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# Pregnancy in the Academy

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## Saranna Thornton

Saranna Thornton is a professor of economics and business at Hampden-Sydney College and the author of the AAUP's guidebook *Pregnancy in the Academy*.

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## Aaron Nisenson

Aaron Nisenson is senior counsel at the AAUP



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# What We'll Cover Today

- Types and Sources of Rights and Benefits Involving Pregnancy
- Federal Laws Involving Pregnancy
- Accessing Pregnancy Benefits
- Questions and Answers
- Filing a Complaint

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# Types of Rights and Benefits Involving Pregnancy

- Leave for medical condition related to pregnancy or childbirth
- Leave to care for a newborn child or pregnant mother (also available to a non-pregnant spouse)
- Accommodations to work or work schedules to address medical conditions arising from pregnancy or child care
- Right to return to work after a childbirth or related leave
- Right to be free from discrimination due to pregnancy, childbirth, or parental status
- Right to have access to insurance and certain medical benefits associated with pregnancy, childbirth, or child rearing
- Right to break time for breastfeeding

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# Sources of Rights and Benefits Involving Pregnancy

- Federal law—the focus of today's webinar
- State or local law and regulation
- State employee rules and regulations (for public sector institutions.)
- Collective bargaining agreements that may cover faculty members
- University policies
- Faculty handbooks
- Health insurance, disability and leave policies, procedures, or practices

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# Applicable Federal Laws

- Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act of 1978;
- Section 7 of the Fair Labor Standards Act of 1938, as amended by Title IV of the Patient Protection and Affordable Care Act of 2010;
- Title IX of the Education Amendments of 1972;
- The Family and Medical Leave Act of 1993;
- Title I of the Americans with Disabilities Act of 1990 and the Americans with Disabilities Act Amendment Act of 2008.

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This guide provides general legal information about pregnancy in the academic workplace, and it is not intended as legal advice for specific employees.



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# Overview of Federal Laws

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# Pregnancy Discrimination Act (PDA)

- Specifies that discrimination based on pregnancy is illegal
- Includes discrimination related to a current, past, potential or intended pregnancy
- Applies to all colleges and universities; limited exemptions for those owned and operated by a religious denomination
- Covers all part-time & full-time employees
- “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.”

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# Pregnancy Discrimination Act

- Does not mandate specific benefits
- Does create a rubric that employers must use to formulate nondiscriminatory policies
- The law envisions two types of workers
  - Those who are able to perform all of their essential job functions
  - Those who are temporarily unable to perform some or all of their essential job functions because of a short-term medical disability
- Men and women (including pregnant women) can belong to either group and must be treated the same as others in that group.

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# Title IX of the Education Amendments of 1972

- “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any educational program or activity receiving federal financial assistance.”
- Prohibits sex discrimination based on pregnancy, childbirth, false pregnancy, termination of pregnancy, or recovery from these conditions.
- Applies to all colleges and universities that receive federal funds; narrow exemptions for religious organization

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# The Family and Medical Leave Act (FMLA): Eligibility

The FMLA applies to

- Public and private colleges that have fifty or more employees working at a single site or at multiple sites that are within seventy-five miles of each other.

Eligible employees must

- Have been employed for at least twelve months, which need not be consecutive.
- Have worked at least 1,250 hours in the twelve months preceding the start of the FMLA leave.

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# The Family and Medical Leave Act (FMLA): Provisions

- Up to twelve weeks of **unpaid** leave for childbirth and some pregnancy-related complications, to care for a new adopted or foster child, or to complete a placement for foster care or adoption
- Both a pregnant and the non-pregnant spouse are entitled to leave for care of a newborn
- The mother may be entitled to leave if she is incapacitated during her pregnancy, for prenatal care, or for her own serious health condition following the birth of a child
- The non-pregnant spouse is entitled to leave if needed to care for his/her spouse for these reasons.
- The FMLA defines “spouse” as one’s husband or wife and explicitly includes individuals in same-sex marriages (but not civil unions).
- For more info see AAUP guidebook [\*The Family and Medical Leave Act\*](#)

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# Americans with Disabilities Act (ADA) & ADA Amendments Act (ADAAA)

- Forbid discrimination against qualified employees or job applicants because of a current, past, or perceived disability
- Apply to all colleges and universities
- Disability defined as physical or mental impairment that substantially limits at least one major life activity.
- Pregnancy by itself is **not** a disability, but can result in disability
- Impairments that are both “minor” and “transitory” do not qualify as disabilities

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## ADA and ADAAA

- As long as a disabled, pregnant, job applicant or employee is qualified to perform the essential functions of her job unaided, or with the aid of a reasonable accommodation provided by the employer, the employer may not discriminate against the employee.
- Colleges and universities are required to make reasonable accommodations, unless doing so would cause an “undue hardship” for the college or university.



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## Interaction between Federal Laws

- The benefits mandated by the federal laws we just discussed sometimes overlap.
- When two or more of these federal laws apply to a situation and call for different levels of benefits, employees are entitled to the more generous level of benefits.
- Nothing in the federal statutes supersedes any provision of a state or local law that provides more generous family or medical leave benefits.

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# Accessing Pregnancy Benefits

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# Accessing the Best Benefits Possible

- The benefits mandated by the federal laws are generally the floor, or the minimum rights that employees have.
- Employees often receive greater rights or benefits through other sources, including (in general order of primacy) state or local law or regulations; collective bargaining agreements; university policies or faculty handbooks; and university or department practices.
- It is best to seek the benefits under the source that is most beneficial to you.
- Elements: Inquire, Request, Document

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# Inquire

- Ask about the benefits that the university has available or that it has provided to other faculty, and find out the procedures for requesting benefits
- Areas for inquiry:
  - General information on benefits or policies published by the university
  - Other faculty members and/or your union
  - Your department head
  - Your institution's human resources office

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# Request

- Request the benefits that are available.
  - Do not be shy about requesting the maximum benefits to which you are entitled.
  - Remember that certain policies or benefits supersede others. Thus university wide policies will generally supersede departmental policies. Request the benefits that are most beneficial to you.
- Follow any process that is required and make the requests in a timely fashion.
  - Remember that certain benefits may have different requirements for notice or making a request. For example, a request for a lengthy period of FMLA leave may have different procedural requirements than a request for leave for a doctor's appointment.
  - When there are overlapping or different levels of benefits, it can become confusing, therefore it is very important to . . . . .

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# Document

- Document the requests you have made and any grant of benefits.
  - You may receive all the documentation you need from the university. Double check to ensure that the approval matches your request.
  - Make sure the documentation is specific, and includes the particular time frames or benefits provided.
- Polite follow up emails can be very effective. Just be clear and unequivocal.
  - Example – Thank you so much for your understanding of my situation. I truly appreciate the permission to work from home every Friday for the next six months.
  - Example – Thanks for approving my leave request. Since we had a number of exchanges, I wanted to make sure that I was clear that the approval was for the leave I requested in my email below.
- Retain the documentation somewhere handy
  - In case there are questions regarding that benefits that have been provided.

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# Filing a Complaint

Internal complaints

Complaints with governmental agencies

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# Internal Complaint Procedures

- Department Chair or Dean
- Union representative
- Department of Human Resources
- Title IX Coordinator



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## State and Local External Complaint Procedures.

- State and local laws or regulations protecting pregnancy issues may have independent complaint procedures
- If state rules are violated, employees of public institutions may be able to file complaints with a state agency designated to hear such complaints

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# Equal Employment Opportunity Commission

Responsible for enforcing

- Title VII prohibitions of sex discrimination in employment
- Pregnancy Discrimination Act prohibitions on pregnancy-related discrimination
- Americans with Disabilities Act (as amended by the ADAAA)

Online tool to help potential complainants assess their situation:

<https://egov.eeoc.gov/eas/>

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# US Department of Labor, Wage and Hour Division

Responsible for enforcing the Family and Medical Leave Act

Information about how to file a complaint is here:

<https://www.dol.gov/whd/america2.htm>

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# US Department of Education, Office for Civil Rights

Responsible for enforcing Title IX prohibitions on sex discrimination in education among institutions that receive federal financial assistance from the Department of Education.

Information on filing complaints is here:

<http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>

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Thank you!

Questions?

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FAQs

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Q:

What is the difference between maternity leave, paternity leave, parental leave, child-rearing leave, and disability leave?

A:

Under federal law, there are three types of leave that may arise from pregnancy:

- Pregnancy-related medical leave (i.e., maternity leave): for women experiencing pregnancy-related, medical disabilities
- Parental leave: to care for and bond with newborn or newly adopted children.
- Disability leave: for a serious medical condition; may be used by individuals who need to care for others with such a condition.

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Q:

I am a pregnant faculty member and will need to take leave while classes are in session. How soon do I need to notify my department chair?

A:

For unpaid pregnancy-related FMLA leave: at least thirty days' notice

Pregnancy disability leave: check your employer's policies or your contract if applicable



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Q:

I am a pregnant professor, teaching full time. My due date is early in the summer when my college is not in session. Am I entitled to paid leave?

A:

Benefits must be provided to you on terms at least as generous as those provided to other faculty in similar positions who have medical disabilities during the summertime.

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Q:

I am a pregnant professor in a part-time teaching position. My due date is during the semester. Am I entitled to paid or unpaid leave?

A:

- You must be treated the same as other faculty in similar (part-time) positions who have medical disabilities.
- You may also qualify for FMLA leave.

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Q:

I am a male professor. Last year, a female professor received six weeks of paid leave following the birth of her child. Am I entitled to receive six weeks of paid paternity leave?

A:

It is likely that she received pregnancy disability leave, available to women only for recovery from childbirth or pregnancy-related medical complications. A non-pregnant person is not entitled to this. But:

- Check your policies or collective bargaining agreement to see if your institution provides paid parental leave.
- The FMLA entitles you to up to twelve weeks of unpaid leave following the birth or adoption of a child.
- If you and your spouse both work for the same employer, you may split the twelve-week allotment of FMLA parental leave, or one of you may take the whole twelve weeks

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Q:

My six-week pregnancy disability leave will end the second to last week of our semester. I want to return to work then, but my department chair said that I will have to stay out until the beginning of the spring semester. What are my options?

A:

You may return to work as soon as you are physically able to perform your job duties.

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Q:

My institution has two different pregnancy disability leave policies: one for our faculty and one for our administrative staff. Is this legal?

A:

Yes, it is legal to have different benefits policies for employees who are in different job categories.

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Q:

Our university president has suggested that our paid pregnancy disability leave policy should be available only to married women employees. Is this legal?

A:

No.

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Q:

I am a department chair employed by a college with an ad hoc pregnancy disability leave policy. A professor in my department recently told me she is pregnant. How should I handle her leave?

A:

You should respond consistently to faculty with short-term medical disabilities. Ad hoc policies may interfere with your ability to respond consistently, thus creating a discriminatory work environment.

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Q:

I am a department chair. A faculty member in my department is pregnant and experiencing minor back pain. She has requested that I not schedule her to teach back-to-back classes next term. Must I make accommodations?

A:

No. Normal childbirth and other temporary or minor medical complications (for example, minor back pain, constipation, nausea, etc.) sometimes associated with pregnancy do not qualify as a “disability” and do not require a disability-related accommodation.



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Q:

I am a department chair. A faculty member in my department is pregnant and experiencing some medical complications. When must I make accommodations for her pregnancy disability under the ADAAA?

A:

If a faculty member is experiencing pregnancy-related complications that are either severe *or* non-transitory (with an actual or expected duration of six months or more), your institution is required to determine if there are reasonable accommodations that can be provided to allow her to perform her essential job functions.

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Q:

I am a faculty member teaching graduate students. A student in my seminar is pregnant and her due date is one week before the term ends. Am I required to provide accommodations?

A:

Yes. Under Title IX it is illegal for colleges and universities to exclude pregnant students from participating in classes or other programs.