

# Pregnancy Discrimination is a Form of Sex Discrimination

## True or False?

**1. Whenever an Oregon employee becomes pregnant, the employer must give her at least 12 weeks of maternity leave.**

False. It is true that both the Oregon Family Leave Act (OFLA) and the federal Family and Medical Leave Act (FMLA) require employers to allow employees time off for pregnancy disability leave. The employer must employ at least 25 employees in Oregon to be covered under OFLA and 50 employees in the country to be covered by FMLA. In addition, employees must have been employed for a certain period of time before they are entitled to utilize OFLA or FMLA.

However, even if an employee is not covered by OFLA or FMLA, she still has legal protection under state and federal civil rights laws. It is illegal for an employer to discriminate against an employee because of their gender, and pregnancy has long been considered a subset of gender discrimination. Therefore, if an employer refused to hire or automatically terminated an employee because of pregnancy, she might prevail in a civil rights complaint.

**2. Because pregnancy discrimination is a form of gender discrimination, employers must grant pregnant employees an unlimited time period off in order to deal with pregnancy and childbirth.**

False. The civil rights laws do not require employers to go this far. Rather, the law requires that pregnancy be treated no differently than any other temporary disability. For example, an employer cannot treat time off for pregnancy any differently than time off for an operation or a broken leg.

**3) If an employer operates a facility that uses chemicals potentially dangerous to a pregnant employee or her fetus, the employer still cannot prohibit the employee from working there.**

True. The U.S. Supreme Court has held that as long as the employer has provided sufficient notice of the potentially hazardous nature of the workplace substance, the employer must then leave it to the employee and her doctor to determine whether that risk is severe enough to cause the employee to stop working there during her pregnancy.

**4) If an employee tells an employer that she is pregnant, the employer can automatically order the employee to submit to a medical examination.**

False. If the employee appears to be having difficulty performing her duties, then the employer can require her to obtain a medical examination ( as long as the employer pays any cost incurred by the employee).

Of course, an employer can do that with any employee who appears to be having difficulty performing their duties. But an employer should not require a medical exam of an employee just because she tells the employer that she is pregnant.

For more information on this and other important issues affecting Oregon employers, please visit our website at [www.oregon.gov/boli/ta](http://www.oregon.gov/boli/ta). You can also call us at 971-673-0824.