

How Discrimination on the Basis of Sex Shows Up in Perinatal Care

Pregnant people may experience mistreatment and violence during childbirth because of their sex. This is called obstetric violence, and it is a violation of pregnant people's civil and human rights. The Department of Health and Human Services' Office for Civil Rights acknowledges that harms because of sex have intersectional dimensions and that many harms do not fit neatly into the categories of current nondiscrimination protections. This means that people's experiences of discrimination are often based off of multiple identities that they hold (intersectionality) and that the legal system is structured to respond to discrimination based on protected characteristics ignores this intersectionality. When you receive perinatal care that is different because of your sex, you may have experienced discrimination "on the basis of sex."

What is Discrimination on the Basis of Sex:

- Examples of common potentially discriminatory practices
 - Overriding birthing patients' decisions during childbirth (e.g., forcing or coercing birthing patients to undergo procedures during childbirth)
 - Refusing to provide gender-affirming care for pregnant transgender people, including using a pregnant transgender person's deadname or incorrect pronouns
 - limiting or refusing to let parents get care from a midwife, doula, or lactation consultant
 - Conducting drug tests on pregnant and postpartum patients without informed consent
 - Reporting the results of drug testing to Child Protective Services or law enforcement without informed consent
 - Inserting or keeping a finger in the patient's body without consent, including during labor
 - Inserting or keeping an instrument in the patient's body without consent, including during labor
 - rupturing membranes without the pregnant person's consent or pressuring them to agree
 - forcing pregnant people to have episiotomies or epidurals
 - adding extra stitches that are not medically necessary during repairs of perineal tears (the "husband stitch")
 - forcing birthing people to hold their baby in their vaginas
 - pushing babies back into birthing people's vaginas
 - sexual comments about patients' bodies
 - forcing birthing people to hold certain positions or restricting their movement during labor

Who is Affected

Discrimination on the basis of sex is grounded in paternalistic attitudes and stereotypes about who can or should be able to have children. Sex-based discrimination is a consequence of structural inequality, discrimination, and disrespect for equality and human rights. Doctors and nurses claim power over patients because of their medical knowledge, but pregnant people know their bodies best and should be able to make decisions that are best for them.

Trans and non-binary pregnant and birthing people experience discrimination because of outdated and incorrect stereotypes that they can't or shouldn't be able to have children or it is immoral for them to have children.

Pregnant women are often denied the right to make medical decisions as non-pregnant people by doctors and hospitals. One justification for this is the health of the fetus, but courts have decided that prioritizing the well-being of a fetus over the pregnant person is illegal sex discrimination.

Why it Matters

Pregnant people of [all sexes](#) and gender identities have a right to give birth without discrimination. When a pregnant person's sex limits the care available to them or influences the way the care they receive is delivered, it is unjust. When health care providers overturn the decisions made by pregnant people about their own bodies, they treat pregnant people in a way that would be unthinkable if the patient were not pregnant. Mistreatment during childbirth can especially hurt survivors of sexual assault, turning the birthing process into a traumatic event. Sex-based discrimination also disproportionately hurts Black, Indigenous, and People of Color (BIPOC) with disabilities and Queer and Trans people due to systemic racism, homophobia, and transphobia.

Legal Protections

Receiving (or not receiving) perinatal care that prevents people from making decisions about their body or uses coercion or force to make pregnant patients make certain decisions is sex-based discrimination. Health care facilities and providers in the United States that receive government funding (as most do) have to give patients equal access to care, regardless of their gender, physical looks, or lifestyle. They also cannot use the well-being of the fetus as an excuse to prevent pregnant people from making medical decisions for themselves. Equal Protection Clause; Title IX. In practice, this means that an organization has to provide pregnant people the same access to treatment, benefits, and ability to make decisions as non-pregnant people if they receive money from the federal government. 42 U.S. Code § 18116. The Office of Civil Rights in the US Department of Health and Human Services (HHS) has the legal authority to enforce these laws. Section 1557 of ACA.

How to File an OCR Complaint

You can file a complaint **through OCR's [online portal](#)** or by mail, fax, or e-mail. OCR provides free language assistance services and services are accessible to persons with disabilities.

You will need to:

- Name the health care or social service provider that discriminated against you,
- Describe what happened,
- Explain why you believe what happened was discrimination (were you treated differently than other people on the basis of race, color, national origin, sex, age and/or disability? Does the facility or institution have a practice or policy that applies to everyone, but that has a discriminatory impact on a protected group?).
- File the complaint through the portal within 180 days of when the act or omission complained of occurred, or if that time has already passed, explain why you had "good cause" to need more time.

Elephant Circle can assist you with filing an OCR complaint. Sign up [here](#) to schedule a consultation with a member of our team.