

The Pregnant Workers Fairness Act

MAY 2017

Despite existing protections, pregnant workers in the United States still face workplace discrimination – in all industries, across race and ethnicity, and in every state.¹ Too often, pregnant workers are forced out of their jobs and denied small accommodations – such as sitting instead of standing or carrying a water bottle – that would enable them to continue working and supporting their families. The Pregnant Workers Fairness Act would help end this form of pregnancy discrimination, promote healthy pregnancies and protect the economic security of pregnant women and their families.

Supporting Pregnant Women on the Job

The Pregnant Workers Fairness Act would help prevent employers from forcing pregnant women out of the workplace and help ensure that employers provide reasonable accommodations to pregnant women who want to continue working.

The Pregnant Workers Fairness Act would:

- ▶ Clarify that employers must make reasonable accommodations for workers affected by a known limitation related to pregnancy, childbirth or related medical conditions.
- ▶ Require an interactive process between employers and pregnant workers to determine appropriate reasonable accommodations, similar to the Americans with Disabilities Act.
- ▶ Provide an exemption for businesses if an accommodation imposes an undue hardship on an employer.
- ▶ Protect pregnant workers from retaliation, coercion, intimidation, threats or interference if they request or use an accommodation.
- ▶ Apply to employers with 15 or more employees and provide protections for both job applicants and employees.

Pregnancy Discrimination Persists

The Pregnancy Discrimination Act of 1978 (PDA) outlawed pregnancy discrimination by making clear that discrimination on the basis of pregnancy, childbirth or related medical conditions is illegal sex discrimination. The PDA also established that pregnant workers have to be treated the same, and provided with the same benefits, as non-pregnant workers who are similar in their ability or inability to work.

Despite the longstanding protection of the PDA, nearly 31,000 pregnancy discrimination charges were filed with the U.S. Equal Employment Opportunity Commission (EEOC) and

state-level fair employment practice agencies between Oct. 2010 and Sept. 2015. Denial of workplace accommodations for pregnancy – such as sitting instead of standing, carrying a water bottle, restricting the weight that a worker can lift, or permitting more frequent bathroom breaks – accounted for more than 650 of the pregnancy discrimination charges filed with the EEOC in 2015 alone.² Yet EEOC charges do not paint a complete picture. A 2013 study estimated that 250,000 women per year are denied the reasonable accommodations they need and request during their pregnancies – and many more do not ask for the reasonable accommodations they need.³

Pregnancy discrimination affects women across race and ethnicity, but women of color and immigrants may be at particular risk.

Latinas, Black women and immigrant women are more likely to hold certain inflexible and physically demanding jobs that can present specific challenges for pregnant workers, such as home health aides, food service workers, package handlers and cleaners.⁴ White women file the largest share of pregnancy discrimination charges (46 percent), but Black women file nearly three in 10 charges (29 percent), even though Black women comprise only 14 percent of women in the workforce ages 16 to 54. Black women are also at a higher risk for pregnancy-related complications like pre-term labor, preeclampsia and hypertensive disorders,⁵ and the mortality rate for Black infants in the United States is shockingly high.⁶ This can make reasonable accommodations on the job even more important, and loss of wages and health insurance due to pregnancy discrimination especially challenging.

A pregnant retail worker in Salina, Kansas, was fired merely because she needed to carry a water bottle to stay hydrated and prevent bladder infections.

Plenty of women are able to work through their pregnancies without any need for accommodations but, **too often, pregnant workers who need accommodations are forced out of their jobs unnecessarily when minor adjustments would enable them to keep working.** For example:

- ▶ An activity director at a nursing home in Valparaiso, Indiana, was terminated because she required a reasonable accommodation for some physical aspects of her job to prevent having another miscarriage.⁷
- ▶ A retail worker in Salina, Kansas, was fired merely because she needed to carry a water bottle to stay hydrated and prevent bladder infections.⁸
- ▶ A hardware assembler in Mt. Hope, Ohio, was terminated after her doctor recommended that she not work more than an eight-hour shift or lift more than 20 pounds due to gestational diabetes and the threat of preterm labor.⁹

In 2015, the U.S. Supreme Court held in *Young v. United Parcel Service* that failing to accommodate pregnant workers with medical needs can violate the PDA. Although the decision was an important victory, the need for the Pregnant Workers Fairness Act is as compelling as ever. Under *Young*, a pregnant worker's rights will often depend on whether an employer already accommodates a large percentage of non-pregnant workers while

denying accommodations to a large percentage of pregnant workers. Therefore, pregnant women may not be protected and may face uncertainty about their rights.

The Pregnant Workers Fairness Act Would Help

- ▶ **The Pregnant Workers Fairness Act would promote family economic security.** Nearly 85 percent of women will become mothers at some point in their working lives.¹⁰ Pregnant women who continue working are continue generating income for their families while gaining seniority on the job. When pregnant women are fired, they and their families lose critical income, and they may struggle to re-enter a job market that is especially brutal for unemployed workers, mothers, and, in particular, pregnant women. To make matters worse, new mothers face significant hiring biases.¹¹
- ▶ **The Pregnant Workers Fairness Act would promote healthy pregnancies.** Pregnant women who are denied reasonable accommodations must either risk their own health and the health of their pregnancies or give up critical jobs and income. They also risk losing employer-sponsored health insurance, which compromises their ability to get quality prenatal and post-partum care. In contrast, pregnant women who are able to continue working may be able to take longer periods of leave, which can facilitate recovery from childbirth, breastfeeding, and bonding with and caring for a new child.

It is Time for Congress to Protect Pregnant Workers

The Pregnant Workers Fairness Act would create a clear, predictable rule: Employers must provide reasonable accommodations for limitations arising out of pregnancy, childbirth or related medical conditions, unless doing so would pose an undue hardship. Pregnant workers may also request such accommodations without fear of punishment.

Support for a law like the Pregnant Workers Fairness Act is nearly universal. Ninety-five percent of Americans say it is reasonable for employers to provide minor accommodations to pregnant workers, and support transcends partisan lines overwhelmingly.¹²

Nineteen states and five cities have passed laws requiring employers to provide reasonable accommodations to pregnant workers.¹³ Many of these laws have passed with bipartisan or unanimous support. A federal law would protect workers nationwide.

It is time for Congress to recognize what is at stake for pregnant workers and their families by supporting and ultimately passing the Pregnant Workers Fairness Act.

1 National Partnership analysis of detailed breakdowns of pregnancy discrimination charges, by issue, filed under Title VII, as amended by the Pregnancy Discrimination Act, for the period FY2011 to FY2015 from the EEOC Program Planning and Analysis Division and state-level Fair Employment Practice Agencies (FEPAs).

2 Ibid. The analysis by issue includes only charges filed with the EEOC. Consistent charge data for reasonable workplace accommodations are only available for FY2015 (Oct. 2014 to Sept. 2015) due to how information was previously collected and tracked.

3 Childbirth Connection. (2014, January). *Listening to Mothers: The Experiences of Expecting and New Mothers in the Workplace*. Retrieved 8 May 2017, from <http://www.nationalpartnership.org/research-library/workplace-fairness/pregnancy-discrimination/listening-to-mothers-experiences-of-expecting-and-new-mothers.pdf>

4 National Latina Institute for Reproductive Health and National Women's Law Center. (2014, May). *Accommodating Pregnancy On the Job: The Stakes for Women of Color and Immigrant Women*. Retrieved 8 May 2017, from https://www.nwlc.org/wp-content/uploads/2015/08/the_stakes_for_woc_final.pdf

-
- 5 Creanga, A. A., Bateman, B. T., Kuklina, E. V., & Callaghan, W. M. (2014, May). Racial and ethnic disparities in severe maternal morbidity: a multistate analysis, 2008-2010. *American Journal of Obstetrics & Gynecology*, 210(5), pp. 435.e1–435.e8. Retrieved 8 May 2017, from [http://www.ajog.org/article/S0002-9378\(13\)02153-4/fulltext](http://www.ajog.org/article/S0002-9378(13)02153-4/fulltext)
- 6 Mathews, T. J., Driscoll, A. K. (2017, March). *Trends in Infant Mortality in the United States, 2005-2014*. Centers for Disease Control and Prevention, National Center for Health Statistics Publication. Retrieved 8 May 2017, from <https://www.cdc.gov/nchs/data/databriefs/db279.pdf>
- 7 *Serednyj v. Beverly Healthcare*, 656 F.3d 540 (7th Cir. 2011).
- 8 *Wiseman v. Wal-Mart Stores, Inc.*, No. 08-1244-EFM, 2009 WL 1617669 (D. Kan. June 9, 2009).
- 9 *Mullet v. Wayne-Dalton Corp.*, 338 F. Supp. 2d 806 (N.D. Ohio Sep. 27, 2004).
- 10 U.S. Census Bureau. (2015, April). *Fertility of Women in the United States: 2014. Table 6. Completed Fertility for Women age 40 to 50 Years Old – Selected Characteristics: June 2014*. Retrieved 8 May 2017, from <http://www.census.gov/hhes/fertility/data/cps/2014.html> (Unpublished calculation. The reported percentage of women who had become mothers by age 40 to 44 as of 2014 is 84.7 percent.)
- 11 Corell, S. J., Benard, S., & Paik, I. (2007, March). Getting a Job: Is There a Motherhood Penalty? *American Journal of Sociology*, (112)5, pp. 1297-1339. Retrieved 8 May 2017, from <http://gender.stanford.edu/sites/default/files/motherhoodpenalty.pdf>
- 12 Center for American Progress. (2014, November). *Survey on Pregnancy Discrimination Memo*. Retrieved 8 May 2017, from <https://cdn.americanprogress.org/wp-content/uploads/2014/11/YoungPollingMemo.pdf>
- 13 For a list, see: National Partnership for Women & Families. (2016, June). *Reasonable Accommodations for Pregnant Workers: State and Local Laws*. Retrieved 8 May 2017, from <http://www.nationalpartnership.org/research-library/workplace-fairness/pregnancy-discrimination/reasonable-accommodations-for-pregnant-workers-state-laws.pdf> (Since the publication of that list, Vermont also passed a pregnancy accommodation law, H. 136, signed into law on May 4, 2017.)

The National Partnership for Women & Families is a nonprofit, nonpartisan advocacy group dedicated to promoting fairness in the workplace, access to quality health care and policies that help women and men meet the dual demands of work and family. More information is available at NationalPartnership.org.

© 2017 National Partnership for Women & Families. All rights reserved.