

[WELCOME TO MINNESOTA!](#)

The Minnesota Human Rights Act (MHRA) prohibits discrimination in employment on the basis of sex. Women can bring the following claims under the MHRA including but not limited to:

- (1) Unequal Pay
- (2) Disparate Impact
- (3) Disparate Treatment
- (4) Sexual Harassment
- (5) Pregnancy Discrimination
- (6) Discriminatory Hiring
- (7) Wrongfully Denied Promotion
- (8) Discriminatory Firing
- (9) Retaliation

Continue to learn more information about your rights!!!

[**HAVE I BEEN DISCRIMINATED AGAINST? TAKE THE QUIZ!**](#)

<u>What does the law say?</u>	<u>What can I do about sex discrimination?</u>
<u>Resources and Statistics</u>	<u>Real Life Stories</u>

WHAT DOES THE MINNESOTA LAW SAY?

[What does the law say?](#)

[What types of discrimination does the law cover?](#)

[How do I file a claim?](#)

[What can I get if I win?](#)

[What if I don't want to sue?](#)
(Link to IDEAS FOR CHANGE)

WHAT DOES MINNESOTA LAW SAY?

- a. [Where is the law regarding sex discrimination in employment in Minnesota found?](#)
- b. [To whom does the MHRA apply?](#)
- c. [Under the MHRA what is illegal?](#)
- d. [What is sex or gender discrimination?](#)
- e. [What constitutes sex or gender discrimination under the MHRA?](#)
- f. [What is an “employee” under this law?](#)
- g. [What is an “employer” this law?](#)
- h. [Are women a “protected class”?](#)
- i. [Is there a federal law about sex discrimination?](#)
- j. [How does the state law compare with federal in terms of coverage?](#)
- k. [Is it ever okay for my employer to treat or impact women differently because of their sex?](#)
- l. [In a nutshell, what must I prove to win my case?](#)
- m. [Does it matter when the discrimination occurred?](#)
- n. [Who enforces the law?](#)
- o. [How do I file a claim of sex discrimination with Minnesota Department of Human Rights?](#)
- p. [If I prove my sex discrimination claim, what kind of remedies am I entitled to?](#)

[Back to Main](#)

a. Where is the law regarding sex discrimination in employment in Minnesota found?

The law in Minnesota regarding sex discrimination is the Minnesota Human Rights Act (MHRA). The [MHRA](http://www.humanrights.state.mn.us/rights_363.html) (http://www.humanrights.state.mn.us/rights_363.html) makes employment discrimination on the basis of sex illegal. It also covers employment discrimination on the basis of race, color, creed, religion, national origin, marital status, status with regard to public assistance, disability, sexual orientation, and age.

[Back to top](#)

b. To whom does the MHRA apply?

The [MHRA](http://www.humanrights.state.mn.us/rights_363.html) (http://www.humanrights.state.mn.us/rights_363.html) specifically prohibits employment discrimination by employers, labor organizations, and employment agencies.¹

[Back to top](#)

c. What is illegal under the MHRA?

It is illegal for employers to deny employment, discharge, or discriminate with respect to hiring, tenure, compensation, terms, promoting, working conditions, facilities or privileges of employment, on the basis of sex. These provisions of the [MHRA](http://www.humanrights.state.mn.us/rights_363.html) (http://www.humanrights.state.mn.us/rights_363.html) also apply to labor organizations and employment agencies.²

[Back to top](#)

d. What is sex or gender discrimination?

Sex or gender discrimination is treating employees differently because of sex. This includes being treated adversely with respect to: hiring, firing, promotion, pay, benefits, and job classification.

[Back to top](#)

e. What constitutes sex or gender discrimination under Minnesota Law?

Under Minnesota law, it is illegal for employers to deny employment on the basis of sex, to discharge an employee on the basis of sex, or to discriminate with respect to hiring, apprenticeship, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment on the basis of sex.³

[Back to top](#)

f. What is an “employee” under this law?

An “employee” is defined as an individual who is employed by an employer and lives or works in the state. This includes commissioned salespeople, who are independent contractors.⁴

[Back to top](#)

g. What is an “employer” under this law?

An “employer” is a person who has one or more employees.⁵

[Back to top](#)

h. Are women a “protected class”?

Yes, women are a protected class.

[Back to top](#)

i. Is there a federal law about sex discrimination?

Yes. [Title VII](#) of the Civil Rights Act of 1964 (<http://www.eeoc.gov/policy/vii.html>) prohibits sex discrimination based on race, color, sex, religion, or national origin. The Equal Pay Act prohibits discrimination in terms of salaries and wages. (Click here to learn more about the Federal Law.)

[Back to top](#)

j. How does the state law compare with federal in terms of coverage?

The main difference between Federal law and Minnesota law is that [Title VII](http://www.eeoc.gov/policy/vii.html) (<http://www.eeoc.gov/policy/vii.html>) only applies to employers with 15 or more employees, and Minnesota applies to employers with any number of employees.

[Back to top](#)

k. Is it ever okay for my employer to treat or impact women differently because of their sex?

Yes, there are some circumstances where it is legal for your employer to treat women differently. If there is a legitimate, nondiscriminatory motive for certain treatments or employment practices, then you may not be able to bring a discrimination claim against your employer. For example, if there is a [bona fide occupational qualification](#)⁶ (in which gender is a necessary qualification for a given job) as a reason for the employer's decision, then the differential treatment or impact would be legal.

[Back to top](#)

l. In a nutshell, what must I prove to win my case?

You must first show several elements of evidence, known as a "[prima facie case](#)," which varies depending on the type of claim you bring. Generally, you must show that your employer discriminated against you in the workplace in some way, shape or form. Your employer will have an opportunity to deny or justify the discriminatory action. Ultimately, you must provide evidence that your employer's justification is actually a pretext or a cover-up for the real discrimination.

[Back to top](#)

m. Does it matter when the discrimination occurred?

Yes, you must file a claim within a year of when the last incident of discrimination occurred. If it occurred more than 365 days ago, then the statute of limitations (the time limit you have to file a claim) has run, and the Minnesota Department of Human Rights (<http://www.humanrights.state.mn.us/>) cannot investigate your claim. You are, of course, free to pursue other alternatives, such as contacting your own attorney, if the [MDHR](#) cannot pursue your claim.⁷ (Click here for "ideas for change")

[Back to top](#)

n. Who enforces the law?

Your local human rights commission, which is the Minnesota Department of Human Rights, enforces Minnesota state law. The Equal Employment Opportunity Commission (<http://www.eeoc.gov>) enforces federal anti-discrimination laws.

[Back to top](#)

o. How do I file a claim of sex discrimination with Minnesota Department of Human Rights?

(Click here for “How do I file a claim?”)

[Back to top](#)

p. If I prove my sex discrimination claim, what kind of remedies am I entitled to?

(Click here for “What do I get if I win?”)

[Back to top](#)

WHAT TYPES OF DISCRIMINATION ARE COVERED UNDER THE LAW?

[UNEQUAL PAY: *I don't think I'm being paid fairly compared to men doing the same job.*](#)

(Link to Equal Pay claims)

[DISPARATE IMPACT: *I think my employer's policies disadvantage women more than men.*](#)

(Link to Disparate Impact claims)

[DISPARATE TREATMENT: *I think my employer treats women differently than men.*](#) (Link to Disparate Treatment claims)

[SEXUAL HARASSMENT: *I think I am being sexually harassed at work.*](#) (Link to Sexual Harassment claims)

[PREGNANCY DISCRIMINATION: *I think my employer is discriminating against me because I am pregnant.*](#) (Link to Pregnancy Discrimination claims)

[DISCRIMINATORY HIRING: *I did not get the job I applied for and I think it's because I'm a woman.*](#) (Link to Discriminatory Hiring claims)

[WRONGFULLY DENIED PROMOTION: *I think I didn't get the promotion because I am a woman.*](#) (Link to Wrongfully Denied Promotion claims)

[DISCRIMINATORY FIRING: *I just got fired from my job, and I think it's because I'm a woman.*](#) (Link to Discriminatory Firing claims)

[RETALIATION: *I think my employer fired me because I filed a complaint of sex discrimination.*](#) (Link to Reprisal/Retaliation claims)

EQUAL PAY CLAIMS: *I don't think I'm being paid fairly compared to men doing the same job.*

- a. [How do I prove that I am not receiving equal pay for equal work?](#)
- b. [What does pay discrimination look like?](#)
- c. [What laws protect me from receiving unequal pay for equal work?](#)
- d. [How do I prove that my work requires equal skill, effort, and responsibility as my coworker?](#)
- e. [How do I know if I have a "like or comparable" position?](#)
- f. [Must I prove that my employer intentionally paid me less because I am a female?](#)
- g. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- h. [Does it matter when the discrimination occurred?](#) (new window to WDTLS)
- i. [If I prove my Equal Pay claim, what kind of remedies am I entitled to?](#) (new window to Remedies)

[Back to Types of Discrimination](#)

a. How do I prove that I am not receiving equal pay for equal work?

You need to show that your work is equal to that of your male coworker who receives higher pay than you. "Equal work" is work that requires equal skill, effort, and responsibility, and is performed under similar working conditions as the work of your male coworker.⁸

[Back to Top](#)

b. What does pay discrimination look like?

Common indicators of pay discrimination are when two people of different genders perform very similar job duties and have been with the company for relatively the same amount of time, and one is being paid less than the other. If, however, the difference in wages is based on anything other than sex, such as seniority, or quantity or quality of work, then the difference is not discrimination.⁹

[Back to Top](#)

c. What laws protect me from receiving unequal pay for equal work?

There are several laws that protect you in Minnesota. Minnesota Statute, Section 181.67, prohibits wage discrimination based on sex.¹⁰ Also, the Minnesota Human Rights Act (http://www.humanrights.state.mn.us/rights_363.html) similarly makes it illegal in Minnesota for employers to pay male and female employees different wages because of sex.¹¹ [Title VII](#) of the 1964 Civil Rights Act (<http://www.eeoc.gov/policy/vii.html>) and the Equal Pay Act of 1963 (www.eeoc.gov/policy/epa.html) are federal laws that protect you from receiving unequal pay at work. (Click [here](#) to learn more about federal equal pay laws.)

[Back to Top](#)

d. How do I prove that my work requires equal skill, effort, and responsibility as my coworker's?

Examine your job duties and your coworker's. Are they substantially similar? Small differences in your jobs do not matter as long as they are not substantial. Are your job titles the same? This is not a necessary prerequisite, however it can only help your case, if you have the same title. If he has more education than you, for example, a masters degree, does that higher degree impact the quality of work he is able to perform? Does it take approximately the same amount of time to complete the same tasks? These are all indicators that you and your coworker are performing equal work.¹²

[Back to Top](#)

e. How do I know if my position requires equal skill, effort, and responsibility as my coworker's?

It is important to note that "equal" does not mean identical. Some ways to know if your position is *comparable* to your coworkers' are: (1) your job titles are the same; (2) you work similar hours, doing similar tasks; and/or (3) you have been at the company for approximately the same time.¹³ It is important to note though, that these indicators are not absolute. Each person's situation is different, so you should look at these as ideas and guidelines only.

[Back to Top](#)

f. Must I prove that my employer intentionally paid me less because I am a female?

No. There is no need to prove that there was an intent to discriminate.¹⁴

[Back to Top](#)

g. What could my employer do to deny my allegations, and how do I respond to its denials?

It is likely that your employer will try to show that the purpose of paying you less than your male coworker was not discriminatory in nature. The ways that he/she could do this include showing differences in work quality or quantity, seniority on the part of your coworker, or differences in experience or training. You would need to respond to this by showing that your employer's reasons for the pay differential were pretext or a cover up for an underlying discriminatory purpose.¹⁵

[Back to Top](#)

DISPARATE IMPACT CLAIMS: *My employer's policies disadvantage women more than men.*

- a. [What does disparate impact mean?](#)
- b. [What kinds of claims can be brought as a disparate impact claim?](#)
- c. [I think that a company policy adversely affects me because of my gender, how do I prove it?](#)
- d. [What is the difference between disparate impact and disparate treatment?](#)
- e. [Are there times when an employment policy or practice may legally impact women different than men?](#)
- f. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- g. [Does it matter when the discrimination occurred?](#) (new window to WDTLS)
- h. [If I prove my disparate impact claim, what kind of remedies am I entitled to?](#) (new window to Remedies)

[Back to types of discrimination](#)

a. What does disparate impact mean?

Disparate impact means that there are policies or practices where you work that do not overtly treat women in a discriminatory way, but nonetheless have an adverse result or negative impact on women. These policies are often facially neutral, in that they don't mention women specifically, but they harm women in practice.¹⁶

[Back to top](#)

b. What kinds of claims can be brought as a disparate impact claim?

Unequal pay, failure to promote, discriminatory hiring and firing can all be brought under a disparate impact claim.

[Back to top](#)

c. I think that a company policy adversely affects me because of my gender, how do I prove it?

You must show that the employment practices where you work have an adverse impact on women and not men. You do not need to prove that your employer intended to discriminate against women, but you do need to show that there is no business necessity for its employment practices or policies.¹⁷

[Back to top](#)

d. What is the difference between disparate impact and disparate treatment?

Disparate impact occurs when company policies or employment practices have an adverse effect on you because you are a woman. Disparate treatment, on the other hand, is more of a direct form of discrimination. It is when you are treated differently, because you are a woman. An important difference to note is that proof of a discriminatory

motive,¹⁸ which is required in disparate treatment cases, is not required in disparate impact cases.

[Back to top](#)

e. Are there times when an employment policy or practice may legally impact women differently than men?

Yes, if there is a [bona fide occupational qualification](#), employment practices may legally treat women differently than men. This is a legitimate reason for your employer to consider gender in a particular employment decision. If the policy in question is manifestly related to the job or significantly furthers an important business practice, it may qualify as a [BFOQ](#) and therefore be legal.¹⁹ An example of this would be weight or height requirements that would exclude most women, however, are necessary to complete certain tasks.

[Back to top](#)

f. What could my employer do to deny my allegations, and how do I respond to its denials?

Your employer will most likely try to show that there is a legitimate, nondiscriminatory reason for the company policy in question. It could do this by showing that the practice is manifestly related to the job or significantly furthers an important business purpose. In order to win your case, you would need to show that your employer's proffered reason is merely pretext or a cover-up for discrimination.²⁰ It would be helpful if you could demonstrate that there is a comparable alternative employment practice to the one in question which would have less of an adverse impact on women.²¹

[Back to top](#)

DISPARATE TREATMENT CLAIMS: *I think my employer treats women differently than men.*

- a. [What does “disparate treatment” mean?](#)
- b. [What kind of claims can be brought as a disparate treatment claim?](#)
- c. [I think that a company policy adversely affects me because of my gender, how do I prove it?](#)
- d. [What is the difference between disparate treatment and disparate impact?](#)
- e. [Are there times when an employment policy or practice may legally treat women different than men?](#)
- f. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- g. [Does it matter when the discrimination occurred?](#) (new window to WDTLS)
- h. [If I prove my disparate treatment claim, what kind of remedies am I entitled to?](#) (new window to Remedies)

[Back to Types of Discrimination](#)

a. What does “disparate treatment” mean?

“Disparate treatment” refers to a policy or practice that explicitly treats women differently than men.

[Back to Top](#)

b. What kind of claims can be brought as a disparate treatment claim?

Sexual harassment, unequal pay, wrongful discharge, failure to promote, and pregnancy discrimination claims can all be brought under disparate treatment.

[Back to Top](#)

c. I think that a company policy adversely affects me because of my gender, how do I prove it?

Essentially, you need to prove that your employer had a discriminatory motive in treating you differently because you are a woman. To do this, you must show that:

- 1) you are a member of a protected group, which you are, being a woman;
- 2) You sought and were qualified for opportunities that were available;
- 3) Your employer denied you these opportunities or took similar adverse action towards you; and
- 4) the opportunities remained available or were given to men with equal or lesser qualifications than you, or men were simply just treated better than you.²²

[Back to Top](#)

d. What is the difference between disparate treatment and disparate impact?

Disparate impact is when otherwise neutral company policies or employment practices have an adverse effect on women. Disparate treatment on the other hand, is a more direct form of discrimination. Generally, disparate treatment occurs when you are treated differently because you are a woman. An important difference to note is that proof of a

discriminatory motive, which is required in disparate treatment cases, is not required in disparate impact cases.²³

[Back to Top](#)

e. Are there times when an employment policy or practice may legally treat women different than men?

Yes, this is what is called a **bona fide occupational qualification**. If there is a legitimate and nondiscriminatory reason for a particular employment policy or practice, such as a business necessity, then it is legal.²⁴

[Back to Top](#)

f. What could my employer do to deny my allegations, and how do I respond to its denials?

Your employer will most likely try to show that there is a legitimate, nondiscriminatory reason for the treatment. It could defend its actions by reasoning that the treatment was the result of a business necessity. In order to win your case, you would need to show that the proffered reason is a pretext or a cover-up and that sex discrimination was the true motive.²⁵

[Back to Top](#)

SEXUAL HARASSMENT: *I think I am being sexually harassed at work.*

- a. [I think I am being sexually harassed at work, how do I prove it?](#)
- b. [What does “Quid Pro Quo” sexual harassment look like?](#)
- c. [What does “Hostile Work Environment” sexual harassment look like?](#)
- d. [How do I show that this conduct affected my ability to work?](#)
- e. [How do I show that my employer knew what was going on?](#)
- f. [Can I file a claim against my boss/supervisor under the MHRA?](#)
- g. [Can I bring a claim against my co-worker if he is not my boss or supervisor?](#)
- h. [I complained to my employer and it reprimanded the harasser. Can I still file a claim?](#)
- i. [I reported to my employer, but it didn’t do anything – can I still file a claim?](#)
- j. [What if my harasser is also a woman?](#)
- k. [Is one incident of sexual harassment sufficient basis for a claim?](#)
- l. [What could my employer do to deny my allegations, and how do I respond to the denials?](#)
- m. [If I prove sexual harassment, what kind of remedies am I entitled to? \(New window to Remedies\)](#)
- n. [Is there a time limit for when I can file a claim with the Minnesota Department on Human Rights? \(New window to WD TLS\)](#)

[Back to Types of Discrimination](#)

a. I think I am being sexually harassed at work, how do I prove it?

To prove sexual harassment, you must show that:

- 1) you are a member of a protected class (women);
- 2) you were subject to unwelcome sexual harassment in the form of sexual advances or requests for sexual favors;
- 3) the harassment was based on sex; and
- 4) in the case of [Quid Pro Quo](#) sexual harassment, your submission to the unwelcome advances was an express or implied condition for receiving job benefits or your refusal to submit resulted in a tangible job detriment.²⁶

[Back to top](#)

b. What does “Quid Pro Quo” sexual harassment look like?

This type of harassment occurs when a superior forces an employee to choose between submitting to the superior’s sexual demands or giving up an employment benefit such as promotion, raise or continued employment.²⁷

[Back to top](#)

c. What does “Hostile Work Environment” sexual harassment look like?

This type of harassment consists of conduct that is so severe or pervasive that it affects your ability to work. Inappropriate conduct includes sexual propositions, inappropriate touching, lewd remarks, sexual innuendos, displays of pornography, sexual graffiti, and jokes.²⁸

[Back to top](#)

d. How do I show that this harassment affected my ability to work?

Take note of how your behavior inside and outside of work has changed. As a result of this experience, many women have felt withdrawn socially and struggled with personal relationships. If you have had counseling, many courts will allow your psychologist to testify in court. You may be experiencing a lack of self-confidence at work and have physical symptoms such as panic attacks, chest pains, dizziness and migraines. You may feel like you are too scared to go to work. You are not alone – these are natural reactions.²⁹

[Back to top](#)

e. How do I show that my employer knew what was going on?

Except for the most severe cases, you will probably need to demonstrate that you brought the matter to your employer's attention. Make sure you've explored all of your available grievance options. You will need to provide copies of any emails, memos or complaints you sent to your employer. Ideally, you also have at least an informal record of its responses. Your case will be strengthened if any of your co-workers can testify to how you and your fellow female employees have been harassed.³⁰

[Back to top](#)

f. Can I file a claim against my boss/supervisor under the MHRA?

Yes. Under Minnesota law, your supervisor can be held personally liable, which means you can potentially file a suit directly against that individual in addition to any claim against your employer. However, to pursue a suit against the individual, there must be evidence that your supervisor directly "aided and abetted" or encouraged this discriminatory behavior.³¹

[Back to top](#)

g. Can I bring a claim against my co-worker if he is not my boss or supervisor?

Maybe. Generally, your employer is legally responsible for the discriminatory behavior of its employee (your co-worker) as long as your employer knew or should have known that the discrimination was going on and failed to take action in a timely manner. However, if your employer has an explicit policy about objectionable behavior and how it is to be reported and you fail to do so, courts are less likely to hold the employer accountable and that might be a scenario where the coworker can be held personally liable.³²

[Back to top](#)

h. I complained to my employer and it reprimanded the harasser. Can I still file a claim?

Possibly. The law demands that your employer take timely and appropriate action with respect to the harasser. If you feel your employer's solution failed to remedy the situation, you may be able to sue.³³

[Back to top](#)

i. I reported to my employer, but it didn't do anything – can I still file a claim?

Yes. Your employer has an obligation to take appropriate and timely action. If it has failed to do so, then you have a potential claim.³⁴

[Back to top](#)

j. What if my harasser is also a woman?

Minnesota courts recognize same-sex sexual harassment claims. The courts have rejected the notion that if you file such a claim, you would have to prove that the harassment occurred "because of sex" since this would be extremely difficult to show.³⁵

[Back to top](#)

k. Is one incident of sexual harassment sufficient basis for a claim?

Generally, a single incident or a few isolated instances of offensive sexual behavior or remarks will not be sufficient to find that an employer violated the [MHRA](http://www.humanrights.state.mn.us/rights_363.html) (http://www.humanrights.state.mn.us/rights_363.html). However, even if the conduct is not pervasive, if the harassment has created a severely hostile environment and the employer knew or should have known and failed to stop the harassment, that could be a basis for a claim.³⁶

[Back to top](#)

l. What could my employer do to deny my allegations, and how do I respond to its denials?

To establish its affirmative defense, your employer must show that (1) it exercised reasonable care to prevent and promptly correct any harassing behavior and (2) you unreasonably failed to take advantage of any preventive or corrective opportunities provided by your employer or to avoid harm otherwise. You must respond by showing that you reported the harassment to your employer and it was unresponsive, or the response was inadequate.³⁷

[Back to top](#)

PREGNANCY DISCRIMINATION CLAIMS: *I think my employer is discriminating against me because I am pregnant.*

[I think I am being treated differently because of my pregnancy. How do I prove it?](#)

[I just found out that I'm pregnant, should I tell my employer?](#)

[Can my employer fire me because I may become pregnant?](#)

[Can I ask my employer to make accommodations for me on account of my pregnancy?](#)

[For what amount of time can I take leave because of pregnancy?](#)

[What happens to my job while I am on pregnancy leave?](#)

[Can my employer deny me pregnancy leave?](#)

[I've been missing a lot of work due to prenatal check-ups or pregnancy-related complications; can my employer fire me for this?](#)

[Is my employer required to pay me while I am on pregnancy leave?](#)

[I'm pregnant but not showing yet and I have an upcoming interview, do I need to disclose the fact that I'm pregnant?](#)

[Can an employer refuse to hire me because I may become pregnant?](#)

[Can my employer prevent me from working while I'm pregnant or require me to take a certain amount of leave?](#)

[Can my employer keep me from working in certain areas or doing certain tasks because of health and safety concerns?](#)

[Can my employer move me to another position while I am pregnant so as not to offend clients or customers?](#)

[Does my employer's health insurance have to cover the medical costs of my pregnancy?](#)

[I just returned from maternity leave and need to take extra breaks in order to pump milk, but my supervisor won't allow me to take more than 2 breaks a day. Can I file a claim?](#)

[Can my employer treat me differently because I am unmarried and pregnant?](#)

[I was pregnant, but had a miscarriage or an abortion, and need time off to recover. Am I covered by the law?](#)

[My employer's medical plan covers most health conditions, but excludes abortion. Is this legal?](#)

[What could my employer do to deny my allegations, and how do I respond to its denials?](#)

[Does it matter how long ago the discrimination occurred? \(new window to WDTLS\)](#)

[If I prove my pregnancy discrimination claim, what kind of remedies am I entitled to? \(new window to Remedies\)](#)

[Back to Types of Discrimination](#)

a. I think I am being treated differently because of my pregnancy? How do I prove it?

To show that you were treated differently, you must be able to show how your employer deviated from a standard company policy. For example, if sick leave or disability leave was offered to your co-worker who has a broken leg, your employer must treat your pregnancy in the same manner.³⁸

[Back to Top](#)

b. I just found out that I'm pregnant, should I tell my employer?

Yes, as soon as you feel comfortable disclosing this information. Legally, you must give your employer at least 30 days notice of your intention to take maternity leave. However, practically speaking, the more notice you give your employer, the easier it will be for your employer to accommodate your needs. Additionally, if your pregnancy is affecting your ability to do your job, your employer needs to be informed about it.³⁹

[Back to Top](#)

c. Can my employer fire me because I may become pregnant?

No. An employer cannot fire you because you become pregnant as long as you can perform the essential functions of the job.⁴⁰ Even if the company believes that there are potential risks that could prevent you from bearing children, such as lead exposure, as long as the company fully informs you of the risk, it is ultimately your decision to continue working.⁴¹

[Back to Top](#)

d. Can I ask my employer to make accommodations for me on account of my pregnancy?

Yes. Keep in mind that your doctor is the only one who knows what is or is not safe for you to do at work. If your employer requests it, you should be prepared to provide them with a note from your doctor describing how your workload should be adjusted to accommodate for your current condition.⁴²

[Back to Top](#)

e. For what amount of time can I take leave because of pregnancy?

Each employee makes an arrangement with her employer as to the length of time and potential compensation. However, it is important to note that if you have been working for an employer for at least a year (either full-time or at least 1250 hours), and your company has more than 50 employees, you are entitled to 12 weeks of unpaid leave under the federal Family Medical Leave Act (<http://www.dol.gov/esa/regs/statutes/whd/fmla.html>).⁴³ If you work for a smaller company (between 21 and 50 employees), you are still covered under Minnesota's Parenting Leave Act (MPLA). However, the [MPLA](http://www.revisor.leg.state.mn.us/stats/181/941.html) (<http://www.revisor.leg.state.mn.us/stats/181/941.html>) only allows for a six-week maternity leave.⁴⁴

[Back to Top](#)

f. What happens to my job while I am on pregnancy leave?

When you return from leave, you must be given back your original job, or an equivalent job with equivalent pay, benefits, and other terms and conditions of employment.⁴⁵

[Back to Top](#)

g. Can my employer deny me pregnancy leave?

Unfortunately, yes. If your employer has either fewer than 21 employees or you have been employed by the company for less than a year, that company has no legal obligation to provide pregnancy leave.⁴⁶ However, if the company has a sick or disability leave policy that uses different criteria than the federal law, it must make the same accommodations for pregnancy as offered to other employees in a similar condition.⁴⁷

[Back to Top](#)

h. I've been missing a lot of work due to prenatal check-ups or pregnancy-related complications; can my employer fire me for this?

If you miss work but fail to talk a doctor prior to doing so, it may be viewed by your employer as absenteeism, and can hurt your performance reviews and give an employer potential grounds for firing you.⁴⁸

[Back to Top](#)

i. Is my employer required to pay me while I am on pregnancy leave?

No. However, you are entitled to the same treatment as your co-workers that take sick or disability leave. As a result, if these co-workers are being paid during their respective leaves, you can expect to be paid as well.⁴⁹

[Back to Top](#)

j. I'm pregnant but not showing yet and I have an upcoming interview, do I need to disclose the fact that I'm pregnant?

No. You don't have to disclose your pregnancy during the interview. The only time physical condition comes into play is if you are unable to perform the scope of the job. A warehouse worker, for example, who is required to lift 50-pound boxes, would be asked in the interview whether he/she has physical limitations keeping them from performing the requirements of the position.⁵⁰

[Back to Top](#)

k. Can an employer refuse to hire me because I may become pregnant?

No. An employer cannot refuse to hire you because you are or may become pregnant as long as you can perform the essential functions of the job. You cannot be treated differently in terms of benefits, choice of job assignments or other conditions of employment.⁵¹

[Back to Top](#)

l. Can my employer prevent me from working while I'm pregnant or require me to take a certain amount of leave?

You cannot be required to take a leave of absence during your pregnancy. You must be permitted to work as long as you are able to do your job.⁵²

[Back to Top](#)

m. Can my employer keep me from working in certain areas or doing certain tasks because of health and safety concerns?

Yes, but only if there are compelling medical reasons. Even if your employer has good intentions, if you did not request a transfer or are bothered by the suggested changes, this could be a potential violation. However, it would be legitimate for your employer to ask you for your doctor's opinion on topics such as your ability to stand for long periods or engage in heavy lifting. If your doctor suggests restrictions, your employer may act accordingly.⁵³

[Back to Top](#)

n. Can my employer move me to another position while I am pregnant so as not to offend clients or customers?

No. If customers or clients are for some reason uncomfortable dealing with an employee who is pregnant, that's irrelevant – just as it would be if customers or clients were uncomfortable with an employee's race or sexual orientation. The preference of customers and other employees is never a legal basis for discrimination.⁵⁴

[Back to Top](#)

o. Does my employer's health insurance have to cover the medical costs of my pregnancy?

If your employer offers health insurance, it must cover expenses for pregnancy on the same basis as costs for other conditions. As long as coverage is consistent across multiple health conditions, there is likely no case for discrimination. If your company offers generous health benefits, you have the right to expect a high level of coverage for pregnancy costs. Similarly, if the coverage is generally inadequate, you can expect the same limited coverage.⁵⁵

[Back to Top](#)

p. I just returned from maternity leave and need to take extra breaks in order to pump milk, but my supervisor won't make any accommodations. Can I file a claim?

When you return to your job, if you are breastfeeding, your employer must provide a reasonable unpaid break time if you need to express breast milk for your infant child. Your employer must make an effort to provide a room or other location near your work area, other than a toilet stall, where you can do this in privacy.⁵⁶

[Back to Top](#)

q. Can my employer treat me differently because I am unmarried and pregnant?

No. Pregnancy related benefits cannot be limited to married employees.⁵⁷

[Back to Top](#)

r. I was pregnant, but had a miscarriage or an abortion, and need time off to recover. Am I covered by the law?

Recovery time must be dealt with in the same way that other health conditions are addressed by your company.

[Back to Top](#)

s. My employer's medical plan covers most health conditions, but excludes abortion and contraceptive devices and medication. Is this legal?

Health insurance for expenses arising from abortion is not required, except where the life of the mother is endangered.⁵⁸

[Back to Top](#)

t. What could my employer do to deny my allegations, and how do I respond to its denials?

Your employer will likely provide a legitimate nondiscriminatory reason for the action taken against you. To counter its response, you will need to show that the reason your employer has offered is merely pretextual, meaning that the employer's explanation of its behavior is dishonest. You must then reassert that discrimination was actually the motivating factor for the adverse employment decision.⁵⁹

[Back to Top](#)

DISCRIMINATORY HIRING POLICIES: *I wasn't hired because I am a woman.*

- a. [I think I wasn't hired because I am a woman, how do I prove it?](#)
- b. [The interviewer asked me some very personal questions. Is that legal?](#)
- c. [The interviewer stated that his customers would prefer to see a man to do this job rather than a woman. Is this a legal reason not to hire me?](#)
- d. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- e. [Does it matter when the discrimination occurred?](#)
- f. [If I prove my hiring discrimination claim, what kind of remedies am I entitled to?](#)

[Back To Types of Discrimination](#)

a. I think I wasn't hired because I am a woman, how do I prove it?

In general, an employer has the right to hire whoever it wants and it may establish any kind of application and selection process it chooses. However, you can establish that the employer had a discriminatory motive by showing that:

- 1) you belong to a protected class (women);
- 2) that you applied and were qualified for the job for which the employer was seeking applicants;
- 3) despite your qualifications, you were rejected; and
- 4) that, after your rejection, the position remained available or was given to someone else with your qualifications.⁶⁰

[Back to top](#)

b. The interviewer asked me some very personal questions. Is that legal?

No. The interviewer cannot ask about areas such as your sexual orientation, religion or medical history. Any questions that are not directly related to how well you can perform the job are inappropriate and potentially discriminatory.⁶¹

[Back to top](#)

c. The interviewer stated that his customers would prefer to see a man to do this job rather than a woman. Is this a legal reason not to hire me?

No. Customer preferences are not considered a legitimate reason for rejecting a candidate. A person must be chosen solely on their skills and experience.

[Back to top](#)

d. What could my employer do to deny my allegations, and how do I respond to its denials?

Your prospective employer will likely provide a legitimate nondiscriminatory reason for why you were not hired. To counter its response, you will need to show that this reason is merely pretextual, meaning that the employer's explanation of its behavior is

dishonest. You must then reassert that discrimination was actually the motivating factor.⁶²

[Back to top](#)

WRONGFULLY DENIED PROMOTION: *I think I was denied a promotion because I'm a woman.*

- a. [I think I did not get the promotion because I'm a woman, how do I prove it?](#)
- b. [Must I show that I took proactive steps to get the promotion, and that I was qualified?](#)
- c. [Must I show that my employer sought a replacement with similar qualifications?](#)
- d. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- e. [Does it matter when the discrimination occurred?](#)
- f. [If I prove my wrongful denial of promotion claim, what kind of remedies am I entitled to?](#)

[Back to Types of Discrimination](#)

g. I think I did not get the promotion because I'm a woman, how do I prove it?

You must show that:

- 1) you are a member of a protected group (women);
- 2) you sought and qualified for opportunities that the employer was making available to others;
- 3) despite your qualifications, you were still denied these opportunities; and
- 4) after you were denied, the same opportunities remained available or were given to other persons with same qualifications as you.⁶³

[Back to top](#)

h. Must I show that I took proactive steps to get the promotion, and that I was qualified?

Yes. You need to show the court that you took proactive steps to advance your career. Great examples would be pursuing additional certification or volunteering for challenging assignments. You must also show that you would be qualified for the new position.⁶⁴

[Back to top](#)

i. Must I show that my employer sought a replacement with similar qualifications?

Yes. The court will likely seek to make comparisons between you and your fellow co-workers / job applicants. If your field experiences are equal to or superior to your male co-workers and yet, your position in the organization does not reflect this fact, you may have a claim.⁶⁵

[Back to top](#)

j. What could my employer do to deny my allegations, and how do I respond to its denials?

Your employer will likely provide a legitimate nondiscriminatory reason for why you were not promoted. To counter its response, you will need to show that this reason your employer has offered is merely pretextual, meaning that the employer's explanation of its

behavior is dishonest. You must then reassert that discrimination was actually the motivating factor.⁶⁶

[Back to top](#)

WRONGFUL TERMINATION: *I think I was fired because I'm a woman.*

- a. [I think I was fired because I'm a woman, how do I prove it?](#)
- b. [Are women a "protected class"?](#)
- c. [How do I show that my legally protected class led to my discharge?](#)
- d. [What could my employer do to deny my allegations, and how do I respond to its denials?](#)
- e. [Does it matter how long ago the discrimination occurred? \(new window to WDTLS\)](#)
- f. [If I prove my pregnancy discrimination claim, what kind of remedies am I entitled to? \(new window to Remedies\)](#)

[Back To Types of Discrimination](#)

a. I think I was fired because I'm a woman, how do I prove it?

You must show that:

- 1) you are a member of a protected class, which you are, being a woman;
- 2) you were similarly qualified for the position from which you were discharged;
and
- 3) that you were replaced by a male.⁶⁷

[Back to top](#)

b. Are women a "protected class"?

Yes, women are a protected class under the MHRA

(http://www.humanrights.state.mn.us/rights_363.html), which prohibits discrimination on the basis of sex.⁶⁸

[Back to top](#)

c. How do I show that my legally protected class led to my discharge?

Proof of discrimination can be shown by direct evidence of a discriminatory motive, such as where an employer announces that he does not think women can succeed in certain positions. Alternatively, where direct evidence is not available, you can show discrimination by indirect means. For example, if you can prove that there was no valid reason for your termination, and your employer cannot convince the court otherwise, you have a good chance of convincing the court that you were discharged because you were a woman.⁶⁹

[Back to top](#)

d. What could my employer do to deny my allegations, and how do I respond to its denials?

Your employer would have to show that there were other legitimate reasons for your discharge, such as poor work performance, insubordination, tardiness, etc. You then would have to show that these reasons were pretextual or false, and that the real reason was because you are a woman.⁷⁰

[Back to top](#)

RETALIATION/REPRISAL: *I think my employer fired me because I filed a sex discrimination claim.*

[What is retaliation or reprisal, and how do I prove it?](#)

[What is “protected conduct”?](#)

[How do I show that my legally protected conduct led to my discharge?](#)

[Must I show that my employer knew about my “protected conduct”?](#)

[I’ve just received a warning from my employer, and I suspect I will be fired soon. What should I do?](#)

[What could my employer do to deny my allegations, and how do I respond to its denials?](#)

[Does it matter how long ago the discrimination occurred? \(new window to WDTLS\)](#)

[If I prove my pregnancy discrimination claim, what kind of remedies am I entitled to? \(new window to Remedies\)](#)

[Back to Types of Discrimination](#)

a. What is retaliation or reprisal, and how do I prove it?

Reprisal includes any form of intimidation, retaliation, or harassment committed by the employer to punish or retaliate against you for making a discrimination complaint.⁷¹ To prove retaliation or reprisal you must show that:

- 1) your action was protected by law;
- 2) your employer took adverse action; and
- 3) there was a causal connection between your conduct and your employer’s action.⁷²

[Back to top](#)

b. What is “protected conduct”?

Protected conduct includes opposing employer practices that are unlawful, making a discrimination complaint, filing a charge, testifying, or participating in an investigation. Your belief that your employer’s acts are unlawful must be reasonable.⁷³

[Back to top](#)

c. How do I show that my legally protected conduct led to my discharge?

You can show a causal connection by presenting evidence of circumstances that would lead someone to infer that there was a retaliatory motive on behalf of your employer. An example of this would be showing that your employer had actual knowledge of your protected activity and that the adverse employment action followed closely in time.⁷⁴

[Back to top](#)

d. Must I show that my employer knew about my “protected conduct”?

Yes, you need to show that your employer had actual or imputed knowledge of your protected conduct.⁷⁵

[Back to top](#)

e. I've just received a warning from my employer, and I suspect I will be fired soon. What should I do?

Keep thorough documentation of everything that happens at work. Any evidence that may show that your employer had a retaliatory motive in firing you will greatly help your case.

[Back to top](#)

f. What could my employer do to deny my allegations, and how do I respond to its denials?

Your employer could present evidence showing that it had a legitimate reason for the adverse action taken against you. Evidence of the elimination of your former position, lack of retraining, or failure to rehire someone for a long period of time could further its defense that a reason other than reprisal or retaliation motivated the action.⁷⁶ Ultimately, however, you must show that your complaining about sex discrimination (or your “protected conduct”) more likely than not led to the adverse action.⁷⁷

[Back to top](#)

HOW DO I FILE A CLAIM?

- a. [How do I file a state claim with the Minnesota Department on Human Rights?](#)
- b. [How do I contact the Minnesota Department on Human Rights?](#)
- c. [Against whom can I file a claim?](#)
- d. [How long will the process take?](#)
- e. [Do I need an attorney?](#)
- f. [Do I have to contact the Minnesota Department on Human Rights?](#)
- g. [Is the process different if I live in the Twin Cities?](#)
- h. [Who will investigate my complaint?](#)
- i. [What do I do after my initial contact with the Minnesota Department on Human Rights?](#)
- j. [What happens after I submit my claim?](#)
- k. [What happens if the investigators determine that no “reasonable” or “probable” cause exists on which to base a claim?](#)
- l. [What happens if the investigator determines that “reasonable” or “probable” cause exists on which to base a claim?](#)
- m. [What is a “right to sue” letter?](#)
- n. [Can I appeal a decision of the Commission?](#)
- o. [Can I file a federal claim of employment discrimination as well? If so, how?](#)
- p. [What are the advantages and disadvantages of filing a federal claim over a state claim?](#)

[Back to Main](#)

a. How do I file a state claim with the Minnesota Department on Human Rights?

To first establish if you have a case, you can use the interactive guide to employment discrimination (<http://www.humanrights.state.mn.us/interactive/explorer/index.html>) available on the Department’s website.

[Back to top](#)

b. How do I contact the Minnesota Department on Human Rights?

You may choose to contact the Department to discuss your situation and the possibility of filing a charge by phone at 651-296-5663 or 1-800-657-3704 (TTY: 651-296-1283). You may also email the Department at complaintinfo@therightsplace.net or submit a form online (http://www.humanrights.state.mn.us/interactive/explorer/ans_yes.html) to obtain information about next steps and request to be contacted by phone, email or letter by a professional at the Department.

[Back to top](#)

c. Against whom can I file a claim?

You may have a claim against your employer, your harasser or officers of the business. Either a member of the Department of Human Rights staff or a private attorney can help you determine the party or parties to include as defendants in your case.⁷⁸

[Back to top](#)

d. How long will the process take?

Under MHRA (http://www.humanrights.state.mn.us/rights_363.html), the Department has up to one year to complete its investigation and make a determination on a charge. However, if at any time your case is referred to alternative dispute resolution, which is a form of mediation, the clock stops, and those efforts are not counted towards the year.⁷⁹

[Back to top](#)

e. Do I need an attorney?

No. However, you may choose to file the charge through a private attorney instead of the Department. If you opt to do so, the charge must include the required questionnaire, which many attorneys already have in their offices. The Department website offers a how-to guide (http://www.humanrights.state.mn.us/attorneys_howto.html) to aid attorneys through the process. However, you are not required to obtain your own counsel. The Department provides the filing service at no cost and will also supply a translator if you require it. Collectively, the staff is fluent in 14 languages.

[Back to top](#)

f. Do I have to contact the Minnesota Department on Human Rights?

No. You may choose to file the charge through a private attorney instead of the Department.⁸⁰

[Back to top](#)

g. Is the process different if I live in the Twin Cities?

If the discrimination happened in St. Paul or Minneapolis, you also have the option of filing with the St. Paul Human Rights Department (http://www.ci.stpaul.mn.us/depts/humanrights/your_civil_rights.html) or the Minneapolis Department of Civil Rights (<http://www.ci.minneapolis.mn.us/citywork/civil-rights/>) instead of filing with this Department. You can choose whichever option is most convenient for you.

[Back to top](#)

h. Who will investigate my complaint?

The Minnesota Department on Human Rights, a neutral state agency, investigates all charges of illegal discrimination.⁸¹

[Back to top](#)

i. What do I do after my initial contact with the Minnesota Department on Human Rights?

You will be asked to fill out a questionnaire giving more details about what happened. If your complaint indicates a possible violation of the Human Rights Act, a charge will be drafted for you to sign before a notary public. At this time, the Department will tell you whether your charge is a priority case. The priority does not reflect on the merits of a charge or the likely outcome of an investigation. According to state law, a case must be handled as soon as possible according to certain criteria.⁸²

[Back to top](#)

j. What happens after I submit my claim?

A copy of the signed charge will be sent to the person or organization accused of the discrimination, along with a request for a response within 20 days. Based upon the response, if further investigation is warranted, the Department may interview witnesses and otherwise attempt to determine if discrimination occurred (“[probable cause](#)”).⁸³

[Back to top](#)

k. What happens if the investigators determine that no “reasonable” or “probable” cause exists on which to base a claim?

The Commissioner can dismiss cases without deciding whether there has been a violation. If your case is dismissed, the Department will tell you the reason in writing. You can still file a suit using a private attorney, as long as you file the suit within 45 days of receiving the commissioner’s letter.⁸⁴

[Back to top](#)

l. What happens if the investigator determines that “reasonable” or “probable” cause exists on which to base a claim?

If the Commissioner of Human Rights decides there is good reason to believe discrimination occurred, the Department will refer the case to the Minnesota State Attorney General's Office for further action. The Department always seeks to keep the matter out of court and encourages a negotiated settlement between the parties. If this is not possible, then there will be a hearing in front of a judge to determine if unlawful discriminatory practice occurred and damages may be awarded at this time.⁸⁵

[Back to top](#)

m. What is a “right to sue” letter?

This is the letter that would be sent to you if your discrimination claim has been dismissed. From the time you receive the letter, if you choose to do so, you have 45 days to file a civil suit with a private attorney.⁸⁶

[Back to top](#)

n. Can I appeal a decision of the Commission?

Yes. Within ten days of the notice of the decision, you can appeal a no [probable cause](#) determination or request reconsideration of a dismissal decision. The Commissioner will review the prior decision within 20 days after receipt of the request. Within ten days of that decision, the commissioner will notify in writing the charging party and respondent of the judgment.⁸⁷

[Back to top](#)

o. Can I file a federal claim of employment discrimination as well? If so, how?

If your charge involves federal laws, it may be filed at the federal Equal Employment Opportunity Commission (EEOC). If your charge is eligible, the Minnesota Department of Human Rights (<http://www.humanrights.state.mn.us/>) will automatically cross file it with the EEOC (<http://www.eeoc.gov>).⁸⁸

[Back to top](#)

p. What are the advantages and disadvantages of filing a federal claim over a state claim?

There are three main reasons to pursue a state claim: 1) The state offers a more flexible timeline - 1 year to report as compared to 300 days at the EEOC; 2) State law covers employers of any size – federal law only covers employers with 15 or more employees; and 3) The state allows for greater damage recovery, not only because [Title VII](#) (<http://www.eeoc.gov/policy/vii.html>) has caps based on workforce size, as compared to MHRA (http://www.humanrights.state.mn.us/rights_363.html) which allows for up to three times the actual damages sustained, but also because employees can be held personally liable.⁸⁹

[Back to top](#)

WHAT AM I ENTITLED TO IF I WIN?

- a. [What am I entitled to if I win?](#)
- b. [What is equitable relief?](#)
- c. [Am I entitled to monetary damages if I win?](#)
- d. [What is the difference between compensatory and punitive damages?](#)
- e. [Am I entitled to back pay?](#)
- f. [Am I entitled to my old job back?](#)
- g. [Am I entitled to attorney's fees?](#)

[Back to Main](#)

a. What am I entitled to if I win?

Remedies include [reinstatement](#), [compensatory damages](#), and [punitive damages](#). [Compensatory damages](#) include both [back pay](#) and [front pay](#), and under Minnesota law, may be multiplied by the court up to three times the actual amount.⁹⁰

[Back to top](#)

b. What is equitable relief?

Equitable relief basically refers to any remedies that are non-monetary. This type of relief could include [reinstatement](#) or include any actions that the employer must take such disciplinary action against a harasser or launching a sensitivity training program.⁹¹

[Back to top](#)

c. Am I entitled to monetary damages if I win?

Yes. Under [compensatory damages](#), you may recover up to three times the amount of the actual damages you suffered. In addition, you may receive up to \$8,500 in [punitive damages](#).⁹²

[Back to top](#)

d. What is the difference between compensatory and punitive damages?

While compensatory damages are sought to address the actual damages you have suffered, [punitive damages](#) are intended to punish the employer for showing a “willful indifference” to the rights of its employees.⁹³

[Back to top](#)

e. Am I entitled to back pay?

Yes, “back pay” may be an appropriate remedy if you are seeking to recover lost wages due to an unjust personnel action such as a discharge, a forced leave or a wrongfully denied promotion. If you are seeking compensation for losses not yet incurred, rather than [reinstatement](#), you may also be eligible for “[front pay](#).”⁹⁴

[Back to top](#)

f. Am I entitled to my old job back?

If appropriate, you may be reinstated in your old job.

[Back to top](#)

g. Am I entitled to attorney's fees?

Yes. The Minnesota Human Rights Act

(http://www.humanrights.state.mn.us/rights_363.html) provides that [attorney's fees](#) may be awarded to the prevailing party in a discrimination claim.⁹⁵

[Back to top](#)

96

¹ Minn. Stat. § 363A.08, Subd. 1,2,3. (West 2005)

² Minn. Stat. § 363A.08, Subd. 1,2,3.

³ Minn. Stat. § 363A.08 Subd. 2

⁴ Minn. Stat. § 363A.03 Subd. 16

⁵ Minn. Stat. § 363A.03 Subd. 16

⁶ Minn. Stat. § 363A.08 Subd. 2.

⁷ Minn. Stat. § 363A.28 Subd. 3.

⁸ Minn. Stat. § 181.67. subd. 1.

⁹ Minn. Stat. § 181.67. subd. 1.

¹⁰ Minn. Stat. § 181.67. subd. 1.

¹¹ Minn. Stat. § 363.08, subd. 2

¹² *Danz v. Jones*, 263 N.W.2d 395, 400 (1978).

¹³ *Id.*

¹⁴ Minn. Stat. § 363.08, subd. 2

¹⁵ *Danz*, 263 N.W.2d at 397.

¹⁶ *Biderman v. National Semiconductor Datachecker/DTS Corp*, 1991 WL 30319 at **1, 2 (Minn.App. Mar. 12, 1991).

¹⁷ *Biderman*, 1991 WL 30319 at **1, 2 (Minn.App. Mar. 12, 1991).

¹⁸ *Goins v. West Group*, 635 N.W.2d 717, 722 (2001).

¹⁹ Minn. Stat. § 363A.28 Subd. 10

²⁰ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802-804. (1973).

²¹ Minn. Stat. § 363A.28 Subd. 10

²² *Goins v. West Group*, 635 N.W.2d 717, 724 (2001).

²³ *Goins*, 635 N.W.2d at 722.

²⁴ Wesley Kobylak, *Disparate Impact Test for Sex Discrimination in Employment under Title VII of Civil Rights Act of 1964*, 68 ALR Fed. 19, 1, 16, 17 (2000).

²⁵ *McDonnell Douglas Corp.*, 411 U.S. at 802-804.

²⁶ *Benassi v. Back & Neck Pain Clinic*, 629 N.W.2d 475, 480-481 (Minn.2001)

²⁷ *Id.*

²⁸ *Jenson v. Eveleth Taconite Co.*, 130 F.3d 1287, 1291 (8th Cir. 1998)

²⁹ *Devane v. Sears Home Improvement*, 2003 WL 22999363 at **1, 4 (Minn.App. Dec. 23, 2003)

³⁰ *Devane*, 2003 WL 22999363 at **1, 7 (Minn.App. Dec. 23, 2003)

³¹ Engelmeier, Sheila and Jonathan J. Hegre, *The Deepening Divide: Minnesota and Federal Employment Laws*, 58-APR Bench & B. Minn. 21, 24 (2001)

³² *Id.* at 22.

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- ³³ MDHR, *Sexual Harrassment: Questions and Answers*, http://www.humanrights.state.mn.us/sex_harass_Q_A.html
- ³⁴ *Id.*
- ³⁵ Engelmeier, Sheila and Jonathan J. Hegre, *The Deepening Divide: Minnesota and Federal Employment Laws*, 58-APR Bench & B. Minn. 21,23 (2001).
- ³⁶ MDHR, *Sexual Harrassment: Questions and Answers*, http://www.humanrights.state.mn.us/sex_harass_Q_A.html
- ³⁷ Engelmeier, Sheila and Jonathan J. Hegre, *The Deepening Divide: Minnesota and Federal Employment Laws*, 58-APR Bench & B. Minn. 21, 22 (2001).
- ³⁸ *On Prejudice and Pregnancy*, The Rights Stuff Special Report (newsletter of MDHR) 7 (Summer 2001).
- ³⁹ *Id.* at 8.
- ⁴⁰ *Id.* at 9.
- ⁴¹ *Id.* at 8.
- ⁴² *Id.* at 8.
- ⁴³ *Id.* at 9.
- ⁴⁴ Minn. Stat. §181.941, subd. 1
- ⁴⁵ Minn. Stat. § 181.942, subd. 1(a)
- ⁴⁶ *Scheidecker v. Arvig Enterprises, Inc.*, 122 F.Supp.2d 1031,1045 (D. Minn. 2000)
- ⁴⁷ *On Prejudice and Pregnancy*, The Rights Stuff Special Report (newsletter of MDHR) 8 (Summer 2001).
- ⁴⁸ *Dooner v. Impressions Inc.*, N.W.2d, 1995 WL 634933, 1 (Minn.App.)
- ⁴⁹ *On Prejudice and Pregnancy*, The Rights Stuff Special Report (newsletter of MDHR) 7 (Summer 2001).
- ⁵⁰ *Id.* at 9
- ⁵¹ *Id.* at 9.
- ⁵² *Id.* at 9.
- ⁵³ *Id.* at 7.
- ⁵⁴ *Id.* at 8.
- ⁵⁵ *Id.* at 7.
- ⁵⁶ *Id.* at 9.
- ⁵⁷ EEOC, *Facts about Pregnancy*, <http://www.eeoc.gov/facts/fs-preg.html>
- ⁵⁸ *Id.*
- ⁵⁹ *McDonnell Douglas Corp.*, 411 U.S. at 802..
- ⁶⁰ *Stedman v. State*, 1997 WL 118115 at *1,3 (Minn.App. March 18, 1997).
- ⁶¹ MDHR, *Hiring, Job Interviews and the Minnesota Human Rights Act*, http://www.humanrights.state.mn.us/employer_hiring.html
- ⁶² *McDonnell Douglas Corp.*, 411 U.S. at 802.
- ⁶³ *Sigurdson v. Isanti County*, 448 N.W.2d 715, 720 (Minn.1986).
- ⁶⁴ *Id.* at, 717.
- ⁶⁵ *Sigurdson v. Isanti County*, 448 N.W.2d 62, 65 (Minn.1989). WHAT THE HECK IS THIS?
- ⁶⁶ *McDonnell Douglas Corp.*, 411 U.S. at 802.
- ⁶⁷ *Goins*, 635 N.W.2d at 724.
- ⁶⁸ Minn. Stat. § 363A.08, Subd. 2.
- ⁶⁹ *Ray v. Miller Meester Advertising, Inc.* 664 N.W.2d 355, 367 (2003).
- ⁷⁰ *Id.*
- ⁷¹ *Minneapolis Police Dept. v. Minneapolis Com'n on Civil Rights*, 402 N.W.2d 125, 132 (Minn. App. 1987)
- ⁷² *Hubbard v. United Press Int'l, Inc.* 330 N.W.2d 428, 441, 444 (1983).
- ⁷³ *Barnes v. Benham Group, Inc.* 22 F.Supp.2d 1013, 1022 (D. Minn. 1998)
- ⁷⁴ *Smith v. DataCard Corp.*, 9 F.Supp.2d 1067, 1080 (D. Minn. 1998)
- ⁷⁵ *Hubbard v. United Press Intern, Inc.* 330 N.W.2d 428, 445 (1983).
- ⁷⁶ *Johnson v. Canadian Pacific Ltd.*, 522 N.W.2d 386, 390 (Minn. App. 1994).
- ⁷⁷ *McGrath v. TCF Bank Sav., FSB*, 509 N.W.2d 365 (1993).
- ⁷⁸ Kirsch, Steven J. and Gillman, Richard S., *Sexual Harassment in the Workplace*, 5A Minn. Prac., Methods of Practice § 10.22 (3d ed.)

⁷⁹MDHR, *Frequently Asked Questions*, http://www.humanrights.state.mn.us/about_genfaq.html

⁸⁰*Id.*

⁸¹MDHR, *Frequently Asked Questions*, http://www.humanrights.state.mn.us/about_genfaq.html

⁸²MDHR, *Assignment of Priority to Cases*, http://www.humanrights.state.mn.us/attorneys_cpguidelines.html

⁸³MDHR, *Our Charge Filing Process*, http://www.humanrights.state.mn.us/attorneys_cpguidelines.html

⁸⁴MDHR, *Commissioner May Dismiss Your Case*, http://www.humanrights.state.mn.us/attorneys_cpguidelines.html

⁸⁵MDHR, *Frequently Asked Questions*, http://www.humanrights.state.mn.us/about_genfaq.html

⁸⁶MDHR, *How are your Rights Protected?* http://www.humanrights.state.mn.us/rights_process.html

⁸⁷Minn. Stat. Ann. §363A.28 sub 6.

⁸⁸MDHR, *If Your Charge Involves Federal Law*, http://www.humanrights.state.mn.us/attorneys_cpguidelines.html

⁸⁹Engelmeier, Sheila and Jonathan J. Hegre, *The Deepening Divide: Minnesota and Federal Employment Law*, 58-APR Bench & B. Minn. 21,23,24(2001)

⁹⁰*Id.* at ,23

⁹¹*Jenson v. Eveleth Taconite Co.*, 130 F.3d 1287, 1301 (8th Cir. 1998)

⁹²Engelmeier, Sheila and Jonathan J. Hegre, *The Deepening Divide: Minnesota and Federal Employment Law*, 58-APR Bench & B. Minn. 21,22(2001)

⁹³*Jenson v. Eveleth Taconite Co.*, 130 F.3d 1287, 1301 (8th Cir. 1998)

⁹⁴*Ray v. Miller Meester Advertising, Inc.*, 684 N.W. 2d 404, 410 (Minn. 2004).

⁹⁵Kirsch, Steven J. and Gillman, Richard S., *Sexual Harassment in the Workplace*, 5A Minn. Prac., Methods of Practice § 10.22 (3d ed.)