



## Montana Human Rights Bureau

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1-800-542-0807  
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For more information, please visit our website at:

[www.montanadiscrimination.com](http://www.montanadiscrimination.com)

The Department of Labor & Industry is committed to making its services available to people with disabilities. Persons with disabilities requiring accommodation to take advantage of the **department's services should** contact the Human Rights Bureau.

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# The Rights of Pregnant Employees in the Workplace



## Montana Human Rights Bureau



If you are pregnant or have recently had a child and you believe an employer has denied your right to maternity leave or you believe an employer has otherwise discriminated against you, contact the Montana Human Rights Bureau. It is important to remember that under state discrimination laws you only have 180 days to file a complaint. This means you only have 180 days from when an adverse act happens to have a written complaint filed with our office. Time may be extended if you participated in a grievance procedure. (MCA 49-2-501)

## What Does the Human Rights Bureau Do?

The Montana Human Rights Bureau receives and investigates complaints of illegal discrimination. The Human Rights Bureau is the agency responsible for enforcing the Montana Human Rights Act and the Governmental Code of Fair Practices, along with certain federal anti-discrimination statutes. The Bureau is committed to providing quality education and training opportunities to employers, employees, housing providers, tenants, and all Montana residents.

It is important to understand that we serve Montana as a neutral entity; we do not provide any type of advocacy service on behalf of the employee or the employer.

## A Pregnant Employee has the Following Rights

### Nondiscrimination in Hiring

An employer may not refuse to hire an applicant because she is pregnant or plans to become pregnant.

### Continued Employment

An employer may not fire or discharge an employee because of her pregnancy.

### Reasonable Maternity Leave

An employee is entitled to a reasonable leave of absence for the temporary disabilities associated with childbirth, delivery and related medical conditions. An employer may require the employee to provide medical verification. The employer may not place restrictions on the leave, which would not apply to leaves of absence for any other valid medical reason.

### No Mandatory Unreasonable Leave

An employer may not require an employee to take a mandatory maternity leave for an unreasonable length of time.



### Use of Accrued Benefits and Leave Time

A pregnant employee is entitled to use any disability benefits, sick leave, vacation time, annual leave or compensatory time accrued pursuant to plans maintained by the employer for her maternity leave. If the employer maintains no such plans or benefits, the employee is entitled to maternity leave without pay.

### Equal Treatment in Employee Benefit Plans

Disabilities as a result of pregnancy, childbirth or related medical conditions are, for all job related medical conditions, temporary disabilities. An employer may not treat an employee disabled due to pregnancy less favorably than an employee with any other temporary disability under any health, medical temporary disability or sick leave plan maintained by the employer. All benefits provided to temporarily disabled employees pursuant to such a plan must be provided to pregnant employees.

A woman experiencing an atypical pregnancy that results in a condition that substantially limits one or more major life activities may have additional protections under disability discrimination laws. Additionally, under certain circumstances, an employer may be required to provide a woman who is pregnant with accommodations such as light duty if that accommodation is afforded to others with temporary disabilities.

### Reinstatement after Maternity Leave

An employee who has signified her intent to return at the end of a reasonable leave of absence for maternity must be reinstated to her original job or to an equivalent position with equivalent pay and accumulated seniority, retirement, fringe benefits and other service credits. The law provides a limited exception to this rule for private employers when the employer's circumstances have changed so much that it is impossible or unreasonable to do so. For example, an employer who has gone out of business while the employee is on maternity leave would not be required to reinstate her.



## What is Reasonable Maternity Leave?

Whether maternity leave is reasonable is determined case by case based upon the ability of the employee to perform her job. In the case of normal pregnancy and delivery, medical providers typically consider a reasonable leave to be six to eight weeks after delivery.

If the employee is unable to perform her job prior to delivery, or if there are complications such as illness or surgical delivery, necessary leave may be longer than normally required. If the employer and the employee cannot agree in establishing a reasonable period of time for the leave, the employer should rely on the judgment of the employee's physician or other medical provider who has actually examined the employee.

An employer and an employee may mutually agree to a longer period of leave, either compensated or uncompensated, than would otherwise be required by law. An employer is not required to provide maternity leave for child care beyond the period of actual disability. However, if an employer permits the use of leave beyond the period of disability, it should allow child care leave for both mothers and fathers.

As a condition of maternity leave, an employer may require the employee to provide medical verification that the employee is unable to perform her employment duties.

Leave for fathers and parents of adopted children are not required by state law (except for employees of the State of Montana) but may be required under federal law. An employer may, however, voluntarily provide for such leave.

## What About Breastfeeding?

In 2007, the Montana Legislature passed legislation requiring public employers (all state and county governments, municipalities, school districts and the university system) to provide accommodations for breastfeeding mothers.

This legislation does not require private employers to provide accommodations.

If you work for a private employer, ask your employer about their policies regarding breastfeeding and any accommodations they may be willing to provide.

A pregnant employee may have additional protections under the federal Family Medical Leave Act. For information on the laws relating to the Family Medical Leave Act, visit the U.S. Department of Labor website at [www.dol.gov](http://www.dol.gov) or call 1-866-487-9243.

