



WASHINGTON LEGISLATIVE OFFICE
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CONGRESS SHOULD PASS THE PREGNANT WORKERS FAIRNESS ACT

H.R. 2694 (116th Congress)

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

When Congress enacted the Pregnancy Discrimination Act (PDA) more than 40 years ago, it prohibited employers from discriminating against employees based on pregnancy, childbirth, or related medical conditions. Yet at a time when women constitute nearly 60 percent of the work force,ⁱ and the majority work during their pregnancies,ⁱⁱ pregnancy discrimination persists.

Today, pregnant employees routinely are denied temporary job modifications they need to keep working while maintaining a healthy pregnancy—like a stool to sit on, a schedule change, or a break from lifting heavy boxes. These temporary adjustments may be especially important for women in jobs requiring physical activity or exposure to hazardous conditions—from retail, health care, and janitorial work to law enforcement and firefighting. New parents who are breastfeeding and need to pump milk on the job face similar obstacles.

The Pregnant Workers Fairness Act (PWFA) addresses this problem by making it clear that employers must provide “reasonable accommodations” for pregnant employees, just as they must provide (under the 1990 Americans with Disabilities Act, or ADA) “reasonable accommodations” for workers with disabilities.

The Pregnant Workers Fairness Act promotes women’s health and economic security.

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 economic impact can be severe; if she is the sole or

primary breadwinner for her children, as nearly half of working women are, her entire family will be without an income when they most need it. She further may be denied unemployment benefits because she is considered to have left her job voluntarily. She may have few, if any, additional resources on which to rely. PWFA ensures that women would not face such devastating consequences. Instead, it treats pregnancy for what it is—a normal condition of employment for millions of women that should not cost them their paycheck.

Conversely, if a pregnant worker remains at work despite being denied the modifications she needs because she is desperate not to lose income, she may put her health and pregnancy at risk.

PWFA would end this Catch-22.

States across the country support laws like the Pregnant Workers Fairness Act.

Twenty-seven states and the District of Columbia have adopted pregnant worker fairness laws or policies, many with broad bipartisan support.ⁱⁱⁱ The majority of those laws were passed in the last 5 years.

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. PWFA can also help reduce litigation costs by providing greater clarity regarding an employer’s legal obligations to pregnant workers.

The Pregnant Workers Fairness Act is necessary.

The federal PDA prohibits employers from discriminating against employees based on pregnancy, childbirth, or related medical conditions. It requires employers to treat pregnant workers the same as other workers who are “similar in their ability or inability to work.”

Although the Supreme Court in *Young v. United Parcel Service, Inc.* (2015) confirmed that the PDA obligates employers to accommodate pregnant workers to the same extent they do non-pregnant workers, many courts interpret this obligation narrowly. For instance, some courts have dismissed PDA claims even where it is undisputed the employer has an accommodation policy and refused to grant an accommodation for pregnancy because the pregnant worker could not identify specific co-workers who were accommodated^{iv} or prove those individuals had precisely the same physical limitation as she did.^v Another court approved an employer’s reserving “light duty” jobs only for individuals injured at work.^{vi} In all of these cases, judges concluded the pregnant plaintiffs were not sufficiently “similar” to the accommodated, non-pregnant workers to warrant the same treatment as required by the PDA.

Congress should pass PWFA to make crystal clear employers’ obligation to provide reasonable accommodations to pregnant workers.

ⁱ U.S. Dep’t of Labor, Bureau of Labor Statistics, “Labor Force Statistics from the Current Population,” last modified Jan. 18, 2019, available at <https://www.bls.gov/cps/cpsaat02.htm>.

ⁱⁱ U.S. Census Bureau, *Maternity Leave and Employment Patterns, 2006-08*, Current Population Report, P70-128, at 4-5 & Table 2 (2011), available at <https://www.census.gov/prod/2011pubs/p70-128.pdf>.

ⁱⁱⁱ These are: Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, Texas, Utah, Vermont, Washington, and West Virginia. See ACLU, “Delivering Fairness,” available at

The Pregnant Workers Fairness Act is a measured approach that would allow women to keep working while maintaining a healthy pregnancy.

Modeled after the ADA, PWFA:

- Requires employers with 15 or more employees to make reasonable accommodations for known limitations related to pregnancy, childbirth, or related medical conditions unless they can demonstrate that the accommodation would impose an “undue hardship.”
- Prohibits employers from forcing a pregnant employee to take a leave of absence if a reasonable accommodation can be provided.
- Prevents employers from denying job opportunities to an applicant or employee because of the individual’s need for a reasonable accommodation.
- Prevents an employer from forcing an applicant or employee to accept a specific accommodation.
- Prohibits retaliation against individuals because they opposed perceived violations of PWFA, made a charge, or testified or participated in an investigation, proceeding, or hearing.

For more information, contact Vania Leveille, Senior Legislative Counsel, at the ACLU Washington Legislative Office at 202-715-0806 or vleveille@aclu.org.

<https://www.aclu.org/issues/womens-rights/pregnancy-and-parenting-discrimination/delivering-fairness-ending>.

^{iv} See *LaCount v. South Lewis SH OPCO, LLC*, No. 16-CV-0545-CVE-TLW, No. 1826696 (N.D. Okla. May 5, 2017); *Luke v. CPlace Forest Park SNF, LLC*, No. 13-00402-BAJ-EWD, 2016 WL 4247592 (M.D. La. Aug. 8, 2016), *aff’d*, 747 Fed. App’x 948 (5th Cir. 2019), *en banc pet. pending*.

^v See *Adducci v. Federal Express Corp.*, 298 F. Supp. 3d 1153, 1162 (W.D. Tenn. 2018).

^{vi} *Durham v. Rural/Metro Corp.*, No. 4:16-CV-01604-ACA, 2018 WL 4896346 (N.D. Ala. Oct. 9, 2018), *app. Pending*. See also *Legg v. Ulster Cty.*, No. 09-CV-550 (FJS/RFT), 2017 WL 3207754 (N.D.N.Y. July 17, 2017), *app. pending* (prison policy reserving light duty for guards injured on the job did not have discriminatory “disparate impact” on pregnant guards, even though it was impossible for a pregnant guard to qualify for light duty under that policy).