## The Abortion Provider's Guide to Supporting Patients with Workplace Issues: Time Off, Medical Notes, and Protection from Harassment

In the post-Roe era, abortion seekers are facing increased barriers at work and school to accessing timely reproductive healthcare, and some are facing discrimination and harassment. This guide gives abortion care providers information to help them ensure patients can get time off work without being forced to disclose private health information.

### Providing Medical Documentation for Time Off

Most employees have a right to take time off work to access abortion healthcare. Although employers are not required to seek medical documentation when an employee asks for time off work, many do. If an employee does not provide the documentation, they may be penalized at work, or even fired. But if the documentation they provide includes *too much* information, the worker may face harassment from their employer and coworkers and/or be reported to law enforcement. Whether an employee is required to provide medical documentation, and what information they must provide, depends on the law they are relying on to request time off. Find tips on how to get this delicate balance right, below.

There are 3 options when determining what law someone should use to request time off:

#### **Option 1 (Top Choice): Rely on paid sick days, if available.**

Several [states and localities](#) require employers to provide paid sick days. Employees may request time off for a “doctor’s appointment” or “health issue.” Under many of these laws, patients must be allowed to take a day or two, or sometimes three, off without medical documentation. Unfortunately, states that have abortion bans and restrictions are less likely to require paid sick days. Refer your patient to WorkLife Law’s free legal helpline to learn more.

#### **Option 2: Rely on the Pregnant Workers Fairness Act.**

The PWFA gives most employees a right to take time off for medical appointments (including travel) as well as time off for physical and psychological recovery. This law requires employers nationwide to provide reasonable accommodations (including leave) for pregnancy, childbirth, and related medical conditions like abortion and miscarriage. It applies to employers with 15 or more employees, but similar [state laws](#) may cover smaller employers. The employee does not have to inform their employer that the requested time off is for an abortion. However, for this law to apply, the employee must disclose that their need for time off is due to “pregnancy, childbirth, or a related medical condition.”

- ❖ **Use WorkLife Law’s [Medical Certification Form](#) to protect your patient’s privacy.** When an employee requests time off under the Pregnant Workers Fairness Act, employers are allowed to seek limited medical documentation. WorkLife Law’s [Medical Certification Form](#) solicits all



of the information employers have a right to ask for, but employers are prohibited by law from asking for more information than is included in the form. Your patient cannot be required to fill out invasive FMLA or ADA paperwork if they are using the Pregnant Workers Fairness Act and are willing to disclose their pregnancy. You can learn more in WorkLife Law's [Medical Certification FAQ](#).

- ❖ **If your professional identity indicates that you are an abortion provider, explore if another healthcare provider is able to provide medical documentation instead.** The Pregnant Workers Fairness Act explicitly permits a non-treating healthcare provider (e.g., a primary care doctor, nurse, doula, or therapist) to complete the form documenting the need for time off.

### **Option 3: If your patient's abortion is connected to a disability, rely on the ADA.**

The Americans with Disabilities Act (ADA) requires employers to provide reasonable accommodations, including time off for medical appointments and recovery, when needed because of a disability. If your patient's abortion is related to a physical or mental condition (e.g., cancer, depression, lupus, hypertension), they may choose to ask for time off for a medical appointment related to their disability, instead of pregnancy. Employers are allowed under the ADA to request medical documentation.

## **Your Patient's Other Workplace Rights**

If you believe your patient's rights are being violated, or if they have questions, you may refer them to UC Law SF's Center for WorkLife Law's free helpline at [hotline@worklifelaw.org](mailto:hotline@worklifelaw.org) or 415-703-8276.

### **Right to Privacy:**

Workers may worry that their employer will disclose their private medical information when they turn in a work note. The Americans with Disabilities Act (ADA) requires employers with 15 or more employees to keep health information and medical paperwork confidential from coworkers and others. While the law is clear, always keep in mind that some employers may not follow it. Additionally, employers may be allowed to turn over health information when requested by law enforcement as part of a criminal investigation or if required by a court order as part of a lawsuit. You may refer your patient to WorkLife Law's [Abortion FAQ](#) for detailed tips on how to protect their privacy when turning in work notes.

### **Right to Reasonable Accommodations:**

Your patient may need changes at work because of pregnancy or abortion. For example, they may need to use the bathroom more often, limit strenuous physical activity, take additional breaks, or avoid driving or operating heavy machinery while on medication. Likewise, they may need changes to address mental health needs, like a shifted or flexible schedule or telework. The Pregnant Workers Fairness Act and similar state laws, described above, require employers to make such reasonable accommodations, so long as they can be provided without significant difficulty or expense. To learn more about pregnancy accommodations, visit [PregnantAtWork.org](http://PregnantAtWork.org). You can use our [Medical Certification Form](#) to protect your patient's privacy when certifying their need for accommodations.



## Right to be Free from Discrimination, Retaliation, and Harassment:

Employers with 15 or more employees are prohibited by Title VII of the Civil Rights Act from discriminating against an employee because they had an abortion, considered having one, or decided against having one. [State laws](#) may cover smaller employers. An employer may not harass, retaliate, or punish an employee because of abortion – or allow coworkers to do so. These protections apply in states with abortion bans, although religious employers may be exempt.

## Resources to Share with Your Patients

**Know-Your-Rights Handout for workers.** Our 1-pager can be shared directly with patients or posted in your waiting and exam rooms. Also check out our [Handout for Travel Companions](#).

**Is your patient a student?** They also have the right to take time off school and to receive accommodations under Title IX. Check out our resources at [PregnantScholar.org](#), including our [medical documentation guide and certification form](#) for students.

**Free and confidential legal assistance** about work/school issues is available on the Center for WorkLife Law's free helpline at [helpline@worklifelaw.org](mailto:helpline@worklifelaw.org) or 415-703-8276.

### Still have questions?

Learn more at [PregnantAtWork.org](#). The Center for WorkLife Law at the University of California College of the Law, San Francisco is available to answer your questions about abortion and pregnancy rights in employment and education, as well as medical certification, at no charge. **You can email us at [info@worklifelaw.org](mailto:info@worklifelaw.org) or leave a message for us at 415-565-4640.**

For legal advice and representation related to abortion issues more generally (i.e., not related to the workplace and school), contact the [Abortion Defense Network](#).