

## Pregnancy Leave and Nursing Rights of Employees

State and federal laws protecting workers from sex and gender discrimination prevent differential treatment of pregnant workers. Treating a worker differently on account of pregnancy may be a violation of Title VII of the Equal Rights Act. Unlike under the Americans with Disabilities Act (ADA), in which an employer has been given the right to withhold employment on account of permanent disabilities, which might pose a substantial safety or health risk to coworkers or the disabled individual, the U.S. Supreme Court ruled that “women affected by pregnancy [must be treated]... the same for all employment-related purposes ... as other persons not so affected but similar in their ability or inability to work.” 42 U.S.C. § 2000e(k).

Pregnancy is not usually a disability, as it is a temporary condition. However, discrimination against a pregnant worker, because she is “perceived” to be disabled (or discrimination against the caretaker for a disabled child, spouse, parent or the associate of a disabled person) might be an ADA violation.

### PREGNANCY LEAVE

If a pregnant woman takes the advice of her physician to refrain from job assignments that may endanger her pregnancy, she can ask for and receive up to 12 weeks of federal Family Medical Leave under the same terms and conditions as men. In a case from New Mexico, female Albuquerque police officers sued for discrimination in violation of the Pregnancy Discrimination Act of Title VII. Albuquerque required pregnant employees to take sick leave first, instead of allowing personal or vacation leave, as they did with others taking FMLA, adversely affecting paid benefits and overtime after returning. Defendants responded that they were applying a “uniform policy applicable to all employees.” The Tenth Circuit found the evidence sufficient that a reasonable jury could find the defendants’ explanation pretextual and that a trial court or jury could infer an intent to discriminate based on pregnancy, so they sent the case back to the district court level for trial on the discrimination issue. *Orr v. City of Albuquerque*, No. 07-2105 (10th Cir. 7/8/2008).

### NURSING RIGHTS

Colo. Rev. Stat. § 25-6-301 and § 25-6-302 (2004) recognize the benefits of breastfeeding and encourages mothers to breastfeed. The law also allows a mother to breastfeed “in any place she has a right to be.” Colorado law requires employers to provide nursing mothers with reasonable unpaid break time or permit them to use paid break time to express (pump) breast milk for up to two years after a child’s birth. The employer must make reasonable accommodation to provide a private location, not a bathroom stall and near the work area, for nursing moms per CRS §8-13.5-104 (2008)

### WHAT THIS MEANS FOR COUNTIES

Remember that all policies, leave, and pay issues must be equitable based on how they are applied to pregnant and nursing mothers (as well as fathers who want time for caretaking responsibilities). Men also have the right to take time off for various family needs under the FMLA. Do not allow discrimination or harassment of employees who use these rights. Remember to address nursing needs in your break policies. Review all terms and conditions of employment to allow for equitable practices for workers with maternity and paternity status. For more information, contact CTSI at 303 861 0507.