





Pregnant Workers' Accommodation Rights

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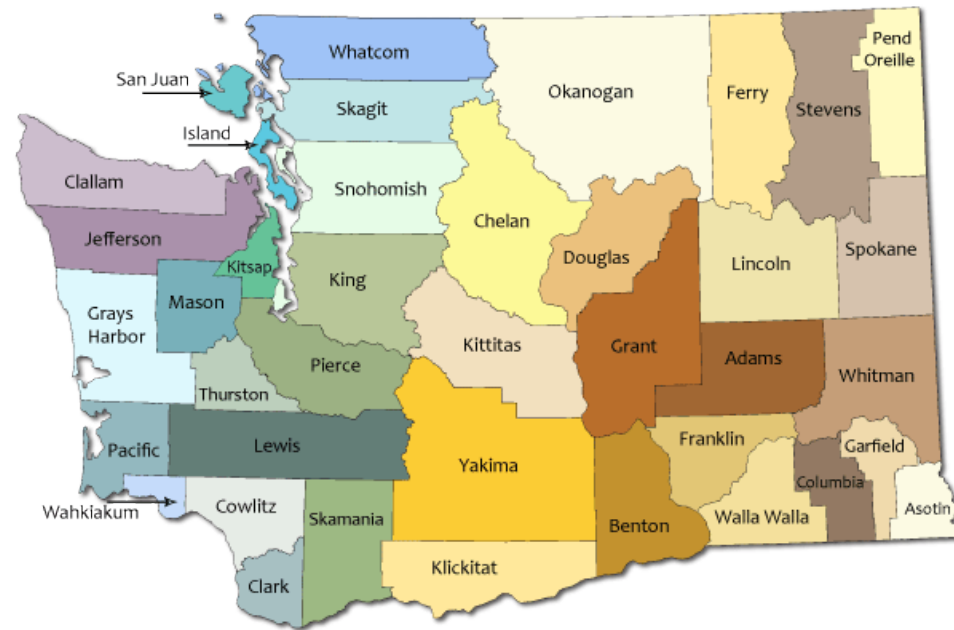


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Who are we?

- ▶ Attorney General's Office
Wing Luke Civil Rights Division
- ▶ Created in 2015
- ▶ Works to protect the civil rights of
EVERYONE in Washington.





What types of cases do we work on?

- ▶ Discrimination on the basis of race, color, religion, national origin, sex, pregnancy, sexual orientation, gender identity or expression, age, marital status, status as a family with children, veteran, disability, or the use of a trained dog guide or service animal.
- ▶ In a range of areas, including in employment, housing, education, credit and insurance transactions, and at government offices and businesses that are open to the public.



Civil Rights 101

Everyone has the right to be free from discrimination because of race, creed, national origin, sex, sexual orientation, disability, or honorably discharged veteran or military status. (Washington Law Against Discrimination (RCW 49.60))



The Healthy Starts Act

Relatively new law
(2017)

Employer needs to have at least 15
employees.



Protections apply to pregnancy and health related conditions



During Pregnancy



After the birth of the baby
(breastfeeding, express milk)

Two types of accommodations:

Required

- No exceptions
- Employer may not ask for written certification from a healthcare professional

Additional

- No significant difficulty or expense to the employer
- May ask for written certification from healthcare professional



Required accommodations



Frequent, longer or flexible restroom breaks



Modifying a no food/drink policy



Required accommodations



Providing sitting/sit more frequently



No lifting more than 17 pounds



Additional accommodations:

No significant difficulty or expense to the employer. May require written medical certification:

- ▶ Job restructuring, including modifying a work schedule, job reassignment, changing a work station, or providing equipment;
- ▶ Providing a temporary transfer to a less strenuous or hazardous position;
- ▶ Scheduling flexibility for prenatal visits;



Additional accommodations:

- ▶ Providing **reasonable** break time for an employee to express breast milk for **two years** after the child's birth **each time the employee has need** to express the milk and providing a **private location**, other than a bathroom, if such a location exists at the place of business or worksite, which may be used by the employee to express breast milk. If the business location does not have a space for the employee to express milk, the employer shall work with the employee to **identify a convenient location and work schedule** to accommodate their needs;
- ▶ Providing any further accommodations the employee may need.

Undue Hardships

No bright-line rules as to what constitutes an “undue hardship.”

One must consider “if the cost or difficulty is unreasonable in view of... the size of and the resources available to the employer.”

2020 Breastfeeding/Pumping Amendment

- ▶ An employer may not request that the employee provide written certification from a health care professional regarding the need for a reasonable accommodation to express breast milk.
- ▶ House Bill 2266 – Amended the Healthy Starts Act, RCW 43.70
- ▶ Effective June 11, 2020



Employers are prohibited from:

Retaliating against pregnant employees who request one of these changes

Denying employment opportunities to pregnant employees who are otherwise qualified, or

Requiring pregnant employees **to take leave if an alternative is available.**

Federal Law That Protects Breastfeeding Employees

- ▶ Fair Labor Standards Act (FLSA) – 29 U.S.C. 207, Section 7
 - ▶ In 2020, the Affordable Care Act amended the FLSA to require employers to provide a nursing mother reasonable time to express breast milk after the birth of a child.
 - ▶ The employer must provide reasonable break time to express breast milk for one year after child's birth
 - ▶ Employer must provide a place, other than a bathroom, shielded from view and free from intrusion from coworkers and the public
 - ▶ Employer with fewer than 50 employees not subject to this requirement if it would impose an “undue hardship” by causing significant difficulty or expense given the size, resources, nature or structure of the business.



Where do I send a complaint?

▶ **Email: pregnancy@atg.wa.gov**

▶ **Call: toll-free line at (833) 660-4877.**

▶ **Online form:**

<https://fortress.wa.gov/atg/formhandler/ago/PregnancyAccommodationsComplaintForm.aspx>



Where do I send a complaint?

atg.wa.gov/pregnancy-and-breastfeeding-accommodations



Washington State
Office of the Attorney General

Attorney General
Bob Ferguson

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PREGNANCY AND BREASTFEEDING ACCOMMODATIONS

Pregnancy and Breastfeeding Accommodations

Washington law provides specific civil rights protections for pregnant employees. These protections apply to an employee's pregnancy and pregnancy-related health conditions, which include health conditions during pregnancy and after the birth of the baby, such as the need to breastfeed or express milk. If a pregnant employee works for an employer with 15 employees or more, the employer is required to provide the following reasonable accommodations to the employee:

1. Providing frequent, longer, or flexible restroom breaks;
2. Modifying a no food or drink policy;
3. Providing seating or allowing the employee to sit more frequently; and
4. Refraining from lifting more than 17 pounds.

In addition, a pregnant employee may have rights to other workplace accommodation(s), as long as there is no significant difficulty or expense to the employer. These are:

5. Job restructuring, including modifying a work schedule, job reassignment, changing a work station, or providing equipment;
6. Providing a temporary transfer to a less strenuous or hazardous position;
7. Scheduling flexibility for prenatal visits;
8. Providing reasonable break time for an employee to express breast milk for two years after the child's birth each time the employee has need to express the milk and providing a private location, other than a bathroom, if such a location exists at the place of business or worksite, which may be used by the employee to express breast milk. If the business location does not have a space for the employee to express milk, the employer shall work with the employee to identify a convenient location and work schedule to accommodate their



Where do I send a complaint?

fortress.wa.gov/atg/formhandler/ago/PregnancyAccommodationsComplaintForm.aspx

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Washington State
Office of the Attorney General Attorney General
Bob Ferguson

How may we help you?

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PREGNANCY ACCOMMODATIONS COMPLAINT FORM

* Starred fields are mandatory in order to process your request.

1 Information About You

*Last Name: *First Name: Middle Name:

*Address: *City: *State: *Zip:

*Contact phone:

Best day(s) of the week and time(s) of day to reach you by phone

*Contact e-mail address:

*Confirm e-mail address:

*Is this complaint about you? No Yes

What language should we contact you in?

2 Information About the Employer

Our attorneys are working daily to make sure pregnant employees are accommodated according to the law.

- ▶ Most of the complaints are resolved without litigation. If there is retaliation against the employee we take action.
- ▶ So far, we have filed one lawsuit related to this law.



State of Washington v. Colmar Inc., et al.

- ▶ Pregnant employee requested accommodation from her normal job requirements of lifting up to 150 pounds.
- ▶ Company refused her request, and fired her for not being able to do her job.
- ▶ The Attorney General's Office filed a complaint on December 2019, requesting that the company is restrained from continuing the unlawful conduct and awards damages or appropriate monetary relief to each person aggrieved.

Wed, Jan 24, 17:45

So do you need a doctors note,
because I can get you that.

No

Then what is the problem for me
running the route tomorrow?

If you cannot do the job which is to
move packages up to a hundred
and fifty pounds and deliver them



Text Message



To: Denise

and fifty pounds and deliver them
then I do not have a job for you to
do I'm sorry

You know I have limitations because
I'm still early in my pregnancy and
this is the most dangerous time for
me to carry a box that heavy.

I was going to have to let you go
anyhow. This just speed the
process up.

How?

And you know what the job is.

Because you weren't going to get
me my route back?

No.

Yea but just because I'm pregnant
doesn't mean I can't do the job. You



Text Message



To: Denise

doesn't mean I can't do the job. You are always on light duty... what makes me different

I'm going to call my boss.

Thank you

Mine is due to an injury on the job not from getting pregnant Salina worked her entire pregnancy don't give me that crap that you can't work because you're pregnant either you don't want to or you want to but it doesn't matter anymore because you're no longer employed with us

I am your boss

I never said that I can't work, I told you just heave ass boxes

You should check what your reading



Text Message





QUESTIONS?

<https://www.atg.wa.gov/wing-luke-civil-rights-division>