

Laws on Pregnancy Discrimination in Workplace: “What Should be Know to Every Expecting Lady”



Law

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ABSTRACT

This article is an attempt to reflect the most sensitive concept called Maternity and what should be know to every expecting lady regarding laws on pregnancy. In such situations, it is very pertinent to discuss the present laws that governing pregnancy in India and in abroad as well. The author has also discussed various draft law and commission reports and government initiatives to combat the pregnancy discrimination in workplaces.

INTRODUCTION

Swami Vivekananda: “Just as bird cannot fly with one wing only, a nation cannot march forward if the women are left behind.”

Women constitute a larger percentage of the workforce in industrialized and developed countries. Although these days the number of women in the workforce, who continue their employment throughout pregnancy is high but the recently published report by the National Women’s Law centre, shows that pregnant women still face discrimination while on the job. Thus it is necessary to address the pregnancy related health issues in the workplace in order to formulate appropriate strategies to promote and protect material and infant health.

Women cannot be dismissed from the service of the company for being pregnant.

If a Woman is pregnant or is thinking of becoming pregnant, one thing that she will have to think about and fully understand is what being pregnant and having a baby means in relation to her job. This is often referred to as her pregnancy (or parental) rights. These rights encompass a wide variety of concepts, from the parental leave you’re entitled to after your baby is born, to how you should be treated as a pregnant person at your job, to how you’re treated after you have your baby both at work and outside of work till the baby is healthily born.

To establish prima facie, a claimant must show that:

- They have a characteristic protected under the Code (i.e.pregnancy)
- They experienced adverse treatment within a social area (i.e. with respect to a service, employment, etc.), and
- The protected characteristic was a factor in the adverse treatment or impact.

The most important issue to be determined is whether pregnancy was a factor in the negative treatment or impact. Even if pregnancy or being of child-bearing age is only one of the factors in a decision to restrict a woman’s equal access to employment, housing or services, prima facie discrimination will be found.

Once prima facie discrimination is established, the burden then shifts to the organization or person responsible to either provide a credible non-discriminatory explanation, or justify the conduct or practice using one of the defences available under the Code .

TYPES OF DISCRIMINATION (DIRECT INDIRECT AND SUBTLE)

Discrimination can take several forms. It may be direct and overt, where an individual or organization deliberately treats a woman differently because she is, was or may become pregnant. This type of discrimination usually arises from negative attitudes and biases, and is a common form of pregnancy discrimination. For example, a service provider may ask a breastfeeding mother

to either stop breastfeeding or leave, because it does not allow breastfeeding on the campus premises, or an employer may dismiss a pregnant employee because of stereotypes that pregnant women cannot do their jobs along with babysitting.

If a woman claims she was treated negatively because of pregnancy and there is reason to believe that the organization or person may not have known she was pregnant, the woman may have to show that the organization or person knew or ought to have known of the pregnancy and therefore pregnancy discrimination arose.

Example1: A woman who was six weeks pregnant was employed as a telemarketer for less than a month when she resigned during a training session. The reason behind her resignation was that the trainer made remarks that she used the washroom too often and ate too much, and that this indicated that the trainer did not want a pregnant woman working for the company. However, the woman said she had not told the trainer or anyone in management about her pregnancy. The HRTO (HUMAN RIGHTS TRIBUNAL OF ONTARIO) concluded that there was no pregnancy discrimination. In this case, the pregnancy was not obvious at six weeks and the woman had not established that the employer knew or ought to have known that she was pregnant.Discrimination may also happen indirectly. It may be carried out through another person or organization.

Example2: A company contracting services from a temp agency takes on a worker who later tells the employer that she is pregnant. The company tells the agency not to send any more female workers who look like they are pregnant or are of child-bearing age.Both the organization and person who sets out discriminatory conditions, and the organization or person who carries out this discrimination, can be named together in a human rights claim and can be held jointly responsible.

Example3: A new employee notified her manager after one week of employment that she was pregnant. Soon then, her employment was terminated. The employer claimed the employee was fired due to performance issues. The HRTO(HUMAN RIGHTS TRIBUNAL OF ONTARIO) found that while there may have been some performance issues, the decision to terminate the employee was significantly influenced by the employee’s pregnancy because the employer felt it would not be worthwhile to train her before she started her leave.

Individual acts themselves may be ambiguous or explained away. But when viewed as part of a larger picture, they may lead to a conclusion that discrimination because of pregnancy was a factor in the treatment or in other words termination of a person in this case. An inexplicable departure from the usual practices may support a claim of discrimination. Criteria applied to some people but not others may also be evidence of discrimination, if it can be shown that pregnant and breastfeeding women were singled out for negative treatment thus were victimised of preg-

nancy discrimination. The cumulative effect of overt and subtle discrimination is profoundly damaging to people who experience it.

LAWS IN UNITED STATES OF AMERICA:

The major federal laws that afford workplace protections and employment rights for women/workers who are pregnant are:-

- Title VII of the Civil Rights Act, (1964)
- The Pregnancy Discrimination Act, (1978)
- The Nursing Mother Break Time Provision of the Patient Protection and Affordable Care Act (Affordable Care Act), 2010.
- Family and Medical Leave Act of 1993
- The Fair Labour Standards Act, Amended by the Affordable Care Act in 2012.

The Maternity Benefits Act 1961

[Female workers are entitled to a maximum of 12 weeks (84 days) of maternity leave. Out of these 12 weeks 6 weeks leave is post natal leave. In case of miscarriage or medical termination of pregnancy, a worker is entitled to 6 weeks of paid maternity leave. Employees are also entitled to one additional month of paid leave in case of complications arising due to pregnancy, delivery, miscarriage, premature birth, miscarriage, medical termination or a tubectomy operation (2 weeks in this case)]¹

Central Civil Service (Leave) Rules 1972

[Female Civil Servants are entitled to maternity leave for a period of 180 days for their first two live born children.]²

In 1964, Congress passed **Title VII of the 1964 Civil Rights Act** which prohibits sex discrimination.

In 1976, the Supreme Court ruled in **General Electric Company v. Gilbert** that discrimination on the basis of pregnancy was not sex discrimination, but rather discrimination between pregnant and non pregnant persons which was not covered by Title VII.

In 1978, Congress passed the **Pregnancy Discrimination Act** to amend Title VII to make it clear that the prohibition on sex discrimination includes "because of or on the basis of pregnancy, childbirth or related medical conditions

The **PDA** also states, "women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all employment related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work."

In 1991, the Supreme Court granted certiorari to resolve a conflict between the Fourth, Seventh and Eleventh Circuits as to the legality of foetal protection policies, and to address "whether an employer, seeking to protect potential fetuses, may discriminate against women just because of their ability to become pregnant."

The Court held that **Title VII** forbids sex-specific foetal protection policies even where the employer's motives are to help the female employees.

• **United Automobile, Aerospace & Agricultural Implement Workers of America, UAW v. Johnson Controls, Inc.**, 111 S. Ct. 1196, 55 EPD 40,605 (1991). Johnson Controls raised concerns about tort liability if an unborn foetus was harmed by exposure to lead on-the-job. According to the Court, the basis for holding an employer liable "seems remote at best" if, "under general tort principles, Title VII bans sex-specific foetal protection policies, the employer fully informs the woman of the risk, and

the employer has not acted negligently..."

LAWS IN CHINA:

"Provisions on Female Labour Protection under special circumstances (State Council Discuss No. 619)"³ - It extends maternity leave for female employees in China to 14 weeks (98 days) from the previous 90 days (just meeting the minimum maternity leave stipulated by the International Labour Organization (ILO).

During maternity leave, a female employee shall receive a maternity allowance in lieu of salary.

LAWS IN JAPAN:

Labour Standards Act (Act No. 49 of 1947)⁴

[This statutory enactment provides that an employee must provide an expecting mother employee with maternity leave for 6 weeks (14 weeks for multiple pregnancy beyond twins) before her child birth and 8 weeks after the child birth].

Equal Employment Opportunity Act between Men and Women (Act No. 113 of July 1, 1972).

[This enactment prohibits unequal employment condition for reasons like pregnancy, marriage, maternity leave.]

Act on the welfare of workers who take care of child care and family care leave (Act No. 76 of 1991)⁵.

[This Act provides that employees have the right of taking unpaid child care leave for 1 year and prohibits an employee to dismiss any worker who has taken or is going to take child care leave.]

LAWS IN TAIWAN:

In Taiwan, pregnancy discrimination is considered as a violation of sex-discrimination laws and thus are also treated as such if an employer is found guilty. Despite the laws, discrimination against women and especially pregnancy discrimination has found a common place as it is rarely reported and discrimination is tolerated thus promoting the same.

LAWS IN CANADA

In Canada also like in Taiwan pregnancy discrimination is considered as violation of sex –discrimination laws and thus will be treated as such. Generally, women cannot be fired at their job because they are pregnant, breastfeeding, or plan to become pregnant. Even if a woman has not worked at your job for 52 weeks, she can still not be fired for being pregnant and the employer is still required to accommodate the pregnant lady. Women should also have full access to her earned benefits like vacation, sick leave, seniority, or overtime. Finally, the employer cannot tell the pregnant women when to begin her maternity leave. As long as her health permits, she should be permitted to work until her baby is born .Pregnancy is a valid health reason to be away from work (for prenatal appointments or tests for example) but is not considered an "illness" or a "disability".

LAWS IN HONG KONG:

In Hong Kong, pregnancy discrimination is a criminal offence if an employer discriminates against a pregnant employee who has been hired under a continuous contract. An employer who contravenes this can be liable to prosecution and, on conviction, fined HK\$100,000. The employer would also be required to pay the employee's wages in lieu of notice, a further sum equivalent to one month's wages as compensation, and ten weeks maternity leave pay also. Pregnant workers who feel they have been discriminated because of their pregnancy are also protected by the Sex Discrimination Ordinance.

CONCLUSION

The majority of issues pregnant women faces is the violation of their rights in the workplace. If this happens to a woman she will want to address it with her boss or supervisor, or whatever

system is in place for her to make her voice heard. For example, if she's in a union, she might file a grievance since many of them have collective agreements that cover human rights protections, which include pregnancy. If the discrimination continues, she might want to consult your provincial human rights body to find out what the process is for taking an issue further. In addition, these groups often advise of how to best handle a situation.

Each Province has its own human rights code or legislation governing these women discrimination rights. In principle, they are all similar in their protection of woman rights. They include their leave and accommodation at work. However, because they are a little different in each province, the expecting lady should check her provincial practices. For more specific information about rights and responsibilities in her Province, she needs to visit the website of her provincial human rights commission or contact them directly and check her Province from province guide to find the right body in her province and thus can save herself from being victimised from pregnancy discrimination and other types of women discrimination because their is no tool for development more effective than the empowerment of women.

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