

CONGRESS SHOULD PASS THE PREGNANT WORKERS FAIRNESS ACT

H.R. 1975/S. 942

No woman should be forced to choose between a healthy pregnancy and her job.

When Congress enacted the Pregnancy Discrimination Act thirty-five years ago, it prohibited employers from discriminating against employees based on pregnancy, childbirth or related medical conditions. Yet, at a time when women constitute almost half the work force, and millions work during their pregnancies, discrimination against pregnant women persists.

Today, too many pregnant working women are “pushed out” of their jobs because employers refuse to provide temporary work modifications—like a stool to sit on, permission to carry a bottle of water, a break from lifting heavy boxes—that would allow them to remain productive employees and maintain a healthy pregnancy. These temporary adjustments may be especially important for women who are, for example, police officers, food service workers, truck drivers, delivery workers, and retail salespersons—jobs that require sustained physical activity.

The Pregnant Workers Fairness Act (PWFA) addresses this problem by making it crystal clear that employers must provide reasonable accommodations for limitations caused by pregnancy, just as they already must provide reasonable accommodations for limitations caused by disabilities.

The Pregnant Workers Fairness Act promotes the physical health and economic security of women and their families.

When a pregnant worker is forced to quit, coerced into taking unpaid leave, or fired because her employer refuses to provide a temporary job accommodation, the impact on her family can be severe and long-lasting. If she is the sole or primary breadwinner in the family, as many working women

are, she will be without an income or health care benefits when she most needs them. She may be ineligible for unemployment or other forms of public assistance and may have few, if any, additional resources on which to rely. PWFA ensures that women and families would not face such devastating circumstances and instead allows women to remain productive members of the workforce and provide for their families.

If a pregnant worker cannot afford to lose her paycheck and health insurance and remains at work despite her employer’s refusal to provide a temporary accommodation, she may put her own health as well as her pregnancy at risk. She may even miscarry.

In one case, an airline ticket agent in Louisiana was instructed by her doctor not to lift heavy items at work. Her employer refused to provide her with a “light duty” assignment and informed her that she would be placed on unpaid leave if she brought a doctor’s note. Not having an income wasn’t an option, so she remained on the job and continued to lift heavy bags, while spending 10 to 12 hours per day on her feet. Near the end of her pregnancy, she suffered stress-induced toxemia and went into labor prematurely. Her child suffered numerous health complications.

In another situation, a woman was 16 weeks pregnant and worked as a cashier at a large retailer in New York City. One day she fainted and was taken to the emergency room. Despite doctor’s orders that she remain vigilant about drinking water, she was severely dehydrated. When the physician asked why she was not drinking enough fluids, she said that her employer would not allow her to drink water while working at the cash register.

PWFA would do away with such Hobson’s choices and allow a woman to continue her job, take care of her health and maintain a healthy pregnancy.

The Pregnant Workers Fairness Act makes good business sense

Providing pregnant employees with reasonable, temporary accommodations increases worker productivity, retention and morale, decreases re-training costs, and reduces health care costs associated with pregnancy complications.

In 2011 the Equal Employment Opportunity Commission saw a 23% increase, from 2005, in pregnancy-related discrimination claims. PWFA can help reduce litigation costs by providing greater clarity regarding an employer's legal obligations to pregnant workers.

The Pregnant Workers Fairness Act is necessary because current law is inadequate.

The Pregnancy Discrimination Act of 1978 prohibits employers from discriminating against employees based on pregnancy, childbirth or related medical conditions. It requires employers to give pregnant workers the same treatment and benefits—including temporary accommodations— as other workers who are similar in their ability or inability to work. Despite these legal protections, employers continue to deny pregnant workers the kinds of job modifications that they routinely offer to temporarily injured or disabled employees and instead force pregnant workers onto unpaid leave or terminate their employment.

The ability of many pregnant workers to exercise their legal rights has been eroded by unfavorable court rulings. Some courts have held pregnancy discrimination claims to nearly impossible standards, ruling that a pregnant worker cannot make a discrimination claim unless she can specifically identify a non-pregnant employee *with nearly identical physical symptoms* who was accommodated by the employer. Other courts have allowed employers to treat pregnant workers worse than others with similar physical limitations, as long as the employer provides a "pregnancy blind" reason for doing so. Some courts have also restricted pregnant workers' ability to obtain accommodations under the Americans with Disabilities Act.

Given the current state of the law, Congress must pass PWFA and clarify that employers must provide reasonable accommodations to pregnant workers.

The Pregnant Worker Fairness Act is a measured approach that would prevent employers from pushing pregnant women out of their jobs.

Modeled after the Americans with Disabilities Act, an anti-discrimination law with which employers are well-versed, the Pregnant Workers Fairness Act:

- Requires employers with more than 15 employees to make reasonable accommodations to known limitations related to pregnancy, childbirth, and related medical conditions unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business.
- Prohibits employers from forcing a pregnant employee to take unpaid leave, FMLA leave or other similar leave program if another reasonable accommodation can be provided.
- Prevents employers from denying job opportunities to an applicant or employee because of the woman's need for a reasonable accommodation.
- Prevents an employer from forcing an applicant or employee to accept an accommodation.
- Prohibits retaliation against individuals because of their opposition to any of these discriminatory practices or because they made a charge, testified or participated in an investigation, proceeding or hearing.

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