

Curbside Consultation

Helping Pregnant Women Keep Their Jobs

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Case scenarios are written to express typical situations that family physicians may encounter; authors remain anonymous. Send scenarios to afpjournals@aafp.org. Materials are edited to retain confidentiality.

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Case Scenario

At 7.5 months pregnant, my patient found herself increasingly uncomfortable at work. Her varicose veins ached from standing on the job, where she was required to work a cash register and walk prescriptions from the pharmacy to the checkout area. I wrote a note to her boss explaining that she was pregnant and needed light-duty work for the duration of her pregnancy. Her employer's human resources department told her that there were no available alternative positions, and that she did not meet the eligibility criteria for leave as defined by the Family and Medical Leave Act. She would be allowed to reapply for any available openings after her baby was born, but human resources could not guarantee rehiring her. My patient is her

family's primary breadwinner. Is there anything I could have done differently to avoid this outcome?

Commentary

Although many women can continue working during pregnancy without any adjustments, many other women require reasonable accommodations to allow them to continue working effectively and safely. Common pregnancy-related conditions and corresponding workplace adjustments are described in *Table 1*.

Physicians should know the laws regarding employed pregnant women, and how to write a work accommodation note that will not jeopardize their patients' employment status.

Table 1. Common Pregnancy-Related Conditions and Workplace Accommodations

Condition	Possible accommodation
Back pain	Alternate sitting and standing when possible; break for stretching twice daily, as well as during meal break
Breastfeeding	Two breaks of at least 30 minutes to pump; meal break where pumping may occur; private space for pumping
Carpal tunnel syndrome	Breaks from typing for at least 10 minutes every hour; wrist splints; padded roll in front of keyboard to prevent wrist extension
Gestational diabetes mellitus	Breaks for snack, bathroom, and blood sugar checks twice daily, in addition to meal break
Hyperemesis with dehydration	Have electrolyte drink available; schedule modifications as needed (e.g., late arrival, reduced hours, intermittent leave)
Postpartum depression	Schedule modification to accommodate therapy appointments
Varicose veins or hemorrhoids	Feet elevated when possible, support hose, extra water to drink, high-fiber snacks, sit (with cushion) instead of stand when possible

Pregnant women are only partially protected at work by a patchwork of federal laws with several caveats. Some are left without a clear right to receive the accommodation they may need to continue working or to take job-protected leave.

- The Pregnancy Discrimination Act prohibits discrimination on the basis of pregnancy and requires employers to accommodate pregnant employees to the same extent as they accommodate nonpregnant employees who are “similar in their ability or inability to work.”¹ Because of its vague legal standard, some employers believe that they are not required to accommodate pregnant women under this law.

- The Americans with Disabilities Act only recently expanded to cover pregnant women, and some employers remain confused about its requirements. This act requires employers to provide reasonable accommodations to employees who have pregnancy-related impairments that constitute disabilities, including anemia, sciatica, gestational diabetes mellitus, preeclampsia, morning sickness, swelling in the legs, depression, or other impairments that substantially limit a major life activity or the normal functioning of a bodily system.¹ Women who do not have a condition that constitutes a disability under the law are not entitled to an accommodation.

- The Family and Medical Leave Act requires covered employers to provide employees leave for pregnancy-related medical conditions, prenatal care appointments, childbirth, and baby bonding.¹ Employees are entitled to only 12 weeks of leave, unpaid. Additionally, two out of five women of childbearing age are not covered because of strict eligibility requirements.²

- Various state and local laws may provide additional protections. However, even the most protective laws apply only in the jurisdictions where they were passed.

Although these laws exist, and protections for pregnant women have increased in recent years, there is still no clear federal mandate requiring employers to accommodate pregnant women. Too many women remain unprotected, and employers do not always understand their own obligations. As a result, a quarter of a million women are denied their accommodation requests every year.³

Because of these legal shortcomings, the work accommodation notes that physicians write are of critical importance to ensure that pregnant women receive the modifications they need to continue working safely and effectively. In their notes, physicians must communicate to employers the information necessary to determine whether the employee is entitled to an accommodation under the law and what accommodation should be made. This is a demanding task for which health care professionals are not properly trained.

Unsuitable work accommodation notes can have negative consequences for pregnant patients, potentially causing them to be put on unpaid leave, lose their health insurance, or even lose their jobs.⁴ The problem of physicians writing inadequate work notes is so acute that the Center for WorkLife Law at the University of California Hastings College of the Law has developed guidelines and other tools that physicians can use to write effective notes (<https://www.pregnantatwork.org/healthcare-professionals/>).

Protocols for writing legally appropriate notes vary from state to state; however, there are some universal principles to keep in mind. First, except in rare cases, the note should communicate to your patient’s employer that she is able to continue working, with a reasonable accommodation. There are risks associated with recommending leave. Contrary to popular belief, many women do not meet eligibility criteria and are not entitled to any job-protected leave. Even those who are covered are often entitled to only 12 weeks of unpaid leave. If that leave expires before the patient is ready to go back to work, she could lose her job.

Second, the note should be as specific as possible in communicating your patient’s limitations. Avoid vague recommendations such as light duty, which may be misinterpreted by the patient’s employer as a message that the patient is unable to do her job. Instead, state exactly what your patient needs to be able to continue working safely.

Third, do not make recommendations that are not medically necessary because, if the recommendation cannot be accommodated, your patient could be put on unpaid leave or even lose her job. During a low-risk, normal pregnancy, there is very little evidence that physical labor causes harm.^{5,6} Physical mobility and exercise are healthy during pregnancy.⁷ In one study of pregnant women with short cervixes, the group of women placed on activity restriction had more preterm births than the group without activity restriction.⁸

Fourth, the note should state the accommodation start date and the anticipated end date, which can be revised in the future, if necessary.

Additional information may be necessary depending on the state where your patient works. Pregnant@Work provides state-specific interactive tools and letter templates that increase the likelihood that your patients will be accommodated (<https://www.pregnantatwork.org/healthcare-professionals/>). Pregnant@Work also has a free legal hotline and resources for pregnant women.

How could the physician in the case scenario have helped this patient stay at her job and continue earning income? Instead of recommending light duty, the letter should have specifically identified the patient’s limitations (e.g., unable to stand for entire eight-hour ►

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shift without periodic sitting) and suggested accommodations (e.g., allow sitting on a stool when ringing up customers). Writing an effective and legally appropriate work accommodation note takes extra care, but by following these principles and the guidelines from Pregnant@Work, you just might save your patient's job.

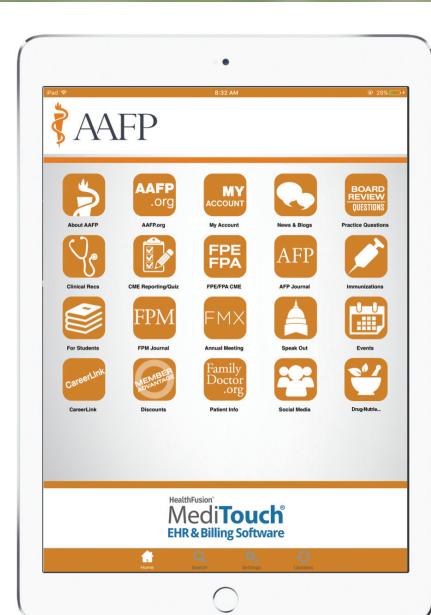
NOTE: Questions about legal issues or the Pregnant@Work resources can be directed to Liz Morris, JD, at morrisliz@uchastings.edu.

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