



CANADIAN
HUMAN RIGHTS
COMMISSION

COMMISSION
CANADIENNE DES
DROITS DE LA PERSONNE

Pregnancy and Human Rights In the Workplace

A Guide for Employers



Canada



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Introduction

Pregnancy in the workplace is a fundamental human rights issue of equality of opportunity: women should not suffer negative consequences in the workplace because they are pregnant. The *Canadian Human Rights Act* (the Act) prohibits discrimination related to pregnancy.

This guide to pregnancy and human rights outlines an employer's responsibilities regarding pregnancy in the workplace. It also provides tips for creating a respectful and inclusive work environment, and offers practical advice to prevent discrimination related to pregnancy.

The challenges of balancing work responsibilities and family obligations extend beyond pregnancy. The broad principles of dignity, respect, and accommodation explained in this guide can be applied to everyone protected by the Act.

Who is covered under the *Canadian Human Rights Act*?

The *Canadian Human Rights Act* protects all federally regulated employees from discrimination in the workplace. This extends to full-time, part-time and temporary employees, probationary and contract workers, volunteers, and job applicants.



The Act applies to employers such as:

- federal government departments and agencies
- crown corporations
- banks
- inter-provincial transportation companies (including trucking, bus, rail and air)
- telecommunications service providers
- First Nations

How is pregnancy defined?

“Pregnancy” includes conditions and circumstances, such as:

- fertility treatment(s), or family planning
- medical conditions or complications that might affect or be affected by pregnancy or childbirth (e.g. diabetes, high blood pressure)
- pregnancy as a surrogate
- childbirth
- miscarriage or conditions arising as a direct or indirect result of miscarriage
- stillbirth or conditions arising as a direct or indirect result of stillbirth
- abortion or conditions arising as a direct or indirect result of abortion
- reasonable recovery time after childbirth, miscarriage, stillbirth or abortion
- placing a baby for adoption
- maternity and pregnancy-related leave
- breastfeeding



What is pregnancy-related discrimination?

Pregnancy-related discrimination is any action, decision or policy that negatively affects an employee or group of employees, because of pregnancy or pregnancy-related conditions or circumstances.

Can discrimination be linked to multiple grounds?

Employees who believe they are being discriminated against can make a complaint on more than one ground. For example, if a pregnant woman felt she was being harassed at work because she was pregnant and single, she could make a complaint on the grounds of sex *and* marital status.

The Act also provides protection from discrimination based on parenthood, under the ground of “family status.” Family status rights cover issues such as parental or maternity leave, adoption leave and childcare related needs; these may apply to both new mothers and fathers.

There are **11 grounds of discrimination** under the *Canadian Human Rights Act*:

- race
- national or ethnic origin
- colour
- religion
- age
- sex
- sexual orientation
- marital status
- family status
- disability
- conviction for which a pardon has been granted



What actions could be considered pregnancy-related discrimination?

The following actions could be considered pregnancy-related discrimination:

- Refusing to hire or promote a person because she is pregnant, plans to become pregnant, or recently gave birth.
- Adverse differential treatment in employment because of pregnancy-related circumstances or conditions.
- Terminating a person's employment due to pregnancy-related conditions or circumstances.
- Creating or following policies or practices that negatively affect an employee, because of pregnancy-related conditions or circumstances.
- Failing to provide reasonable accommodation for an employee who is pregnant, trying to become pregnant or recently gave birth.

Harassing employees because of pregnancy or related conditions or circumstances is also considered discrimination. Harassment includes joking, teasing and unwelcome comments, or touching.



What is the employer's duty to accommodate?

Some people may need to change the way they work because of pregnancy-related needs, and as an employer, you have a legal duty to meet those needs. This is called the duty to accommodate. Providing maternity leave is an example of accommodation.

The duty to accommodate only applies when a request is based on one of the grounds of discrimination. Employees are entitled to reasonable accommodation when a rule, practice, or situation in their workplace has an adverse impact on them. Accommodation does not always mean a perfect solution, or their preferred option. However, employees are entitled to a fair and dignified solution that allows them to continue to do their jobs and maintain their current wages and benefits. For example, a pregnant employee may need additional time for bathroom breaks; these should be allowed without docking her existing break times.

An employee has the responsibility to communicate her accommodation needs to you the employer in a clear and timely way. This should include providing enough information for you to make an informed decision regarding a request for accommodation. An employee is also responsible for working with you to discuss options and must accept a reasonable solution that accommodates her needs in the workplace.



It is your responsibility to accommodate employees by removing barriers that may limit their ability to do their job. Each employee and workplace is different. Situations involving the duty to accommodate must be looked at on a case-by-case basis, according to the individual's needs.

Once an employee informs you of her pregnancy, you should respectfully discuss any needs and the accommodation options to find the best solution(s) at the earliest opportunity. You must be open to ideas and suggestions, explore alternatives, and offer reasonable and dignified solutions to accommodate the employee, up to the point of undue hardship. This involves communication, creativity, flexibility, and may require compromise by both parties. You should also remain open to adjusting a previously agreed-upon solution if circumstances change.

If your workplace is unionized, and if the accommodation involves changes that affect the union rules or practices, employee representatives should be included in these discussions. Union and employee representatives have the responsibility to consider options, including exceptions to union rules and terms of collective agreements, to work towards flexible solutions that accommodate an employee's pregnancy-related needs.



Accommodation involves compromise: Gina's story

Gina's job requires that she wear a uniform. The uniform is supplied and paid for by her employer. Gina is pregnant and asks for two new uniforms, in different sizes, to meet her changing physical needs.

In turn, Gina's supervisor provides two options: Gina can either take leave when her uniform no longer fits (even though she would still be able to perform her duties at that time); or she can have her current uniform altered and later re-altered at her own cost.

After some discussion, they agree to an appropriate accommodation that meets Gina's needs and does not negatively affect her. She will be supplied one new uniform, to be altered as needed throughout her pregnancy, at the employer's expense.

What is undue hardship?

When you accommodate an employee, you are required to make adjustments and sometimes bear some costs. Certain solutions might even cause you some difficulty or hardship. The duty to accommodate ends when you reach the point of "undue hardship," which is when factors such as safety, health or cost make



the employer's burden too high. Once accommodation reaches undue hardship, you would not be required to accommodate an employee further. The point of undue hardship varies for each employer and for each accommodation situation, depending on the individual's needs.

It is important to document accommodation requests, the steps you take to accommodate the employee, and any evidence that causes you to conclude that you have reached the point of undue hardship.

Health and safety risks and accommodating pregnancy-related issues

Health and safety are important, and should be balanced with the right of an employee to participate fully in the workplace. Doctor-ordered restrictions should be followed, but you should not assume a person is unable to perform her duties merely because she is pregnant or has pregnancy-related concerns. If you believe that workplace conditions will result in a serious health or safety risk to a pregnant employee, you should discuss this with her. You must work with employees and their representatives (if applicable), to examine ways to reduce the risk and still allow employees to fulfil the core functions of their job.



Finding the balance: Julia's story

Julia works as a manager in a medical lab and is pregnant. She recently applied to a job competition in a new lab. The job requires exposure to chemicals proven to be toxic for pregnant women. This fact might appear to eliminate Julia from the competition, even though she is the top applicant. However, as the top candidate, Julia must not be denied the job opportunity if she can be accommodated throughout her pregnancy. The employer must first ask how Julia's pregnancy can be accommodated in the workplace.

- What can be done to adjust the job or the working conditions to make it safer?
- Is chemical exposure avoidable during the period of the pregnancy?
- Can the core functions of the job be done without the risk of chemical exposure?
- Can certain functions be shared with others for the duration of the pregnancy?

Upon further examination the employer realizes that the position only requires brief exposure to the chemical-filled areas while travelling to meetings. As a result, Julia can use alternate routes through the workplace to avoid exposure for the duration of her pregnancy.



Best practices to avoid pregnancy-related discrimination

Typically, there are four phases of employment where you can identify and prevent pregnancy-related discrimination.

During job selection and/or job promotion

- When advertising job opportunities, do not exclude women who are pregnant or who are of assumed childbearing age.
- When interviewing, do not ask candidates about plans to have children, use of birth control, or pregnancy. You can ask if the candidate can work the required hours.
- Do not deny hiring, training or promotional opportunities because of pregnancy, or the intention to take maternity leave.

During pregnancy

- Do not unreasonably withhold leave to attend pregnancy-related appointments. This may be leave with or without pay, depending on your workplace.
- Do not deny sick leave to pregnant employees when they are ill.
- Do not force employees to take maternity or pregnancy-related leave.
- Do not terminate employment contracts or term employment early because of pregnancy, or an employee's intention to take pregnancy-related leave.
- When restructuring or downsizing, assess all positions in the same manner.



During maternity leave or pregnancy-related absence(s)

- Ensure that employees on maternity or pregnancy-related leave are still eligible for benefits that are available to employees. Employees responsible for a portion of the cost of benefits during employment, continue to be responsible for that portion while on maternity or pregnancy-related leave.
- Make employees on maternity or pregnancy-related leave aware of job opportunities that become available and allow them to apply.
- Allow employees on maternity or pregnancy-related leave to continue to accrue seniority and years of service.
- Inform employees on maternity or pregnancy-related leave of any changes to their job, and provide them the opportunity to participate in any related discussions or consultations.

During an employee's return to work after pregnancy-related or maternity leave

- Allow employees to return to the same job, or a similar job if their original job no longer exists.
- Give employees any wage increases that came into effect while they were on maternity or pregnancy-related leave.
- Provide accommodation for employees who breastfeed or express/pump breast milk.



Accommodation solutions

Managers and supervisors should seek out creative and flexible responses to individual pregnancy-related needs. Temporary solutions can include the following:

- flex-time
- changing or sharing shifts
- light duties
- job-sharing or task-sharing arrangements
- safer duties
- modified uniforms
- a different job
- extra washroom breaks as needed
- no shift work
- time off for pregnancy-related medical appointments
- no overtime
- preferred parking
- leave or a leave extension
- flexible start time to deal with morning sickness or breastfeeding schedules
- part-time work
- alternate work arrangements
- allowing work visits of a newborn to breastfeed
- longer or extra breaks and a private place to breastfeed or express milk



What is the Canadian Human Rights Commission's role?

The Commission is mandated to develop and conduct information and discrimination prevention programs to educate the public and assist employers in creating and sustaining a culture of human rights in the workplace.

The Act empowers the Commission to receive complaints and determine if they should be resolved informally, referred to the Canadian Human Rights Tribunal (the Tribunal) for further inquiry or dismissed. If employees believe they have been negatively affected by discriminatory workplace practices or policies, they can file a complaint. It is the Tribunal, and not the Commission, that decides if discrimination has occurred. The Tribunal holds hearings like those of a court. If an employer is found to have discriminated, the Tribunal may require it to change its practices or policies, and/or to pay an employee monetary damages.

Under the *Employment Equity Act*, the Commission is also responsible for ensuring that federally regulated employers provide equal opportunities for employment to four designated groups: women, Aboriginal peoples, persons with disabilities, and members of visible minorities.



Recommended readings and resources

For more information please consult:

- Canadian Human Rights Commission’s Pregnancy Policy (www.chrc-ccdp.gc.ca/legislation_policies/phrw_gdpt/toc_tdm-eng.aspx)
- *Canada Labour Code* (www.laws.justice.gc.ca/en/L-2)
- *Employment Insurance Act* (www.laws.justice.gc.ca/en/E-5.6)
- *Canada Occupational Safety and Health Regulations* (www.laws.justice.gc.ca/en/L-2/SOR-86-304/index.html)
- *Government Employees’ Compensation Act* (www.laws.justice.gc.ca/en/G-5)
- A Place For All: A Guide to Creating an Inclusive Workplace (www.chrc-ccdp.ca/discrimination/APFA_UPPT/toc_tdm-en.asp)
- Treasury Board Policy on Occupational Safety and Health (www.tbs-sct.gc.ca/hr-rh/osh-sst/index-eng.asp)
- Treasury Board Manager’s *Guide to Canada Labour Code* Pregnancy Rights and Health and Safety Risks (www.tbs-sct.gc.ca/pubs_pol/hrpubs/tbm_119/clc-cct2-eng.asp#_Toc520515285)
- HRSDC Pamphlet on Occupational Health and Safety: Pregnant and Nursing Employees (www.rhdcc-hrsdc.gc.ca/eng/labour/publications/health_safety/pregnant.shtml)
- Treasury Board Policy on the Provision of Accommodation for Employees with Disabilities (www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12541§ion=HTML)
- Your workplace collective agreement provisions
- Internal policies at your workplace