

Pregnant and Jobless:

Thirty-Seven Years After Pregnancy Discrimination Act, Pregnant Women Still Choose Between A Paycheck and A Healthy Pregnancy



a better
balance

the work and family legal center

October 2015

Pregnant and Jobless:

Thirty-Seven Years After Pregnancy Discrimination Act, Pregnant Women Still Choose Between A Paycheck and A Healthy Pregnancy

Published by A Better Balance, © October 2015



About A Better Balance: The Work & Family Legal Center

A Better Balance is a national legal advocacy organization dedicated to promoting fairness in the workplace and helping workers meet the conflicting demands of work and family. Through legislative advocacy, litigation, research, public education, and technical assistance to state and local campaigns, A Better Balance is committed to helping workers care for their families without risking their economic security.

www.abetterbalance.org | facebook.com/abetterbalance | [@ABetterBalance](https://twitter.com/ABetterBalance)

Summary of Report

Congress passed the Pregnancy Discrimination Act 37 years ago to level the playing field for pregnant workers. Yet in 2015, pregnancy remains a liability in the workplace, especially for women who seek minor job accommodations to stay healthy and employed. While a partial victory, the U.S. Supreme Court's recent decision in *Young v. UPS* still requires millions of pregnant workers to jump through legal hoops in order to prove their employer discriminated against them—a burden that few pregnant women have the luxury of time and resources to do. Every day, women in America are still being forced to choose between their paycheck and a healthy pregnancy, especially women in low-wage and physically demanding jobs. While over a dozen states and cities have passed legislation to prevent this discrimination, pregnant women nationwide deserve a clear, statutory right to reasonable accommodations absent undue hardship to their employer—the same standard in place for workers with disabilities. Their wellbeing and financial security should not depend upon luck or location. As we have seen firsthand with our clients, clear accommodation laws can help women stay attached to the workforce, while women who lack such protections often get pushed out of their jobs and sink into financial despair. The only way to ensure fairness and equal opportunity for all pregnant workers is for Congress to pass the Pregnant Workers Fairness Act.

Disclaimer: While text, citations, and data are, to the best of the authors' knowledge, current as of the date the report was prepared, there may well be subsequent developments, including recent legislative actions, which could alter the information provided herein. This report does not constitute legal advice; individuals and organizations considering legal action should consult with their own counsel before deciding on a course of action.

Table of Contents:

Introduction	3
<hr/>	
Part I: A New Day for the PDA?	4
A. <i>Young v. UPS</i>	4
B. The Need for a Clear Right to Accommodations for Pregnant Workers	6
<hr/>	
Part II: The National Trend Toward Fairness	9
A. Pushing Pregnant Women Out of the Workforce Jeopardizes Family Economic Security	9
• <i>Sandy's Story</i>	11
B. Accommodating Pregnant Workers Is a Public Health Necessity	12
C. Prominent Public Health Groups Support Fairness for Pregnant Workers	12
D. The Costs of Premature Delivery	13
• <i>Danielle's Story</i>	13
E. Accommodations Can Prevent Other Maternal and Infant Health Problems	14
F. The Benefits of Breastfeeding and Recovery from Childbirth Are Well Documented	14
G. Accommodating Pregnant Workers: The Business Case	15
H. Providing Accommodations Offers Substantial Savings to Taxpayers	16
I. The PWFA Is Preferable to Alternative Proposals	16
<hr/>	
Part III: Pregnancy Protections for Workers in States and Localities Across the U.S.	17
<hr/>	
Part IV: New York City: A Case Study	21
• <i>Betzaida Cruz Cardona's Story</i>	21
• <i>Angelica Valencia's Story</i>	22
• <i>Sandy Blake's Story</i>	23
• <i>Floralba Espinal's Story</i>	23
• <i>Alison Nakamura Netter's Story</i>	24
• <i>Nicolette Herrera's Story</i>	24
<hr/>	
Part V: Congress Must Pass the Federal PWFA	25
• <i>Amanda B.'s Story</i>	25
<hr/>	
Conclusion	27

Introduction:

Although Congress passed the Pregnancy Discrimination Act (PDA) 37 years ago to let millions of working American women “assume their rightful place, and make a full contribution in our Nation’s economy,”¹ pregnancy remains a liability in the workplace. This year, the Supreme Court took up the issue in the case of *Young v. UPS*. Even Justice Anthony Kennedy, who dissented from the majority, conceded, “There must be little doubt that women who are in the workforce—by choice, by financial necessity, or both—confront a serious disadvantage after becoming pregnant.”²



'Waiting_2' by nexus6, licensed under CC BY-NC-SA 2.0

The problem is especially pronounced for women who seek minor accommodations during pregnancy, such as permission to sit during a long shift, an extra restroom break, or temporary relief from heavy lifting to avoid pregnancy complications. Despite the promise of the PDA, pregnant women, especially women in low-wage and physically demanding jobs, are routinely fired or forced off the job when they make these requests to maintain a healthy pregnancy.³ According to recent data, it is estimated

that more than 250,000 pregnant women who request accommodations are denied them each year.⁴ And that number does not include women who never asked for an accommodation in the first place, for fear of refusal or retaliation.⁵ Compounding the problem, many women who most need accommodations can least afford to go without them. Women who hold part-time and lower-paying jobs, those with a high school degree or less education, and women of color all tend to need minor accommodations at work more than their counterparts.⁶ When denied accommodations, these women find themselves in a downward spiral of financial dire straits.

The PDA prohibits employers from treating pregnant employees worse than others who are similar in their ability or inability to work. But proving that a denial of accommodations is unequal treatment under law has often been unduly difficult. While the Supreme Court’s decision in *Young v. UPS* may encourage some employers to adopt stronger policies to avoid liability, the standard imposed by the Court creates uncertainty and confusion making it difficult, if not impossible, for pregnant workers to prove discrimination in a timely manner. For low-wage women in retail, health care, and other physically demanding jobs where time is of the essence, this poses a fundamental deterrent to justice. The result?

Every day, women in America are still being forced to choose between their paycheck and a healthy pregnancy.

There is a solution. Pregnant women deserve a clear, national statutory right to reasonable accommodations on the job. Part I of this report reviews the current state of the PDA and explores why it is insufficient to address the needs of many pregnant women in today’s workforce. Part II outlines public health and economic data on why a clear right to accommodations benefits pregnant women, their babies, their families, businesses, and taxpayers alike. Part III identifies the patchwork of existing state and local legal protections that guarantee pregnant workers the right to reasonable accommodations. Part IV of the report provides a case study from New York City to demonstrate how a clear legal standard operates in practice. And finally, Part V calls for passage of the federal Pregnant Workers Fairness Act (PWFA) to provide these critical protections to all women across the country.

Part I:

A New Day for the PDA?

Young v. UPS

Peggy Young worked for the United Parcel Service (UPS) for seven years before she became pregnant in 2006.⁷ At that time, she worked as an early morning driver or “air driver,” picking up and delivering packages that had arrived by air carrier the previous night.⁸ When she announced her pregnancy at work, Peggy was told to bring in a doctor’s note,⁹ listing any restrictions posed by her condition.¹⁰ She complied, and delivered a note from her midwife recommending she not lift more than 20 pounds during pregnancy.¹¹

Peggy did not expect the restrictions to pose a problem; she primarily delivered envelopes and parcels far lighter than 20 pounds, and she was willing to do her regular job.¹² Instead, she was told that she would not be allowed to do her job and UPS had no light duty for her.¹³ Although UPS regularly provided light duty assignments for other workers with a variety of other medical conditions, including those injured on the job, Peggy was out of luck: no light duty for pregnancy.¹⁴

Peggy begged to keep working but was told not to come back into the building until she was no longer pregnant because she was too much of a liability.¹⁵ For the final six and a half months of pregnancy, “by forcing me off my job, UPS made me go without my pay and my benefits, causing my family financial distress. . . . Because UPS would not let me work, I lost my health insurance. I could no longer use the medical care I had chosen. I had to use less desirable medical care four times as far from home. I also lost my right to disability benefits related to my pregnancy and childbirth.

What started as a very happy pregnancy became one of the most stressful times of my life.”¹⁶

What happened to Peggy Young in 2006 was unfair, but not uncommon. At A Better Balance, we have heard dozens upon dozens of similar stories through our clinic and advocacy over the past few years. And while the stories no longer surprise us, their persistence and pervasiveness is distressing.



Why, in 2015, are women still getting pushed out of the workplace when they become pregnant?

The answer goes back to 1978. That was the year that Congress passed the PDA.¹⁷ At the time, forced ejection of pregnant women from the workplace was commonplace and unabashed. Women in a broad range of jobs, including those in the airline industry, teaching, utilities, insurance, and auto manufacturing, were automatically pushed out of their professions based on the notion that pregnancy is incompatible with work.¹⁸ Congress passed the PDA in order to repudiate this regime of discrimination that relegated pregnant women to second-class status among their peers, and to give women the opportunity to “participate fully and equally in the workforce without denying them the fundamental right to full participation in family life.”¹⁹

The PDA was certainly transformative. No longer could employers categorically deny women employment because of their pregnancy. And they had to treat women affected by pregnancy, childbirth, or related medical conditions, “the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work.”²⁰

While that second directive of equal treatment seemed fairly straightforward, years of interpretation by courts eroded the law’s promise of equality. Courts said employers could lawfully deny workplace adjustments to pregnant workers, even while granting the same to co-workers, as



long as any difference in treatment was “pregnancy-blind.”²¹ For example, light duty for on-the-job injuries, but not for limitations incurred off the job, was perfectly permissible under the PDA, according to some court decisions, despite the fact that such policies imposed the very same harmful economic and health consequences for women as the ones Congress sought to prevent in 1978. As a result, instead of standing on equal footing with their peers, pregnant women often found themselves at the bottom of the heap.

That’s where Peggy Young found herself at UPS. The company provided accommodations for workers injured on the job, those whose high blood pressure or history of accidents prevented them from driving, those disabled under the definition of the Americans with Disabilities Act, and even those who lost their driver’s license because of a DUI conviction.²² But pregnant workers were out of luck.

When Ms. Young’s case reached the Supreme Court, many hoped the justices would reinvigorate the promise of the PDA, offering pregnant women the tool they needed to continue earning income for their families while also protecting their own health. The court’s decision, 6-3 in favor of Peggy Young, did reaffirm the purpose of the PDA, telling employers that if they accommodate a large percentage of non-pregnant workers, like all workers with on-the-job injuries or disabilities, but not pregnant workers, they are likely violating the law by placing a “significant burden” on pregnant workers.²³

For Peggy Young, the Court’s decision was a victory, which sent her case back to the lower court for further review under the new standard.²⁴ But for many pregnant women, who simply need a small adjustment at work on a tight time frame, the decision creates new challenges.

According to the Court, an individual woman who wants to prove unlawful treatment based on her employer’s failure to accommodate her pregnancy (and who does not have “smoking gun” type of evidence to show the employer is biased against pregnant women) must go through a *three-step process* to prove her case:

1. The plaintiff must show that she was protected by the law (e.g. pregnant), sought an accommodation on the job, and was denied, while her employer did accommodate others similar in their ability to work.²⁵
2. The employer then has a chance to counter the plaintiff’s case by offering a legitimate, non-discriminatory reason for denying the accommodation, but the reason cannot be that accommodating her was “too expensive” or “less convenient.”²⁶
3. The plaintiff can then respond with evidence to show that the employer’s explanation is not genuine, and is actually pretext for intentional discrimination (meaning not the real reason). In doing so, she can show that the employer’s policy poses a “significant burden” on women in the workplace, and that the employer’s justification for its policy is not “sufficiently strong” to justify the burden.²⁷ For example, she can show that a large percentage of non-pregnant workers are accommodated under policy or practice, while only a small percentage of pregnant workers are afforded accommodations. As the Court put it: “Why, when the employer accommodated so many, could it not accommodate pregnant women as well?”²⁸

Under the Court’s new standard, a woman must follow a multi-step process to produce enough evidence to show her employer acted with intent to discriminate. She must do so, in many cases, under challenging circumstances where her employer has no official policy or has obscured any policy for its own benefit.

The Court has essentially told pregnant women to take on the role of detectives and determine how the majority of their coworkers have been treated before they can access any accommodations for themselves, and all while continuing to perform well at their jobs and attend to their

prenatal health. This burden of proof poses a tremendous challenge, and at A Better Balance, we see it up close: many pregnant workers who need temporary adjustments to their work duties are new to their jobs, lack bargaining power, are unfamiliar with company policies (if there are any), and simply do not have the luxury of time to sort out these questions. Pregnant women must track down broader company policies and assess the treatment of a large percentage of workers to prove their case.

In addition, as some legal scholars have suggested, the Court's new test leaves several issues up for interpretation by the lower courts, which may further muddy the waters.²⁹ For example, in *Huffman v. Speedway LLC*, decided by the Sixth Circuit several months after the Supreme Court's decision in *Young*, a pregnant woman working as a shift manager at Speedway LLC in Michigan handed in a doctor's note indicating restrictions on her regular job duties including lifting, climbing, and standing for long periods of time.³⁰ Rather than accommodating Ms. Huffman, Speedway attempted to place her on FMLA leave, even though the company accommodated another employee whose knee injury restricted her duties.³¹ As evidence of the differential treatment, Ms. Huffman offered statements she heard from the accommodated employee herself and two other former co-workers.³² But the court rejected that evidence as hearsay, and without it, Ms. Huffman could not prove her case.³³ The court concluded: "While Speedway's decision to place a pregnant worker with significant work restrictions on involuntary leave may appear harsh, Huffman presents neither direct nor indirect evidence that Speedway did not treat all of its workers with job-restricting health conditions with equal severity."³⁴

Ms. Huffman did what most pregnant women in her situation would do. She tried to continue working while also adhering to her doctor's orders. She asked around to find out how other employees had been treated when she suspected unfair treatment. And yet she still found herself out of a job when she needed it most and without a legal remedy. *Huffman* is a lower court decision, so it remains to be seen whether it will be appealed or followed across the country, but it does show the difficulties pregnant women must overcome just to get an accommodation they need to stay healthy and employed.

Even after the limited victory for Peggy Young, the PDA leaves many pregnant women across the country, especially those in physically strenuous jobs, unprotected. This was certainly not the reality Congress envisioned when it sought to address obstacles to women's full participation in the workplace ³⁷

years ago. And it is simply unacceptable today, when women make up half the workforce,³⁵ three-fourths of them will become pregnant at some point during their working lives,³⁶ and the majority of families rely on women's income to stay afloat.³⁷

Why, in 2015, do pregnant women still have to jump through hoops just to stay healthy and stay employed?

The Need for a Clear Right to Accommodations for Pregnant Workers

By comparison, workers covered by the Americans with Disabilities Act (ADA), and those who seek religious accommodations under Title VII of the Civil Rights Act, have affirmative statutory rights to reasonable accommodations. Those laws are designed to allow workers with disabilities and religious beliefs to participate fully in the workplace, and achieve their potential without posing unbearable costs upon their employers. When President George H.W. Bush signed the ADA in 1990, he described the law as representing "the full flowering of our democratic principles," and expressed his hope that it would "come to be a model for the choices and opportunities of future generations around the world."³⁸ President Bush also dismissed fears of the ADA accommodations requirement being too vague or costly: the ADA standard was adopted from existing law governing federal contractors, and thus was already familiar to large segments of the private sector and had amassed an extensive body of law to guide compliance.³⁹

Seventeen years later, similar arguments reemerged to support updating and strengthening the ADA. Congressman Jim Sensenbrenner (R-WI), who co-sponsored the Americans with Disabilities Act Amendments Act, explained that the law needed an upgrade in order to correct "a series of court decisions, [by which] the Supreme Court has chipped away



at the protections of the ADA, leaving millions of citizens vulnerable to a narrow interpretation of the law.⁴⁰ He reiterated the ADA's purpose "to break down the physical and societal barriers that kept disabled Americans from fully participating in the American Dream." He also noted that, thanks to the law, "citizens with disabilities have experienced increased opportunities, higher graduation rates, higher employment rates and lower rates of poverty."⁴¹

These are the results of a reasonable accommodations standard that works. When employees and employers sit down together, they have the opportunity to come up with solutions that meet everyone's needs. No lawyers need be involved. The reasonable accommodations standard also encourages precisely the kind of dialogue that can lead to greater understanding of workers as complete human beings, and acceptance of difference in the workplace. Thanks to the ADA Amendments Act, which broadened the definition of disability to include temporary conditions, among other things, now workers with pregnancy-related impairments like gestational diabetes or preeclampsia, which substantially limit a major life activity, also have a clear right to reasonable accommodations.⁴²

But pregnant workers who are not disabled, and simply need accommodations to stay healthy, or to prevent problems before they occur in the first place, are left to jump through hoops.

Disabled workers are not the only ones entitled to reasonable accommodations on the job. Legislators have also lauded the reasonable accommodations standard as the best way to balance an employee's individual religious faith against the needs of business. Although Title VII of the Civil Rights Act of 1964 banned workplace discrimination based on religion, "to give meaning to that protection, Congress amended Title VII in 1972 [adding reasonable accommodations] to ensure the maximum ability of employees to adhere to their religious faiths and practices in the workplace—while recognizing the legitimate day to day needs of employers determined to run successful businesses."⁴³ In 2005, the Workplace Religious Freedom Act was introduced with bipartisan support in both the House and the Senate⁴⁴ to affirm the right of reasonable accommodations for workers to observe their religion. At a hearing on the bill, Congressman Sam Johnson

(R-TX), Chair of the Subcommittee on Employer-Employee Relations, opened the proceedings "with the basic premise—in general, employees should not have to choose between a job and their religion."⁴⁵ He went on to say: "If we are to pursue legislative solutions, they must be fair, equitable, and properly balance the many important, if sometimes competing, interests."⁴⁶ In her testimony, Congresswoman Carolyn McCarthy (D-NY) argued that the reasonable accommodations standard does just that; she explained how a similar provision in New York worked well for businesses across the state and decreased litigation because "companies saw what their responsibility was and it was clear, it was actually clear, on how to accommodate those that were looking for the day off on their religious observation."⁴⁷

Many of the same arguments offered in support of reasonable accommodations for workers with disabilities and religious beliefs apply to pregnant workers.

Like those other groups of workers, pregnant women have historically been excluded from opportunity in the workplace,⁴⁸ and deserve to participate fully in the American Dream. Discrimination against pregnant workers, like discrimination based on disability and religion, is prevalent not just because of stereotypes about them as a group, but also because these groups sometimes have different needs from other workers that require accommodation in order to allow them to be productive members of the workforce. Furthermore, unlike many workers with disabilities or firmly held religious beliefs, pregnant women who require accommodations often need those adjustments for a very limited period of time. Thus, the burden on businesses may be even smaller than what has already been accepted in the context of disability and religious observance.

Thirty-seven years after the PDA banned discrimination based on pregnancy, bias against pregnant women in the workplace shows little sign of waning. While the PDA is a critical tool for combating unfair treatment in many instances, pregnant women need explicit protections. For women who are pregnant, but not disabled, and need workplace adjustments to stay healthy, the PDA could prove to be an unreliable ally. Given longstanding and bipartisan support for the reasonable accommodations standard, why not extend to pregnant women the proven protections and peace of mind afforded to disabled and religious workers? Many states and localities are already doing so, and with plenty of good reasons to support them.

Federal Standards for Workplace Accommodations

	Statutory Protection	Source	Rule/Standard
Religious Practice/ Observance	Yes	Title VII of the Civil Rights Act of 1964	Employers must make reasonable accommodations, short of undue hardship, for the religious practices of all employees. An employer's otherwise neutral policies must give way to an employee's need for religious accommodation. 42 U.S.C § 2000e-2(a), § 2000e(j); <i>E.E.O.C. v. Abercrombie & Fitch Stores, Inc.</i> , 135 S. Ct. 2028, 2033-34 (2015); <i>Trans World Airlines, Inc. v. Hardison</i> , 432 U.S. 63, 74-75 (1977).
Disability	Yes	Americans with Disabilities Act of 1990	Employers must make reasonable accommodations, short of undue hardship, for all employees with qualifying disabilities. 42 U.S.C. §§ 12101-12213 (amended 2008).
Pregnancy	No	Pregnancy Discrimination Act of 1978	Employers must accommodate pregnant employees only to the extent that they accommodate non-pregnant employees similar in their ability or inability to work; employers' policies must not impose a "significant burden" on pregnant employees relative to non-pregnant employees. 42 U.S.C. § 2000e(k); <i>Young v. United Parcel Serv., Inc.</i> , 135 S. Ct. 1338, 1354 (2015).

Part II: The National Trend Toward Fairness

On May 8, 2012, Representative Jerrold Nadler (D-NY) and over fifty cosponsors originally introduced the federal Pregnant Workers Fairness Act (PWFA) in Congress.⁴⁹ The bill was inspired by an Op-Ed in *The New York Times* by Dina Bakst, A Better Balance Co-Founder and Co-President.⁵⁰ The PWFA would explicitly require employers to provide employees with reasonable accommodations for limitations related to pregnancy, childbirth, and related medical conditions, unless it would cause an undue hardship. Later that same year, Senator Bob Casey (D-PA) introduced the Senate version of the bill.⁵¹ The bill was reintroduced in both houses in 2013.⁵²

“While the Court’s decision is a victory for Peggy Young, it still leaves too much uncertainty for other pregnant workers, who still face significant challenges under today’s decision. It is now more important than ever to pass the Pregnant Workers Fairness Act to ensure that all workers with medical needs arising out of pregnancy have a right to accommodations.”

–U.S. Senator Bob Casey (D-PA)⁵³

In 2015, the bill was reintroduced with bipartisan support in the Senate⁵⁴ (by lead sponsors Senator Bob Casey (D-PA), Senator Jeanne Shaheen (D-NH), Senator Kelly Ayotte (R-NH), and Senator Dean Heller (R-NV)) and the House bill (reintroduced by lead sponsor Representative Jerrold Nadler (D-NY)) also currently has bipartisan support.⁵⁵

“In New Hampshire, about 70 percent of women who gave birth in 2013 also worked during their pregnancies, and ensuring that pregnant workers are treated equally in the workplace is essential to working families and our economy . . . Our bipartisan legislation would require employers to make reasonable accommodations to allow pregnant workers to keep working, and prevent them from being forced out on leave or out of their jobs— helping ensure that no mother is forced to choose between the health of her baby and her job.”

–U.S. Senator Kelly Ayotte (R-NH)⁵⁶

As the issue of fairness for pregnant workers has gained attention in recent years, a growing number of states and localities have also joined the movement to guarantee reasonable accommodations for pregnancy and childbirth-related conditions. In fact, since 2013 alone, ten states have passed stronger laws to protect fairness for pregnant workers. Lawmakers from diverse backgrounds appreciate that such provisions are good policy providing women with the legal authority to stand up for themselves on the job and get the adjustments they need in a timely manner serves multiple interests with minimal costs.

Pushing Pregnant Women Out of the Workforce Jeopardizes Family Economic Security

Appearing before Congress, A Better Balance client Armanda Legros testified that her manager at an armored truck company on Long Island, NY sent her home without pay indefinitely when she was six and a half months pregnant and needed to avoid heavy lifting. Armanda described her struggle as a single mother with no other source of income:

“Once my baby arrived, just putting food on the table for him and my four-year-old was a challenge. I was forced to use water in his cereal at times because I could not afford milk. I was scared every time I looked in my empty fridge.”⁵⁷

Armanda lost her job, fell behind on rent payments, and nearly lost her apartment. “Even when I applied for emergency rental assistance, I didn’t qualify because I didn’t have any income coming in.”⁵⁸ Ultimately, Armanda had no choice but to turn to public benefits, applying for Medicaid for her own prenatal care and for her children.

Armanda is not alone. Because of demographic shifts, our country’s outdated laws and policies no longer function to support a majority of families. Almost half of the workforce is made up of women.⁵⁹ Women are increasingly the breadwinners for families and are working later into their pregnancies than ever before.⁶⁰ Finally, three-quarters of women will be pregnant and employed at some point.⁶¹ Having a child is a leading cause of poverty spells, demonstrating just how important it is to prevent disruptions in employment and financial hardship before they start.⁶² The wage gap between men and women has stayed stubbornly stuck around 22% for the last decade⁶³—pregnancy discrimination drags down wages for women and, as a result, their families.



The problem of forced exit from the workforce disproportionately affects low-wage workers, who are less likely to qualify for Family and Medical Leave Act (FMLA) leave to protect their jobs, are less able to find replacement income, less likely to have benefits like temporary disability insurance, and who generally have less bargaining power and financial cushion when they must forgo income for months. Although pregnant women across the economic spectrum are being pushed out of their jobs when they require a modest accommodation to keep working and stay healthy, low-wage workers are hardest hit, exacerbating income inequality across the country.

If we want to help close the wage gap, prevent families from falling into poverty or deeper into poverty, and encourage women’s entry into non-traditional employment, then we must provide better protections for pregnant workers.

Whether or not a pregnant worker is afforded accommodations should not depend on whether or not she is lucky enough to have a sympathetic supervisor—everyone deserves clear legal protections.

The economic consequences for women and families when a pregnant worker is not afforded accommodations can be substantial. Many pregnant workers are forced to use up allotted leave time early, sometimes even before they give birth, leaving no time remaining for recovery from childbirth.⁶⁴ Others are fired when they request accommodations or exhaust their leaves of absence, and then face a particularly difficult time re-entering the workforce as new mothers.⁶⁵ Some women lose their health benefits when they are fired or forced onto unpaid leave and then must switch providers and/or delay medical care while securing replacement health insurance. For women who lose their health insurance shortly before going into labor, they could be looking at staggering healthcare costs for childbirth, which averages \$30,000 for a vaginal delivery and \$50,000 for a C-section in the U.S.⁶⁶ One woman who called our hotline lost her health insurance while eight months pregnant after her employer cut her hours. She requested that her doctor induce her labor early so that she would not have to face exorbitantly expensive hospital bills.

Sandy's⁶⁹ Story

In January 2012, I began my employment with a national nutrition retail store specializing in the sale of health and nutrition related products. I quickly established myself as an exemplary employee, routinely exceeding sales goals and single-handedly aiding in the improvement of previously at-risk stores. When I learned I was pregnant that summer, I informed my current manager and he responded with exuberance and congratulations. I did not feel the need to ask for accommodations at this time as my manager would frequently ask me if I needed anything, and personally made sure I had enough to eat and drink and that my pregnancy remained stress-free and comfortable.

However, several weeks into my pregnancy, my manager resigned his position with the company. Around the same time, I began to feel extremely fatigued and nauseous with dizzy spells, hypoglycemia, and spotting when lifting some of the heavier items in the store. My doctor informed me that until further notice, I should refrain from lifting objects that placed a great deal of strain on my body, and to avoid climbing the 12-foot ladder that was used to stock shelves. Upon informing my new manager of my condition, I was met with indifference and contempt and was told to perform my duties as usual, which I did in an attempt to maintain my employment.

As time went on, I began to be reprimanded for using the restroom more frequently—three times during an eight hour period—and was often forced to work without restroom breaks. This situation proved to be particularly difficult to navigate as the majority of the upper level management was in a period of transition and the district manager was my manager's mother. My manager expressed his discontent with my temporary restrictions and continued to demand that I perform [my job duties] without accommodation. In fact, I found myself engaging in increased levels of heavy lifting compared to not only the other employees but also the workload I experienced prior to becoming pregnant. This increased workload included unloading virtually all product that came into the store, increased responsibility for the blocking and rotating of all products, greater frequency with which I stocked shelves on the 12-foot ladder (as there was no other way to reach the shelves), and I was made to clean using the harsh commercial grade products provided by the company, which left me feeling unwell hours after my shift had ended.

After several months of an increased physically strenuous workload, I began to experience violent stabbing pains throughout my uterus. One day it became so bad that I had to seek immediate medical attention. I told my manager that

I needed to miss my shift so that I could see my doctor, and my manager said that if I failed to show up for my shift, then he would inform our supervisors that I had quit. I informed him that this was an emergency situation and that I would be in as soon as the doctor had ensured my child's health, but was met with offensive language and disbelief.

Even though I should not have had to choose between maintaining my employment and a healthy pregnancy, there was no other alternative to this situation. On September 9th I informed my manager that I would no longer be able to continue my position with [my employer] and was told that it didn't matter because he was going to "f-ing fire [my] ass anyways." My manager proceeded to call me several times following that conversation to indicate that he still needed these shifts covered and again to inform me that I was fired.

Because I was forced out of my job, my family became reliant on government assistance to make ends meet. Even though the help was greatly appreciated, my family was placed in a stressful position fraught with numerous bills and shut off notices. All of our income was dedicated to paying rent and keeping the power on. Only now, three years later, is my family finally recuperating from the losses experienced during this period—a situation that could have been avoided had I been able to keep my job with reasonable, short-term accommodations.⁷⁰



*Photograph courtesy of Game Face Productions/
Working Assumptions Foundation*

Natasha Jackson from South Carolina provides another example of how denial of accommodations can send women into a cascade of financial insecurity.

Natasha's dream of owning a home disappeared after she was denied accommodations while pregnant. She was the highest-ranking account executive and the only female employee at a Rent-A-Center store. When she needed to avoid occasional heavy lifting required at her job, she was forced to go on leave. "The timing could not have been worse. My husband and I had just made a down payment on a house... Without my income, we were forced to back out of the contract."⁶⁷ Natasha ultimately lost her job and went through a divorce: "Everything from that moment in my life just took a down spiral."⁶⁸

Even women lucky enough to have short-term disability insurance may be forced to use up those benefits before their babies arrive. Yvette worked at a New York City grocery store for eleven years. When she sought an accommodation to avoid endangering her high-risk pregnancy, she was fired. After being fired, her union helped her obtain disability benefits, but her 26 weeks of disability payments ran out one month before her due date, forcing her onto unpaid leave just as her household expenses were rising during a difficult pregnancy. When she lost her job, Yvette also lost her health insurance. She had to resort to Medicaid and other public benefits. "My family and I survived on food stamps and my savings. When I finally returned to work three months after giving birth, I had no savings left."⁷¹

Women who are forced out of the workplace when pregnant also forfeit other earned long-term benefits, such as 401K or other retirement contributions, short-term disability benefits, seniority, pension, social security contributions, longevity pay, life insurance, and others.⁷² Depriving women of these benefits when they become pregnant contributes to their economic inequality over the long run, exacerbating the wage gap.

The result is that a woman who required a simple accommodation for just a few months of her pregnancy could end up feeling the financial effects of being denied that accommodation for years.

Accommodating Pregnant Workers Is a Public Health Necessity

In 2012, an emergency room physician in New York City treated a 16-weeks pregnant woman who arrived by ambulance. The patient was working as a cashier at a large retailer in the city when she fainted and collapsed on the job after spending hours standing at the register. Even though her doctor had told her to be vigilant about drinking water, she was severely dehydrated. As the ER physician said, "When I inquired why she was not drinking adequate amounts of fluids, she told me that her boss would not allow her to drink water while working at the cash register....Dehydration can lead to miscarriage, and while pregnant women are already at increased risk of fainting (due to high progesterone levels causing blood vessel dilatation), dehydration puts them at even further risk of collapse and injury from falling."⁷³ Thankfully, the patient's dehydration was treatable, but not every woman is so lucky.⁷⁴

No pregnant woman should have to endure a trip to the ER and intravenous fluids when such a scare could easily be prevented with a water bottle.

Prominent Public Health Groups Support Fairness for Pregnant Workers

Providing accommodations for pregnant workers benefits both maternal and infant health. Women who need income but lack accommodations are often forced to continue working under unhealthy or dangerous conditions, risking their own health as well as the health of their pregnancies.⁷⁵ A clear right to accommodation not only ensures better health outcomes for women and infants, but reduced health care costs, supporting our economy.

The March of Dimes New York chapter estimated that encouraging healthy pregnancies could save the state \$1 billion annually in healthcare costs.⁷⁶

The March of Dimes, which works tirelessly to prevent preterm births and lower infant mortality rates, has been a staunch supporter of the PWFA precisely because of its dedication to public health.

Many health groups and medical providers support the Pregnant Workers Fairness Act. As the Coalition for Quality Maternity Care said in a letter of support, “a choice between working under unhealthy conditions and potentially losing income is no choice at all. . . . For women who are forced out of the workforce because of their pregnancies, the stress associated with job loss can be devastating and can increase the risk of having a premature baby or a baby with low birth weight. In addition, women who work during pregnancy may be able to take longer periods of leave following childbirth, which in turn facilitates breastfeeding, bonding with and caring for a new child, and recovering from childbirth.”⁷⁷ And as indicated in a letter of support by the March of Dimes, “low-wage workers in particular may be faced with the apparent choice between compromising their health or risking losing their job.”⁷⁸ Low-wage workers

are also less likely to have access to prenatal care and most need accommodations from their employers to seek such care and attend visits.⁷⁹

The Costs of Premature Delivery

Premature delivery—birth of an infant before 37 weeks of pregnancy—is the greatest and most common problem faced in obstetrics and perinatal medicine. Today, one in nine live births is preterm and that number accounts for 35 percent of infant deaths.⁸⁰ While premature delivery does not always cause problems for the child, it does increase the likelihood for very serious medical complications.⁸¹ These issues can become chronic and require constant hospital care. Temporary issues like infections and feeding problems are also a major concern with premature delivery.⁸²

*In its last estimate, the Center for Disease Control found that premature birth costs the U.S. health care system more than \$26 billion a year.*⁸³

Danielle’s Story

In 2009, I became pregnant with my first child. At the time, I was working at a gas station in Westfield, [Massachusetts] and had recently been promoted to assistant manager despite only working there for six months. During my shifts, I was required to fill the refrigerator coolers with dozens of milk cartons and heavy jugs from the milk crates and to pump gas and check fuel tanks. Though I had dizzy spells, I was not allowed breaks and would be reprimanded for sitting during my shift. I asked for basic accommodations, such as a stool to sit on, and brought in a doctor’s note asking to be put on light duty.

While I was denied these accommodations, management had scheduled another staff member to be on shift for two older employees so they wouldn’t have to fill the cooler. My request for medically required light-duty was ignored, and instead I was asked to shovel sidewalks during my last trimester and had my hours cut. At 30 weeks pregnant, I almost passed out due to exhaustion. My manager refused to relieve me, left me to finish out my shift and prevented me from resting or seeking medical attention.

At 36 weeks, on June 4, 2010, I gave birth to my son at 5 pounds, 4 ounces. He has sensory processing disorder. While there is no definitive evidence that my son’s disorder was caused by the treatment I received at work, there is research that links maternal stress with low birth weight and preterm delivery. If I had the concrete legal protection . . . I would have received the accommodation I needed, which would have led to a less hostile/stressful work environment and could have led to a healthier pregnancy.⁸⁴



According to the March of Dimes,⁸⁵ premature babies are at risk for the following health problems:

- Apnea
- Respiratory distress syndrome
- Intraventricular hemorrhage
- Patent ductus arteriosus (PDA)
- Necrotizing enterocolitis (NEC)
- Retinopathy of prematurity (ROP)
- Jaundice
- Anemia
- Bronchopulmonary dysplasia (BPD)
- Infections

Medical researchers are still trying to understand all the factors that contribute to the problem of preterm births, but employers can have a role in preventing preterm births by offering accommodations to pregnant workers when needed. Physically demanding work, where accommodations are more often necessary but too often unavailable, has been associated with an increased risk for preterm birth and low birth weight.⁸⁶ One study found that working at night may increase the risk of preterm delivery by 50%.⁸⁷ Small accommodations such as a temporary daytime shift change or light duty for some women during pregnancy can help prevent premature births.

Accommodations Can Prevent Other Maternal and Infant Health Problems

In addition to decreasing preterm births, accommodations by employers can have additional health benefits for pregnant women and infants. For women in extremely physically demanding jobs, some studies have shown increased risk of miscarriage and low birth weight across the board for healthy and at-risk pregnancies.⁸⁸ For some pregnant women, lifting more than 9 pounds on a frequent basis (every 3-5 minutes) or for an hour at a time can be dangerous.⁸⁹ Work hours have also been cited as a risk for pregnant women and their children. According to one study, women who worked 40 or more hours a week are at a higher risk for low birth weight babies.⁹⁰ Some researchers have categorized work schedules as a lifestyle factor that can contribute to miscarriage just as obesity and alcohol consumption can do so.⁹¹ The stress from job loss or financial hardship can also have a physical effect—jeopardizing maternal and infant health.⁹² Because of these risks, providers

may recommend that some pregnant women limit heavy lifting and evening shifts, or reduce overtime work hours—all common accommodations provided to workers with disabilities and on-the-job injuries.

The Benefits of Breastfeeding and Recovery from Childbirth Are Well Documented

Promoting breastfeeding has immediate and long-term benefits for both mother and child. Breastfeeding has been shown to lead to disease and infection resistance, which means lower chance of multiple sclerosis, heart disease, cancer, and juvenile diabetes. It also strengthens a child's immune system, which allows vaccines to be more effective. Non-breastfed children are three times more likely to be hospitalized for respiratory or other infections of the immune system.⁹³ Mothers who breastfeed have lower rates of type 2 diabetes, breast cancer, and ovarian cancer.⁹⁴ As pointed out by the American College of Obstetricians and Gynecologists District II, in testimony supporting the NYC Pregnant Workers Fairness Act, "the extensive health benefits associated with breastfeeding and a longer recovery time is not only beneficial for mothers and infants, but would be advantageous for employers by reducing and/or avoiding the work absences associated [with] illness related to pregnancy and infant illness."⁹⁵



Providing reasonable accommodations allows women to work later into their pregnancies and save any FMLA leave or other leave time until after recovery, allowing for better establishment of breastfeeding.⁹⁶ Almost one quarter of women return to work just two weeks after delivering a child.⁹⁷ Anecdotally, many women have not yet even received their breast pumps from their insurance companies at that point, let alone established successful breastfeeding. Pregnant workers need to be able to use the little leave time they have or are guaranteed by law when they are recovering from childbirth and establishing breastfeeding.

Accommodating Pregnant Workers: The Business Case

The business case for accommodating pregnant workers is well documented. For decades, employers have been accommodating employees under the Americans with Disabilities Act (ADA) and studies show that the cost of these accommodations is very low, with many accommodations being no cost at all. Based on a report conducted by the U.S. Department of Labor Job Accommodation Network, businesses that provide reasonable accommodations for their disabled workers can likely expect:

- Retention of valued and qualified employees—90% of employers reported that providing an accommodation for disabilities allowed them to retain valued employees
- No cost or low cost for accommodating employees—58% of accommodations cost nothing, and for one-time accommodations, employers only spent \$100 more than they otherwise would have
- Accommodations are effective
- Increased employee productivity
- Eliminated cost of training new employees
- Increased employee attendance
- Increased diversity
- Worker's compensation costs or other insurance cost savings
- Improved overall company morale and productivity⁹⁸

Since pregnancy accommodations are only short-term, and likely to be low-cost or no-cost, the business benefits would likely be even greater than the low cost of providing accommodation to workers with more permanent disabilities.

In addition, a clear right to accommodation would provide better guidelines for employers facing a pregnant worker's request for accommodation. This clarity would help avoid costly and time-consuming litigation.

*In fact, after California passed similar legislation, litigation of pregnancy cases actually **decreased** despite the fact that pregnancy discrimination cases around the country were increasing at the time.*⁹⁹

As a result, business leaders nationwide have expressed strong support for the PWFA and similar state and local legislation, which would extend the same reasonable accommodation standard in the ADA to pregnant workers.

According to the U.S. Women's Chamber of Commerce, in a letter in support of the PWFA:

"In our businesses we routinely make [reasonable] accommodations available to pregnant employees. Providing accommodations to pregnant workers benefits our businesses by:

- Reducing turnover costs and improving the retention of pregnant employees
- Increasing employee productivity, engagement and morale
- Reducing litigation costs associated with defending discrimination claims brought by pregnant workers."

As Cynthia DiBartolo, Chairperson of the Greater New York Chamber of Commerce said in a letter supporting the PWFA, "Businesses depend on a female workforce, so issues affecting women's health, safety, and economic stability must be a priority. Companies that invest in and empower women are at an advantage because they attract and retain qualified employees, increase productivity, and reduce costly turnover. These businesses show themselves to be stronger companies and better long-term investments. The PWFA would ensure consistency and certainty for employers while ending a particularly pernicious form of sex discrimination."¹⁰⁰

Finally, in powerful testimony from Dean Cycon, Founder and CEO of Dean's Beans Organic Coffee Company, in support of the Massachusetts Pregnant Workers Fairness Act, he provides two examples of where his company was able to provide accommodations in order to retain two valued pregnant employees. As Mr. Cycon indicated, "If a water bottle or restroom breaks are all that is standing in the way of a pregnant worker putting food on her family's table, then it's a no-brainer."¹⁰¹ Business leaders across the country are standing up in favor of the PWFA—not just because it is the right thing to do, but because of the benefits to the bottom line.

Providing Accommodations Offers Substantial Savings to Taxpayers

As told by Armanda (p.10) and many of the other women featured in this report, when pregnant workers are pushed onto unpaid leave or fired from their jobs, they often have no choice but to resort to public assistance in order to stay afloat. **Women we have spoken to rely on food stamps, Medicaid, unemployment insurance benefits, disability benefits, Temporary Assistance for Needy Families, rental assistance, and other government programs to make ends meet after they lose critical income.** These vitally important safety nets should not have their resources stretched by recipients who would prefer to continue working in a safe environment with accommodations from their employers. This is a systemic problem and requires a systemic solution. The choice is simple: on the one hand, we have businesses that could cheaply provide accommodations and keep a valued worker out of poverty; on the other hand, we have enormous added financial stress on individuals and the taxpayer. Policymakers and individual voters concerned about balancing budgets or government spending should understand the long-term benefits of keeping pregnant women in the workforce.

The healthcare costs of not accommodating pregnant women and not preventing preterm births have been outlined in previous sections, but it is worth reiterating that these health problems have significant impacts on government budgets. Nearly half of all U.S. births occur on Medicaid,¹⁰² and women living in poverty are more likely to have costly health complications during their pregnancies that impact both maternal and infant health.¹⁰³ This same population is disproportionately affected by the lack of clear law providing simple accommodations so they can stay healthy and on the job. Those who are pushed onto Medicaid often must switch healthcare providers in the middle of their pregnancies, affecting the important continuity of care.¹⁰⁴ Reducing the number of preterm births on Medicaid would lead to substantial savings to the government.

As mentioned in the previous section, after California passed similar legislation, litigation of pregnancy cases decreased, even as pregnancy discrimination cases around the country were increasing.¹⁰⁵ The Hawaii Civil Rights Commission reported a similar reduction in pregnancy discrimination complaints and litigation after enactment. Other states have similarly found that warnings of increased litigation post-legislative passage have not come to fruition. Savings from reduced litigation are also passed on to the state, whose enforcing agencies have limited resources. Recently, a proposed Tennessee Pregnant Workers Fairness Act was found to have no significant fiscal impact on the state because the Tennessee Human Rights Commission (the enforcing agency) anticipated that any increase in workload could be accommodated with the use of existing resources.¹⁰⁶

The PWFA Is Preferable to Alternative Proposals

Another pending federal bill, the Pregnancy Discrimination Amendment Act (PDAA), was introduced in June of 2015 and messaged as an alternative to the PWFA.¹⁰⁷ While it is encouraging that many members of Congress are paying attention to the issue of pregnancy discrimination, the PDAA would leave many pregnant workers and their health behind, and is likely worse than the status quo. The PDAA would amend the existing Pregnancy Discrimination Act, but not change the fundamental nature of the law—pregnant workers would still have to jump through hoops and identify other workers who were being treated well in order to get what they needed for their health, as described in Part I of this report. While the PWFA uses a familiar framework from the Americans with Disabilities Act, the PDAA adopts new, untested language and confusing legal standards into an already problematic statutory framework. The PDAA also lacks important provisions that the PWFA provides, such as a clear "undue hardship" exemption for businesses who truly cannot afford to provide an overly expensive or difficult accommodation. The PWFA is clearly preferable to the PDAA alternative.¹⁰⁸



Photo courtesy of MotherWoman

Part III:

Pregnancy Protections for Workers in States and Localities Across the U.S.

There are many states and localities that provide protections for pregnant workers in need of a modest accommodation to stay healthy and employed. In fact, there has been a recent groundswell in state and local action to respond to the growing problem of pregnant workers being forced to choose between their health and their jobs. A Better Balance has worked with local campaigns to pass critically important legislation to protect pregnant workers in recent years.

These laws have proven useful in the short time since their enactment. The state with the oldest law that uses a similar framework to the federal PWFA, California, has used the law many times to keep pregnant workers safe and on the job. Our partners at Equal Rights Advocates published a report detailing the effect California's law has had on the ground, concluding: "ERA has noticed startling disparities between the outcome of calls from California and those from other states. While ERA has been able to resolve most pregnancy accommodation issues quickly and informally for California callers, it has not fared so well for callers in other states. The reason? The law."¹⁰⁹

In just the last three years, there has been a wave of new PWFA laws at the state and local level.

The laws have almost always passed with bipartisan support, and often pass with unanimity or near unanimity. This is because legislators on both sides of the aisle recognize that pregnant workers should not have to choose between their health and their jobs.



"We want to encourage women to be able to keep their jobs...And we want to encourage women to have successful families."

—Delaware State Senator Colin Bonini (R)¹¹⁰

"With this law going into effect, pregnant workers will have a timely and proactive channel through which they can seek reasonable accommodations at their job—such as an extra bathroom break or limited heavy lifting. I am proud to have sponsored the Pregnant Workers Fairness Act, which protects the thousands of working pregnant women in New York City, and hope that similar legislation will soon be enacted on a national level."

—New York City Councilmember James Vacca (D)¹¹¹

"These measures...often receive overwhelming bipartisan support. State and local measures also reduce confusion created by federal courts' misreading of the PDA and help preempt unnecessary litigation by making employers' obligations and employees' rights crystal clear..."

—Amicus Brief of Bipartisan State and Local Legislators as *Amici Curiae* in Support of Petitioner in *Young v. UPS* Supreme Court case.¹¹²

Prior to 2012, six states had stronger legal protections for pregnant workers than federal law provides:

- Alaska
- California
- Connecticut
- Hawaii
- Louisiana
- Texas¹¹³

The following provides a summary of the many states and localities that recently passed laws bringing about stronger protections for pregnant workers:¹¹⁴



Delaware

Passage Date: Sept. 9, 2014

Effective Date: Sept. 9, 2014

Support: Unanimous, Bipartisan Passage

Employers with four or more employees must provide reasonable accommodations to pregnant workers, workers recovering from childbirth, and workers with related medical conditions (which includes lactation), unless the accommodations impose an undue hardship on the business. The statute lists possible reasonable accommodations such as breaks, providing seating equipment, and an appropriate place to express breast milk. A worker cannot be forced to take leave if an accommodation can be provided, or be required to accept an accommodation if it is unnecessary to perform the “essential duties” of the job. Employers must provide conspicuously posted written notice of these rights.¹¹⁵



District of Columbia

Passage Date: Oct. 23, 2014

Effective Date: Mar. 3, 2015

Support: Unanimous

Pregnant workers, workers recovering from childbirth, and workers with related medical conditions (which includes lactation), must receive reasonable accommodations unless the accommodations impose an undue hardship on the business. Employers may require documentation from the worker’s health care provider if they do so for other temporarily disabled employees. The statute lists possible reasonable accommodations such as breaks, providing seating equipment, and an appropriate (non-bathroom) place to express breast milk. A worker cannot be forced to take leave if an accommodation can be provided, or be required to accept an accommodation if it is unnecessary to perform the duties of the job. Employers must provide notice of these rights in both English and Spanish.¹¹⁶



Illinois

Passage Date: Aug. 26, 2014

Effective Date: Jan. 1, 2015

Support: Unanimous, Bipartisan Passage

Employers with fifteen or more employees must provide reasonable accommodations to workers and job applicants who have a medical or common condition related to pregnancy or childbirth unless the accommodations impose an undue hardship on the business. The statute lists possible reasonable accommodations such as water and bathroom breaks, providing seating equipment, and a private non-bathroom place to express breast milk and for breastfeeding. Employers may require documented advice from the worker’s health care provider about the need for accommodation if they do so for employees with disabilities and the request is “job-related and consistent with business necessity.” A worker cannot be forced to take leave if an accommodation can be provided, or be required to accept an accommodation if not requested. Employers must post notice of these rights in a conspicuous location and include them in the employee handbook.¹¹⁷



Iowa

Date: 2013

An Order of the Iowa Civil Rights Commission states that employers are required to provide reasonable accommodations to pregnant employees if needed to perform the essential functions of their jobs, unless the accommodations would constitute undue hardship.¹¹⁸



Maryland

Passage Date: May 16, 2013

Effective Date: Oct. 1, 2013

Support: Bipartisan Passage

Employers with fifteen or more employees must explore with an employee all possible means of providing accommodation for needs related to pregnancy or childbirth if requested by the employee, unless the accommodations impose an undue hardship on the employer. Though the statute uses the term “disability,” in relation to pregnancy needs, the Maryland Commission on Civil Rights clarified that this law applies not only to pregnancy-related disabilities, but to all pregnant employees. Employers may require documentation from the worker’s health care provider if they do so for other temporarily disabled employees.¹¹⁹ The statute lists possible reasonable accommodations such as changing the duties or work hours of the employee, relocating the work area, transferring the employee to a less strenuous or less hazardous position, or providing leave.¹²⁰



Minnesota

Passage Date: May 11, 2014

Effective Date: May 12, 2014

Employers with twenty-one or more employees must provide reasonable accommodations to an employee for health conditions related to pregnancy or childbirth if requested and advised by a licensed health care provider or certified doula, unless the accommodations impose an undue hardship on the operation of the employer's business. Accommodations named in the statute include temporary transfer to a less strenuous or hazardous position, seating, frequent restroom breaks, and limits to heavy lifting. Accommodations that *do not* require a doctor's note, and which an employer cannot claim are an undue hardship are more frequent restroom, food, and water breaks; seating; and limits on lifting over 20 pounds. A worker cannot be forced to accept an unnecessary accommodation. Employers of any size must provide reasonable unpaid break time to an employee who needs to express breast milk for her infant child, unless the break time would unduly disrupt the business operations of the employer. For expressing breast milk, the employer must make reasonable efforts to provide a non-bathroom space that is shielded from view and free from intrusion that includes access to an electrical outlet.¹²¹



Nebraska

Passage Date: Apr. 13, 2015

Effective Date: Sept. 2015

Support: Unanimous Passage

Employers with fifteen or more employees must provide reasonable accommodations to workers who are pregnant, have given birth, or who have a related medical condition unless the accommodations would impose an undue hardship on the employer. Accommodations named in the statute include seating, breaks, light-duty assignments, and an appropriate place to express breast milk. A worker cannot be forced to take leave if an accommodation can be provided. Employers cannot require a medical examination or make inquiries of employees as to whether they are pregnant, have given birth, or have a related medical condition unless the examination or inquiry is shown to be job-related and consistent with business necessity.¹²²



New Jersey

Passage Date: Jan. 21, 2014

Effective Date: Jan. 21, 2014

Support: Nearly Unanimous, Bipartisan Passage

Workers who are pregnant, have given birth, or have a related medical condition must receive reasonable

accommodations unless the accommodations would impose an undue hardship on the employer. The employee must request the accommodation based on the advice of her physician. Accommodations named in the statute include, but are not limited to, breaks help with manual labor, and job restructuring. A worker cannot be forced to take leave if an accommodation can be provided.¹²³



New York

Passage Date: Oct. 21, 2015

Effective Date: Jan. 19, 2016

Support: Unanimous Passage

Employers with four or more employees must make reasonable accommodations for workers with pregnancy-related conditions (which means a condition that still allows an employee to reasonably perform the activities required of the job when given a reasonable accommodation), unless the accommodations would pose an undue hardship on the employer. Reasonable accommodations include provision of an accessible worksite, acquisition or modification of equipment, job restructuring, and modified work schedules. An employer can request a health care provider's note in order to verify the existence of the pregnancy-related condition, or to have information that is necessary for an accommodation. Employees have a right to have this information kept private.¹²⁴

"This is a necessary, simple and logical approach to ensuring equality."

—New York State Senator, Kemp Hannon (R)¹²⁵



North Dakota

Passage Date: Apr. 6, 2015

Effective Date: Aug. 1, 2015

Support: Nearly Unanimous, Bipartisan Passage

Employers must make reasonable accommodations for a pregnant worker who is otherwise qualified for the job, unless the accommodations would disrupt or interfere with the employer's normal business operations, threaten an individual's health or safety, contradict a business necessity of the employer, or impose an undue hardship on the employer.¹²⁶



Rhode Island

Passage Date: June 25, 2015

Effective Date: June 25, 2015

Support: Unanimous, Bipartisan Passage

Employers with four or more employees must provide reasonable accommodations to pregnant workers, workers who have given birth, and workers with related medical conditions (including the need to express breast milk) if requested, unless the accommodations would impose an undue hardship on the business. The statute lists possible reasonable accommodations such as breaks, seating, and a non-bathroom location to express breast milk. A worker cannot be forced to take leave if an accommodation can be provided, or be required to accept an accommodation. Employers must post notice of these rights in a conspicuous location.¹²⁷



West Virginia

Passage Date: Mar. 21, 2014

Effective Date: July 1, 2015

Support: Bipartisan Passage

Employers with twelve or more employees must provide reasonable accommodations to workers with limitations related to pregnancy, childbirth, or related medical conditions with written documentation from their health care provider that specifies their limitations and suggests what accommodations would address those limitations, unless the accommodations impose an undue hardship on the business. A worker cannot be forced to take leave if an accommodation can be provided, or forced to accept an accommodation.¹²⁸

Philadelphia

Passage Date: Dec. 12, 2013

Effective Date: Jan. 20, 2014

Employers must provide reasonable accommodations to employees, if requested, for needs related to pregnancy, childbirth, or a related medical condition, so long as the accommodations will not cause an undue hardship to the employer. Reasonable accommodations include restroom breaks, periodic rest for those who stand for long periods of time, assistance with manual labor, leave for a period of disability arising from childbirth, reassignment to a vacant position, and job restructuring. Employers must provide written notice of these rights.¹³⁰

Providence

Passage Date: May 15, 2014

Effective Date: June 2, 2014

Support: Unanimous, Bipartisan Passage

Employers with seven or more employees must provide reasonable accommodations for conditions related to pregnancy, childbirth, and related medical conditions, unless doing so would pose an undue hardship. This includes lactation. Reasonable accommodations include seating, acquisition or modification of equipment, more frequent or longer breaks, temporary transfer to less strenuous or hazardous work, assistance with manual labor, job restructuring, light duty, modified work schedules, time off to recover from childbirth, break time, and a private, non-bathroom space for expressing breast milk. A worker cannot be forced to take leave if an accommodation can be provided. Employers must provide written notice of these rights.¹³¹

Localities

New York City

Passage Date: Oct. 2, 2013

Effective Date: Jan. 30, 2014

Support: Unanimous, Bipartisan Passage

Employers with four or more employees must provide reasonable accommodations to the needs of an employee for pregnancy, childbirth, and related medical conditions, provided provided the accommodations would not cause an undue hardship. Employers must provide written notice of these rights.¹²⁹

Central Falls, RI

Passage Date: Apr. 14, 2014

Effective Date: Apr. 14, 2014

Employers cannot refuse to reasonably accommodate a condition related to pregnancy, childbirth, or a related medical condition, which includes lactation. Reasonable accommodations include seating, acquisition or modification of equipment, more frequent or longer breaks, temporary transfer to less strenuous or hazardous work, assistance with manual labor, job restructuring, light duty, modified work schedules, time off to recover from childbirth, break time, and a private, non-bathroom space for expressing breast milk. A worker cannot be forced to take leave if an accommodation can be provided. Written notice must be provided.¹³²

Part IV:

New York City: A Case Study

For nearly two years, New York City law has guaranteed pregnant workers the right to reasonable accommodations in the workplace. The New York City Pregnant Workers Fairness Act (NYC PWFA), which is part of the New York City Human Rights Law, went into effect January 30, 2014. The law protects pregnant employees and mothers who have recently given birth against discrimination by requiring every employer with four or more employees to provide reasonable accommodations as long as the request does not cause an undue hardship on the employer. The law covers needs related to pregnancy, childbirth, and related medical conditions; women with healthy pregnancies, and those with lactation or other post-childbirth related needs, can get accommodations such as light duty to prevent injury in a physically demanding job or the ability to nurse a baby during breaks on a multi-day shift. The NYC PWFA balances the needs of an employer against those of the employee when assessing what is reasonable accommodation, but the employer bears the burden to prove that any given accommodation imposes an undue hardship.¹³³

The NYC PWFA offers a powerful tool to pregnant women to help them secure the accommodations they need to stay healthy and stay on the job, without prolonged delays. To appreciate the difference such a law makes, consider the stories of two of our clients, Angelica Valencia and Betzaida Cruz Cardona. Angelica works in New York City, and is covered by the NYC PWFA, while Betzaida lives and works near Rochester, NY, where no state law guaranteed accommodations for pregnant workers when she was expecting her baby.¹³⁴

Betzaida Cruz Cardona (Rochester, NY)

In April 2014, I began working as a customer service cashier for a large national retail chain. I performed typical cashier's duties and sometimes cleaned the store's bathrooms and floors. I took pride in each task I performed as an employee.

In August 2014, I became extremely ill with dizziness, shaking, and other symptoms. I went to the hospital and had to miss several days of work. My doctor told me I was seventeen weeks pregnant and had a pregnancy-related illness. But after a few days I was cleared to return to work. With no paid sick days, I was ready to get back on the job and earn a steady paycheck.

I thought I had done everything right. I'd called in ahead of my shifts. I'd submitted doctor's notes excusing my absences. I'd called to get my new schedule. I'd even went to meet with my manager and a higher-level company representative, armed with a doctor's note listing the only restriction my illness imposed: I could not lift anything over 25 pounds. I did not think this would be a problem because I had never been asked to lift over 25 pounds. In fact, even before my pregnancy, my employer told me that if I ever needed to lift anything heavy, I should call someone in the furniture department to do it for me.

But during this meeting, I was told that I "can't work" and that I should "stay home, take care of [my] pregnancy, and rest." They also told me that I would have to apply for my job again after I gave birth. An hour after this meeting my manager called to tell me I was officially terminated. He refused to provide me with a termination later, and later the company claimed that I had quit, preventing me from receiving unemployment insurance.

I never thought a company I worked hard for would throw me away so easily. With no paycheck, I became homeless and had to rely on family and friends for shelter, moving from couch to couch while my belly grew and I was preparing to be a mom. This was an incredibly difficult and stressful time for me. I called A Better Balance for help and the attorneys there, along with the firm of Emery Celli Brinckerhoff and Abady, settled the matter and, as part of the settlement, the company made me whole and agreed to training and a revised company policy regarding pregnant workers.



Today I am grateful to have a happy and healthy child. However, there are so many other women in different jobs across the United States who are facing the same hardships I had to confront during my pregnancy. All employers and the government need to be on alert: working pregnant women in the U.S. deserve better, and we need clear legislation, like the Pregnant Workers Fairness Act, to accomplish this goal.

Angelica Valencia

(Queens, NY)

In July 2014, Angelica Valencia was three months pregnant after having suffered a miscarriage the year before. Her doctor advised her that in order to ensure a healthy pregnancy, she should avoid heavy lifting and other physically strenuous activities. Having worked for the same produce packing facility for three years, she knew that there was plenty of light duty work available at her job. She could have completed deskwork or packed produce—two of her primary job responsibilities—and easily avoided the heavy lifting her position sometimes required. Angelica’s coworkers even volunteered to cover any heavy lifting for her for the duration of her pregnancy.

Yet Angelica’s manager insisted that light duty work was not available and sent her home for three weeks. Soon after she returned, he began assigning her to grueling overtime hours. Eventually Angelica obtained a doctor’s note indicating that she was experiencing a high-risk pregnancy and should not work more than eight hours a day.



She submitted the note to her manager, and he informed her in a letter the same day that her pregnancy “could put [her] at further risk” because “[t]he overall environment is fast-paced and involves machinery” and the company “can’t allow this type of exposure to [her] Health.” The only way she would be allowed to return to work would be if she received a doctor’s note stating that she could in fact work overtime.

The busy season at Angelica’s company ends in September, and overtime would not have been needed for more than a few more weeks anyway. Still, her employer fired her because she asked to work a normal full-time schedule during that period. Being pushed out of her job, again, while expecting a child, took a tremendous toll on her mental and physical health, and caused her great financial distress. She had to apply for WIC governmental assistance just to make ends meet. Her husband, a beneficiary on her health insurance plan, lost his coverage as well.

Angelica called A Better Balance for help. We informed her employer about the NYC PWFA and Angelica’s right to reasonable accommodations under the law. Soon thereafter, Angelica was returned to work and made whole. Because of the Pregnant Workers Fairness Act, Angelica did not have to choose between her physical health and the income necessary to provide for her growing family. Her employer is now on clear notice that other pregnant workers—including those who have recently given birth—must be treated fairly and provided the reasonable accommodations guaranteed them by law. Angelica herself has become a strong advocate for workers’ rights, and feels empowered to speak out against future injustices in the workplace.

As these two stories reveal, a clear accommodations requirement makes all the difference.

Thanks to the NYC PWFA, Angelica was reinstated at her job, and back on track financially, long before she delivered her baby. Without such a law, Betzaida was unable to hold onto her job, lost her home, suffered a cascade of negative economic consequences, and had to engage a team of lawyers to secure back pay she needed to cover her losses months after being pushed out of work.

ABB has helped dozens of women seeking accommodations on the job in New York City. For some, like Sandy, Nicolet, and Floralba below and Angelica above, we have advocated directly on their behalf, helping employers to understand their obligations under the law. For others, like Alison below, we have offered coaching so they are empowered to advocate for themselves, backed by the power of the NYC PWFA. In all of these situations, the clear reasonable accommodations standard offered by the law made a significant impact on the ultimate result.

Sandy Blake¹³⁵ (New York, NY)



In October 2014, while six-and-a-half months pregnant with my first child, I learned that I was experiencing a high-risk pregnancy due to fibroids and hypertension.

Because of these serious conditions, my doctor provided me with a note indicating that I should not lift over 20 pounds, climb more than 10 consecutive steps, or stand for longer than 30 minutes at a time.

When I brought this note to work with me, my employer told me that I needed to go out on unpaid disability leave immediately.

As a patient care technician at a large New York City hospital, I knew that there were many duties I could have performed at work despite my temporary medical restrictions. For example, instead of staffing the floor in the busy ICU, I could have engaged in “one to ones” with patients, which involve sitting with individual patients in their rooms for long stretches of time. I could have also answered phones or completed paperwork. I even received offers of help from my coworkers who volunteered to cover some of my more strenuous job duties. My employer rejected all of these suggestions, and refused to even consider whether other duties might be available for me so that I could continue working without jeopardizing my health.

At first I was really worried about the financial strain and stress, but then I contacted A Better Balance for help and within just a matter of weeks I was back to work. ABB informed me about the New York City Pregnant Workers Fairness Act and called my employer to advocate for my right to reasonable accommodations under the new law. My employer and I ultimately agreed that I would work temporarily in a different unit where my health would not be at risk. I was thrilled to continue working and did so up until two weeks before my due date.

Thanks to the NYC PWFA, I was able to keep my job at the time I needed it most. Since my child was born, I have successfully returned to work, and my employer has complied with the law. I also feel empowered to speak out against unfair treatment in the workplace. Pregnant workers everywhere need a law like the PWFA that prevents bosses from forcing them out of their job when they're willing and able to work, and most in need of income to support their families.

Floralba Espinal (Bronx, NY)

Floralba Espinal was working for \$8.00 an hour at a thrift shop in the Bronx when she became pregnant. As part of her job, she carried heavy piles of clothing from the storeroom to the retail floor, where they were hung on racks. She had a history of miscarriage and worried about the risk to her pregnancy and her baby if she continued to lift such heavy loads. She saw that other workers had been temporarily transferred to other positions with less physically demanding work, so she asked to do the same. Her boss told her to bring in a doctor's note. But when she did, she was sent home on unpaid leave within hours because, as her boss said, she could no longer do her job. She was told to return when she was cleared to work without restrictions. Floralba walked out of the store and burst into tears. “How do they expect me to pay rent, to buy food?” she wondered. Floralba went to her union, which then consulted its lawyers. After learning about the New York City Pregnant Workers Fairness Act, and with the help of A Better Balance, Floralba was able to use the law to get her job back. She was reinstated in a light-duty capacity as her doctor ordered, got \$1,088 in back pay, and was able to maintain her seniority at the company.



Alison Nakamura Netter

(New York, NY)

When I found out I was expecting, I was overjoyed. However, my joy and excitement soon turned to terror when I found out that the company where I had been working would soon be going out of business.

I never expected to be starting a job search while three months pregnant, nor was I sure how to handle the interview process. Interviewing is stressful in and of itself, and interviewing while pregnant takes it to the next level. While I was not “showing” per se, I had no idea when I should disclose my pregnancy and the fact that I would likely need some modest accommodations on the job before and immediately after I gave birth.

Thankfully I found A Better Balance’s website and their hotline. ABB served as a lifeline for me during this confusing and difficult time. Their attorneys informed me about the New York City Pregnant Workers Fairness Act, which requires employers to provide pregnant workers—including those who are new to the job—with reasonable accommodations, when requested.

After ABB explained the NYC PWFA to me, I felt empowered because I knew how to protect myself legally once I was ready to accept an offer. I was also lucky because my new boss was very supportive. When I informed her that I was pregnant, she told me that if I ever needed to work from home one day, or for part of a day, to accommodate a prenatal appointment, for example, that option was available to me. I was very grateful because I knew that many women outside New York City are not given those options, no matter how easy it might be for their employer to provide them.



Nicolette Herrera

(Queens, NY)



In July 2014, while working at a large food and beverage company in Queens, I learned that I was pregnant. Soon after that, I announced the happy news to my manager.

Instead of congratulating me, he drastically cut my hours, saying he needed to protect me and my baby. He told me “I go to the bathroom too much” and he “doesn’t want me to hurt myself.” From that point on, my scheduled hours

were cut in half, despite repeated requests for more hours and a doctor’s note indicating I was able to work full time with no restrictions. A couple of weeks later, when I provided my manager with notice of my upcoming prenatal appointment, he responded by removing me from the work schedule altogether.

I had a normal, healthy pregnancy, and had no reason not to continue working so that I could earn money as I prepared to welcome my child into the world. But as I spent my pregnancy fighting just to be put on the work schedule, I grew increasingly afraid that I would not have a job to come back to after my child was born.

I was ultimately forced onto leave against my will and left without a paycheck at the time I needed income the most. After I gave birth, I repeatedly asked to come back to work but was told I “shouldn’t leave my child when he was so young.” A few weeks later, my manager informed me I couldn’t come back to work at all because he “had too many people.” Instead, I could “reapply” for a position in a few months when he’ll probably need more help. The kicker? My boss insisted I quit. When I protested, he responded, “You left to take care of your baby, didn’t you?”

I contacted A Better Balance for help and learned about the NYC Pregnant Workers Fairness Act. ABB helped me assert my rights under this law. As a result of their efforts, my employer offered me my job back and agreed to make me whole. The company also agreed to adopt a new policy specifically affirming the rights of pregnant workers to be free from discrimination in the workplace, and provide employee and manager training regarding the new anti-discrimination policy.

Pregnant workers everywhere need a law like the NYC PWFA so they are not unfairly pushed out of a job when they are willing and able to work and in need of only modest accommodations to protect their health.

Part V: Congress Must Pass the Federal PWFA

States and cities throughout the country have seen how simple and effective reasonable accommodations for pregnant workers can be. Yet while these state and local initiatives have improved workplace conditions for thousands of women, job protection and a healthy work environment should not depend upon random luck of location. In New York, where A Better Balance is headquartered, we have seen firsthand the success of the NYC PWFA. But in our Southern Office, where we work to advance and defend the rights of working families in Alabama, Georgia, Kentucky, Mississippi, and Tennessee, the picture is vastly different. Consider the case of Amanda, who called our office earlier this year.

Amanda B. (Knoxville, TN)



As a veteran currently serving in the Tennessee Army National Guard as a medic, I am used to difficult situations, adapting and overcoming—but I was not prepared for the stress I would have to endure at work just because I became pregnant.

In May 2015, when I was 29 weeks pregnant, my medical provider suggested

that I not lift more than 25 pounds for the duration of my pregnancy. The office faxed a note to my employer's human resources department stating this restriction. Never did I imagine that this minor limitation to ensure a healthy pregnancy would create any kind of conflict with my employer, a large hospital owned by one of the biggest employers in Tennessee. And I certainly did not think, as my husband and I excitedly awaited the arrival of our first child, that my employer would put me out of a job.

Although lifting patients was a required function of my job as an ER technician, there had always been more than enough staff members on hand to help complete this task; when I became pregnant, my coworkers were always happy to assist me. My military training had instilled in me this very idea—that you help your neighbor out if you can—and I saw no reason why a medical facility would not help out one of its own workers by agreeing to a reasonable and temporary accommodation. But upon receiving my doctor's note, my supervisor sat me down with human resources that same day and told me that effective immediately I could no longer work, that I was being put on unpaid leave for a maximum of six weeks. After that, I would be out of a job unless I no longer had a lifting restriction.

My primary job title was ER Tech. However, I was trained as an ER greeter/registration worker and unit secretary—two jobs I performed frequently and proficiently. When speaking with my manager and HR, I was told those jobs were unavailable to me because they required me to lift a minimum of 50 pounds. This was shocking to me because I had never lifted anything heavier than copier paper when doing them.

I was also told that I could not hold a clinical position and that I did not meet the requirements for the rest of the jobs in the hospital. HR suggested going onto the company website to look for a job I might qualify for. When I attempted to do so, none of the jobs listed were suited for my qualifications and I had no way of knowing whether they also required lifting. On top of that, the hiring process could take weeks or months. Unfortunately, I didn't have much time to spare—if I took more than six weeks to get into a new position, then I would not qualify for FMLA leave when I gave birth and would be fired. I needed a transfer immediately, and I needed HR to work with me.

I searched in vain for policies or employee handbooks that might tell me how pregnant employees were supposed to be treated, or how the hospital was treating other employees. Human Resources evaded my inquiries, and would not provide me with any clear information about the hospital's own policies.

As my due date drew nearer, I began to feel a drastic increase in defeat. I had been pushed out of my job because I was pregnant and could not perform only one duty, one my coworkers were happy to temporarily assist me with anyway. Our household income went down by almost half. Suddenly there were bills we could not afford to pay. Our savings was keeping us going month to month but quickly dried up. Then I received a letter offering to let me keep my health coverage at a cost of over \$800 a month. I had no choice but to apply for Medicaid, as I couldn't afford insurance through the military either. My husband and I even contemplated moving out of the city to be closer to family—had we not had the support of our families, friends, and our military family, we most definitely would have been out on the street, with a baby on the way.

Needing to apply for public assistance just to survive felt like the lowest point in my adult life. I had worked since I was 15-years-old, I was the first in my family to earn a college degree, and I served proudly in the military. My husband is also currently serving in the Army Reserve. We had always been proud to give back to our country and community, yet our community was failing us.

Choosing to start a family should have never led us into poverty before our child was even born. I want this disgusting treatment of pregnant workers to end—not just because of the way I was treated—but because of other women who may suffer the same, or worse, fate if the law does not change. I worked through my situation with the support of family and friends. Although I am still struggling financially, I did not lose my home. But no woman should have to face that possibility just because she does not have the same support system I do. And no baby should have to be born into a household suffering financially and emotionally—or worse, into a homeless shelter—because the mother was unfairly pushed out of her job. I feel more determined than ever to use my voice to advocate for the rights of pregnant workers everywhere.

Amanda's story illustrates that without a clear legal standard, pregnant women are often not even considered for accommodations.

As a result, women who need income but cannot secure work modifications are often forced to continue working under unhealthy conditions, risking their own health as well as the health of their babies.¹³⁶ Or they find themselves, like Amanda, out of a job at the moment when they need steady income more than ever.

As mentioned above, proposed federal legislation—the federal Pregnant Workers Fairness Act—would remove many of these barriers. The PWFA is modeled on the same reasonable accommodations standard that has worked successfully for workers with disabilities and religious beliefs for the past 25 and 43 years, respectively. It would provide the certainty and clarity that the Supreme Court's decision in *Young* left out of reach for the majority of pregnant workers, allowing them to advocate for themselves in the workplace without resorting to costly and endless litigation. And it has garnered broad support from over 150 organizations¹³⁷ and has bipartisan support in Congress including from Senator Bob Casey (D-PA), Senator Jeanne Shaheen (D-NH), Senator Kelly Ayotte (R-NH), Senator Dean Heller (R-NV), Representative Jerrold Nadler (D-NY), Representative Mike Coffman (R-CO), and Representative Bob Dold (R-IL).¹³⁸

Conclusion

Thirty-seven years after Congress passed the Pregnancy Discrimination Act to root out bias and create opportunity, pregnant workers still find themselves treated as second-class citizens when it comes to getting accommodations they need to stay healthy and stay employed. Although the Supreme Court's decision in *Young v. UPS* was a victory for Peggy Young, it did little to help other pregnant women who have to jump through hoops to prove they should receive an accommodation. In order to ensure that pregnant women stand on equal footing in the workplace, they need an explicit right to reasonable accommodations. It is time for Congress to pass the federal Pregnant Workers Fairness Act, to "honor and safeguard the important contributions women make to both the workplace and the American Family."¹³⁹

¹ 123 Cong. Rec. 29,385 (1977) (statement of Sen. Williams)

² *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338, 1367 (2015) (Kennedy, J., dissenting).

³ Dina Bakst, *Pregnant, and Pushed Out of a Job*, N.Y. TIMES, Jan. 30, 2012, www.nytimes.com/2012/01/31/opinion/pregnant-and-pushed-out-of-a-job.html?_r=0.

⁴ NAT'L PARTNERSHIP FOR WOMEN AND FAMILIES, LISTENING TO MOTHERS: THE EXPERIENCES OF EXPECTING AND NEW MOTHERS IN THE WORKPLACE 2014, <http://www.nationalpartnership.org/research-library/workplace-fairness/pregnancy-discrimination/listening-to-mothers-experiences-of-expecting-and-new-mothers.pdf>.

⁵ *Id.*

⁶ *Id.*

⁷ *Young v. United Parcel Serv., Inc.*, 707 F.3d 437, 440 (4th Cir. 2013).

⁸ *Id.*

⁹ A BETTER BALANCE & NAT'L WOMEN'S LAW CTR., IT SHOULDN'T BE A HEAVY LIFT: FAIR TREATMENT FOR PREGNANT WORKERS 15 (2013), available at www.abetterbalance.org/web/images/stories/ItShouldntBeAHeavyLift.pdf [hereinafter IT SHOULDN'T BE A HEAVY LIFT].

¹⁰ *Id.* at 440–41.

¹¹ *Id.* at 440.

¹² *Id.*

¹³ *Id.* at 441.

¹⁴ *Id.*

¹⁵ *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338, 1346 (2015).

¹⁶ IT SHOULDN'T BE A HEAVY LIFT at 15.

¹⁷ 42 U.S.C. § 2000e(k).

¹⁸ Brief of A Better Balance et al. as Amici Curiae in Support of Petitioner, *Young v. United Parcel Serv., Inc.* at 8–9, 135 S. Ct. 1338 (2015) (No. 12–1226), available at www.aclu.org/sites/default/files/assets/12-1226_tsac_aclu.pdf.

¹⁹ *Id.* at 10.

²⁰ 42 U.S.C. § 2000e(k).

²¹ See, e.g., *Reeves v. Swift Transp. Co., Inc.*, 446 F.3d 637, 641 (6th Cir. 2006).

²² *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338, 1347 (2015).

²³ *Id.* at 1354.

²⁴ *Id.* at 1356. Peggy Young ultimately settled her case with UPS, after it was remanded to the lower court. *UPS Settles With Maryland Woman in Pregnancy Discrimination Case*, NBC WASHINGTON, Oct. 1, 2015, www.nbcwashington.com/news/local/UPS-Settles-With-Maryland-Woman-in-Pregnancy-Discrimination-Case-330305251.html

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 1355.

²⁹ See Joanna L. Grossman & Deborah L. Brake, *Forceps Delivery: The Supreme Court Narrowly Saves the Pregnancy Discrimination Act in Young v. UPS*, JUSTIA, Mar. 31, 2015, <https://verdict.justia.com/2015/03/31/forceps-delivery-the-supreme-court-narrowly-saves-the-pregnancy-discrimination-act-in-young-v-ups>

³⁰ *Huffman v. Speedway LLC*, No. 14–1668, 2015 WL 3973325 (6th Cir. July 1, 2015). While the plaintiff brought her pregnancy discrimination claim under Michigan's Elliott-Larsen Civil Rights Act, rather than the federal Pregnancy Discrimination Act, the court employed the *McDonnell Douglas* burden-shifting framework used in *Young v. UPS* in its analysis.

³¹ *Id.* at *2, *6.

³² *Id.* at *6.

³³*Id.* at *7.

³⁴*Id.*

³⁵ HEATHER BOUSHEY & ANN O'LEARY, CTR. FOR AMERICAN PROGRESS, THE SHRIVER REPORT: A WOMAN'S NATION CHANGES EVERYTHING 17 (2009), http://cdn.americanprogress.org/wp-content/uploads/issues/2009/10/pdf/awn/a_womans_nation.pdf [hereinafter BOUSHEY & O'LEARY].

³⁶ ALEXANDRA CAWTHORNE & MELISSA ALPERT, LABOR PAINS: IMPROVING EMPLOYMENT AND ECONOMIC SECURITY FOR PREGNANT WOMEN AND NEW MOTHERS, CTR. FOR AMERICAN PROGRESS 2 (2009), https://cdn.americanprogress.org/wp-content/uploads/issues/2009/08/pdf/labor_pains.pdf [hereinafter CAWTHORNE & ALPERT].

³⁷ BOUSHEY & O'LEARY at 20.

³⁸ George Bush: "Statement on Signing the Americans with Disabilities Act of 1990," July 26, 1990. Online by Gerhard Peters and John T. Woolley, *The American Presidency Project*. www.presidency.ucsb.edu/ws/?pid=18712.

³⁹*Id.*

⁴⁰ Press Release, Raj Bharwani, Congressman Jim Sensenbrenner, Sensenbrenner Introduces Legislation to Restore Americans with Disabilities Act Protections (July 26, 2007), available at <http://sensenbrenner.house.gov/news/documentsingle.aspx?DocumentID=70108>.

⁴¹*Id.*

⁴² 42 U.S.C. 12100 et. seq.; 29 C.F.R. § 1630.2(j)(1)(ix) ("The effects of an impairment lasting or expected to last fewer than six months can be substantially limiting within the meaning of this section."); 29 C.F.R. App. 1630.2(h) ("...a pregnancy-related impairment that substantially limits a major life activity is a disability under the first prong of the definition.")

⁴³ *The Workplace Religious Freedom Act Of 2005: Hearing on H.R. 1445 Before the Subcomm. On Employer-Employee Relations, Comm. On Educ. & the Workforce, 109th Cong.* (2005) (statement of Rep. Sam Johnson, Chairman, Subcomm. On Employer-Employee Relations, Comm. On Educ. & the Workforce), available at www.gpo.gov/fdsys/pkg/CHRG-109hrg24514/html/CHRG-109hrg24514.htm.

⁴⁴ See *id.*

⁴⁵*Id.*

⁴⁶*Id.*

⁴⁷*Id.* (statement of Rep. Carolyn McCarthy).

⁴⁸ Brief of A Better Balance et al. as Amici Curiae in Support of Petitioner, *Young v. United Parcel Serv., Inc.* at 8-9, 135 S. Ct. 1338 (2015) (No. 12-1226), available at www.aclu.org/sites/default/files/assets/12-1226_tsac_aclu.pdf.

⁴⁹ Pregnant Workers Fairness Act, H.R. 5647, 112th Cong. (2nd Sess. 2012), www.govtrack.us/congress/bills/112/hr5647.

⁵⁰ Dina Bakst, *Pregnant, and Pushed Out of a Job*, N.Y. TIMES, Jan. 30, 2012, www.nytimes.com/2012/01/31/opinion/pregnant-and-pushed-out-of-a-job.html?_r=0.

⁵¹ Pregnant Workers Fairness Act, S. 3565, 112th Cong. (2nd Sess. 2012), www.govtrack.us/congress/bills/112/s3565.

⁵² Pregnant Workers Fairness Act, H.R. 1975, 113th Cong. (1st Sess. 2013), www.congress.gov/bill/113th-congress/house-bill/1975/related-bills; Pregnant Workers Fairness Act, S. 942, 113th Cong. (1st Sess. 2013), www.congress.gov/bill/113th-congress/senate-bill/942.

⁵³ *Casey to Introduce, Call for Vote on Pregnant Worker Discrimination Amendment to Budget*, ROBERT P. CASEY, JR., Mar. 25, 2015, www.casey.senate.gov/newsroom/releases/casey-to-introduce-call-for-vote-on-pregnant-worker-discrimination-amendment-to-budget.

⁵⁴ Pregnant Workers Fairness Act, S. 1512, 114th Cong. (1st Sess. 2015), www.congress.gov/bill/114th-congress/senate-bill/1512.

⁵⁵ Pregnant Workers Fairness Act, H.R. 2654 114th Cong. (1st Sess. 2015), www.congress.gov/bill/114th-congress/house-bill/2654/related-bills.

⁵⁶ *Casey, Shaheen, Ayotte, Heller, Nadler Announce Bipartisan Legislation that Would Protect Pregnant Workers from Workplace Discrimination*, ROBERT P. CASEY, JR., June 4, 2015, www.casey.senate.gov/newsroom/releases/casey-shaheen-ayotte-heller-nadler-announce-bipartisan-legislation-that-would-protect-pregnant-workers-from-workplace-discrimination.

⁵⁷ *Economic Security for Working Women: Hearing Before the S. Comm. On Health, Educ., Labor & Pensions* (2014) (testimony of Armanda Legros, low-wage worker), available at www.help.senate.gov/imo/media/doc/Legros2.pdf.

⁵⁸*Id.*

⁵⁹ BOUSHEY & O'LEARY at 17.

⁶⁰ Approximately half of middle-income working wives are breadwinners. SARAH JANE GLYNN, CTR. FOR AMERICAN PROGRESS, RATES OF WOMEN SUPPORTING THEIR FAMILIES ECONOMICALLY INCREASED SINCE 2007 3 (2012), <http://cdn.americanprogress.org/wp-content/uploads/issues/2012/04/pdf/breadwinners.pdf>. "In 2010 in nearly two-thirds (63.9%) of families with children women were either breadwinners or co-breadwinners." *Id.* Nearly 65% of mothers with children under the age of six work. BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, EMPLOYMENT CHARACTERISTICS OF FAMILIES—2014 2 (2015), www.bls.gov/news.release/pdf/famee.pdf. From 2006 to 2008, 81% of women who became pregnant while employed continued to work until 1 month or less before the birth of their first child, up from 34% in the period from 1961 to 1965. LYNDIA LAUGHLIN, U.S. CENSUS BUREAU, MATERNITY LEAVE AND EMPLOYMENT PATTERNS OF FIRST-TIME MOTHERS, 1961—2008 7 (2011), www.census.gov/prod/2011pubs/p70-128.pdf.

⁶¹ CAWTHORNE & ALPERT at 2.

⁶² Bryce Covert, *Too Often, a New Baby Brings Big Debt*, THE NATION (May 15, 2012), www.thenation.com/article/too-often-new-baby-brings-big-debt/.

⁶³ See, e.g., *Fact Sheet: The Gender Wage Gap: 2014*, INST. FOR WOMEN'S POLICY RESEARCH (2015), available at www.iwpr.org/publications/pubs/the-gender-wage-gap-2014.

⁶⁴ See IT SHOULDN'T BE A HEAVY LIFT at 9.

⁶⁵*Id.* at 10.

⁶⁶ Elisabeth Rosenthal, *American Way of Birth, Costliest in the World*, June 30, 2013, www.nytimes.com/2013/07/01/health/american-way-of-birth-costliest-in-the-world.html?hp&_r=2&.

⁶⁷ IT SHOULDN'T BE A HEAVY LIFT at 11.

⁶⁸ Jennifer Ludden, *Pushed Off the Job While Pregnant*, NAT'L PUB. RADIO, June 11, 2013, www.npr.org/2013/06/11/189207542/pushed-off-the-job-while-pregnant.

⁶⁹ This is a pseudonym to protect her privacy.

⁷⁰ *Massachusetts Pregnant Workers Fairness Act: Hearing on H.B. 1769 Before the Comm. On Labor & Workforce Developments* (2015) (testimony of Sandy, Massachusetts worker) (on file with author). Thank you to our partners at MotherWoman for providing access to this testimony.

⁷¹ IT SHOULDN'T BE A HEAVY LIFT at 6.

⁷² See, e.g., *Orr v. Albuquerque*, 531 F.3d 1210 (10th Cir. 2008) (police officers were forced to exhaust accrued sick leave and were not allowed to use accrued compensatory time for their pregnancy-related leaves, affecting their eligibility for early retirement).

⁷³ Letter from Dr. Lucy Willis, New York Downtown Hospital, to James Vacca, New York City Council (Dec. 4, 2012), available at www.abetterbalance.org/web/images/stories/Willis_letter_of_support.pdf.

⁷⁴ Dr. Wendy Chavkin, *Congress Should Help Pregnant Workers Stay Healthy and On the Job*, THE HILL, June 4, 2015, <http://thehill.com/blogs/congress-blog/healthcare/243899-congress-should-help-pregnant-workers-stay-healthy-and-on-the>.

- ⁷⁵ RENEE BISCHOFF & WENDY CHAVKIN, OBAMA-BIDEN TRANSITION PROJECT, THE RELATIONSHIP BETWEEN WORK-FAMILY BENEFITS AND MATERNAL, INFANT AND REPRODUCTIVE HEALTH: PUBLIC HEALTH IMPLICATIONS AND POLICY RECOMMENDATIONS 13-17 (2008), http://otrans.3cdn.net/70bf6326c56320156a_6j5m6fupz.pdf [hereinafter BISCHOFF & CHAVKIN]. See also Mayo Clinic Staff, *Working During Pregnancy: Do's and Don'ts*, MAYO CLINIC, May 14, 2014, www.mayoclinic.com/health/pregnancy/WL00035 [hereinafter *Do's and Don'ts*]; Joanna L. Grossman, *Pregnancy, Work, and the Promise of Equal Citizenship*, 98 GEO. L.J. 567, 582-84 (2010) [hereinafter Grossman]; Brief of Health Care Providers et al. as Amici Curiae in Support of Petitioner, *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338 (2015) (No. 12-1226), available at www.americanbar.org/content/dam/aba/publications/supreme_court_preview/BriefsV4/12-1226_pet_amcu_hcp-et-al.authcheckdam.pdf.
- ⁷⁶ *Protect New York's Moms From Pregnancy Discrimination*, MARCH OF DIMES: NEW YORK CHAPTER, www.marchofdimes.org/pdf/newyork/Pregnancy_Discrimination_Fact_Sheet.pdf [hereinafter *March of Dimes Fact Sheet*].
- ⁷⁷ Letter from Coalition for Quality Maternity Care, to Jerrold Nadler, H.R. (Aug. 25, 2015), available at www.abetterbalance.org/web/images/stories/Documents/CQMC_Letter_Pregnant_Workers_Fairness_Act_08_24_12.pdf
- ⁷⁸ Letter from Jennifer L. Howse, President, March of Dimes Foundation, to Rep. Bob Casey, U.S. Sen., (July 18, 2014), available at www.abetterbalance.org/web/images/stories/Documents/PregWomenFairness-SenCasey.pdf.
- ⁷⁹ See, e.g., Liz Ben-Ishai & Alex Wang, Paid Leave and Access to Preventive Health Care, CLASP: POLICY SOLUTIONS THAT WORK FOR LOW-INCOME PEOPLE, May 1, 2015, www.clasp.org/resources-and-publications/publication-1/PreventiveHealthPaidLeave.pdf.
- ⁸⁰ *Preterm Birth*, CTRS. FOR DISEASE CONTROL & PREVENTION, Sep. 9, 2015, www.cdc.gov/reproductivehealth/maternalinfanthealth/pretermbirth.htm (last visited Oct. 14, 2015) [hereinafter *Preterm Birth*].
- ⁸¹ Mayo Clinic Staff, *Complications*, MAYO CLINIC, Nov. 27 2014, www.mayoclinic.org/diseases-conditions/premature-birth/basics/complications/con-20020050.
- ⁸² *Id.*
- ⁸³ *Preterm Birth*.
- ⁸⁴ *Massachusetts Pregnant Workers Fairness Act: Hearing on H.B. 1769 Before the Comm. On Labor & Workforce Developments* (2015) (testimony of Danielle Beitz) (on file with author). Thank you to our partners at MotherWoman for providing access to this testimony.
- ⁸⁵ *Premature babies*, MARCH OF DIMES, Oct. 2013, www.marchofdimes.org/baby/premature-babies.aspx.
- ⁸⁶ See, e.g., Monique van Beukering et al., *Physically Demanding Work and Preterm Delivery: A Systematic Review and Meta-Analysis*, 87 INT'L ARCHIVES OF OCCUPATIONAL & ENVTL. HEALTH 809 (2014); Brief of Health Care Providers et al. as Amici Curiae in Support of Petitioner, *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338 (2015) (No. 12-1226), available at www.americanbar.org/content/dam/aba/publications/supreme_court_preview/BriefsV4/12-1226_pet_amcu_hcp-et-al.authcheckdam.pdf.
- ⁸⁷ Lisa A. Pompeii et al., *Physical Exertion at Work and the Risk of Preterm Delivery and Small-for-Gestational-Age*, 106 OBSTETRICS & GYNECOLOGY 1279 (2005) [hereinafter *Physical Exertion at Work*].
- ⁸⁸ Rebecca A. Jackson et al., *My Obstetrician Got Me Fired: How Work Notes Can Harm Pregnant Patients and What to Do About It*, 126 OBSTETRICS & GYNECOLOGY 252 (2015).
- ⁸⁹ *Id.*
- ⁹⁰ Pauline W. Jansen et al., *Employment Status and the Risk of Pregnancy Complications: the Generation R Study*, 67 OCCUPATIONAL & ENVIRONMENTAL MEDICINE 387, 392 (2010). See also *Working During Pregnancy*, SOC'Y OF OBSTETRICIANS AND GYNECOLOGISTS OF CANADA, <http://sogc.org/publications/working-during-pregnancy> (last visited Oct. 6, 2015).
- ⁹¹ Jo Stephenson, *Miscarriage risk 'increased' by working night shifts*, NURSINGTIMES.NET, Feb. 21, 2014, www.nursingtimes.net/nursing-practice/specialisms/midwifery-and-neonatal-nursing/miscarriage-risk-increased-by-working-night-shifts/5068235.article.
- ⁹² See *Stress and Pregnancy*, MARCH OF DIMES, www.marchofdimes.org/pregnancy/stress-and-pregnancy.aspx (last visited Oct. 14, 2015).
- ⁹³ Jordana Mansbacher, *Breastfeeding Benefits*, 28 PEDIATRICS FOR PARENTS 28 (2014), available at www.pedsforparents.com/general/103018/breastfeeding-benefits.
- ⁹⁴ *Why breastfeeding is important*, OFFICE ON WOMEN'S HEALTH, U.S. DEP'T OF HEALTH & HUMAN SERVS., July 21, 2014, www.womenshealth.gov/breastfeeding/breastfeeding-benefits.html.
- ⁹⁵ American Congress of Obstetricians and Gynecologists District II, *Statement from ACOG District II Supporting NYC Pregnant Workers Fairness Act*, June 18, 2013, available at www.abetterbalance.org/web/images/stories/ACOG_DII_Testimony_-_Proposed_Int_No_974-A_-_June_2013.pdf.
- ⁹⁶ See, e.g., *Paid Family Leave: A Crucial Support for Breastfeeding*, CLASP: POLICY SOLUTIONS THAT WORK FOR LOW-INCOME PEOPLE, Aug. 13, 2013, www.clasp.org/resources-and-publications/files/Breastfeeding-Paid-Leave.pdf
- ⁹⁷ Sharon Lerner, *The Real War on Families: Why the U.S. Needs Paid Leave Now*, IN THESE TIMES, Aug. 18, 2015, <http://inthesetimes.com/article/18151/the-real-war-on-families>.
- ⁹⁸ BETH LOY, OFFICE OF DISABILITY EMPLOYMENT POLICY, JOB ACCOMMODATION NETWORK, ACCOMMODATION AND COMPLIANCE SERIES WORKPLACE ACCOMMODATIONS: LOW COST, HIGH IMPACT 5 (2015), <http://askjan.org/media/lowcosthighimpact.html>.
- ⁹⁹ NOREEN FARRELL ET AL., EQUAL RIGHTS ADVOCATES, EXPECTING A BABY, NOT A LAY-OFF: WHY FEDERAL LAW SHOULD REQUIRE THE REASONABLE ACCOMMODATION OF PREGNANT WORKERS 25 (2013), www.equalrights.org/wp-content/uploads/2013/02/Expecting-A-Baby-Not-A-Lay-Off-Why-Federal-Law-Should-Require-the-Reasonable-Accommodation-of-Pregnant-Workers.pdf [hereinafter EXPECTING A BABY, NOT A LAY-OFF].
- ¹⁰⁰ Letter from Cynthia D. DiBartolo, Chief Executive Officer, Tigress Financial Partners LLC, to Members of Congress (Sep. 4, 2013), available at www.abetterbalance.org/web/images/stories/DiBartolo_Letter_on_Letterhead.pdf.
- ¹⁰¹ *Massachusetts Pregnant Workers Fairness Act: Hearing on H.B. 1769 Before the Comm. On Labor & Workforce Developments* (2015) (testimony of Dean Cycon) (on file with author).
- ¹⁰² Anne Rossier Markus et al., *Medicaid Covered Births, 2008 Through 2010, in the Context of the Implementation of Health Reform*, 23 Women's Health Issues e273 (2013), [www.whjournal.com/article/S1049-3867\(13\)00055-8/pdf](http://www.whjournal.com/article/S1049-3867(13)00055-8/pdf). In some states including Arkansas, Louisiana, and Maine, the percentage of Medicaid funded births exceeds 60% of all births. *Id.* at e276.
- ¹⁰³ See N. Tanya Nagahawatte & Robert L. Goldenberg, *Poverty, Maternal Health, and Adverse Pregnancy Outcomes*, 1136 ANNALS OF THE N.Y. ACAD. OF SCI. 80 (2008), available at <http://onlinelibrary.wiley.com/store/10.1196/annals.1425.016/asset/annals.1425.016.pdf?v=1&t=ifuj58h&s=b9ce6135b-422d221042007cf206fd6ec5c02270e>.
- ¹⁰⁴ See, e.g., *Medicaid Coverage for Pregnant Women Remains Critical for Women's Health*, NATIONAL WOMEN'S LAW CENTER (2015), www.nwlc.org/sites/default/files/pdfs/medicaid_coverage_for_pregnant_woman3.pdf ("Medicaid has no cost-sharing for pregnancy-related services... However, some women may prefer to stay with their Marketplace plan to maintain continuity of care for pregnancy or other conditions with ongoing treatment").
- ¹⁰⁵ EXPECTING A BABY, NOT A LAY-OFF at 25.
- ¹⁰⁶ TENN. GEN. ASSEM. FISCAL REVIEW COMM., FISCAL NOTE, H.B. 974-S.B. 1159 (2015), available at www.capitol.tn.gov/Bills/109/Fiscal/HB0974.pdf.
- ¹⁰⁷ *Pregnancy Discrimination Amendment Act*, S. 1590, 114th Cong. (1st Sess. 2015), www.congress.gov/bill/114th-congress/senate-bill/1590/related-bills.

¹⁰⁸ *Ensuring Safe & Healthy Pregnancies in the Workplace: Why We Need the Bipartisan Pregnant Workers Fairness Act Now*, A BETTER BALANCE, www.abetterbalance.org/web/images/stories/Documents/PWFA_v_PDAA_fact_sheet_7-8-152121.pdf.

¹⁰⁹ EXPECTING A BABY, NOT A LAY-OFF at 2.

¹¹⁰ Abby Bar-Lev, When it comes to working women, *Young v. UPS* may finally be the Court's chance to get it right, ALLIANCE FOR JUSTICE, Dec. 4, 2014, www.afj.org/blog/guest-blog-when-it-comes-to-working-women-young-v-ups-may-finally-be-the-courts-chance-to-get-it-right.

¹¹¹ Press Release, Council of the City of New York Office of Communications, Speaker Melissa Mark-Viverito, Council Members and Women's Rights Leaders Herald the Pregnant Workers Fairness Act (Jan. 30, 2014), <http://council.nyc.gov/html/pr/013014pregnant.shtml>.

¹¹² Brief of Bipartisan State and Local Legislators as Amici Curiae in Support of Petitioner, *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338 (2015) (No. 12-1226), available at <http://sblog.s3.amazonaws.com/wp-content/uploads/2014/09/12-1226-tsac-Bipartisan-State-and-local-Legislators.pdf>.

¹¹³ Alaska Stat. § 39.20.520; Cal. Gov't Code §§ 12945 (a)(3)(A)-(C); Conn. Gen. Stat. § 46a-60(a)(7); Haw. Code R. §§ 12-46-106-108 (these regulations were upheld in a Hawaii Supreme Court case *Sam Teague, Ltd. v. Hawaii Civil Rights Comm'n*, 971 P.2d 1104 (Haw. 1999)); La. Rev. Stat. §§ 23:342; Tex. Loc. Gov't Code §180.004.

¹¹⁴ For more information and a complete listing of states/localities with strong protections for pregnant workers, see *State and Local Laws Protecting Pregnant Workers*, A BETTER BALANCE, www.abetterbalance.org/web/ourissues/fairness-for-pregnant-workers/310.

¹¹⁵ Del. Code Ann. tit. 19 §§ 710 (17), 711(a)(3)b, d.-e., 716(a)-(b).

¹¹⁶ Protecting Pregnant Workers Fairness Act of 2014, D.C. Act. 20-458 (2014).

¹¹⁷ 75 Ill Comp. Stat. 5/2-102 (J)-(K).

¹¹⁸ *Latham v. ABCM Corp.*, CP# 12-10-60032, DIA No. 12ICRC002, Jan. 24, 2013.

¹¹⁹ For more information, see *Babygate: Working While Pregnant & Parenting: Maryland*, A BETTER BALANCE, <http://babygate.abetterbalance.org/maryland/>.

¹²⁰ Md. Code, State Gov't § 20-609.

¹²¹ Minn. Stat. §§ 181.939, 181.9414.

¹²² Neb. Rev. Stat. §§ 48-1102(11), 1107.02(2).

¹²³ N.J. Stat. § 10:5-12(s).

¹²⁴ 2015-S8, to be codified at NY Exec. Law §§ 292, 296.

¹²⁵ Letter from Sen. Kemp Hannon, 6th District, New York, to Members of Congress (Oct. 21, 2013) (on file with author).

¹²⁶ N.D. Cent. Code § 14-02.4-03.

¹²⁷ 2015-S 0276 Substitute A as Amended, to be codified at R.I. Gen. Laws § 28-5-7.4.

¹²⁸ W. Va. Code § 5-11B-2.

¹²⁹ N.Y. Admin. Code 8-107(22).

¹³⁰ Phila. Code § 9-1128.

¹³¹ Ordinance to be codified at Providence, R.I., Code § 16-57.

¹³² Central Falls, R.I. Code § 12-5.

¹³³ *New York City Pregnant Workers Fairness Act: Know Your Rights!*, A BETTER BALANCE, <http://www.abetterbalance.org/web/ourissues/fairnessworkplace/286-nycpwfa>.

¹³⁴ At the time of Betzaida's pregnancy, New York State law offered no clear protections for pregnant workers to secure needed accommodations. On October 21, 2015, Governor Andrew Cuomo signed into law a bill requiring reasonable accommodations for pregnancy-related conditions in the workplace. This law will take effect on January 19, 2016.

¹³⁵ This is a pseudonym. Sandy asked that her real name not be disclosed because she is still working for the same employer.

¹³⁶ BISCHOFF & CHAVKIN at 13-17. See also *Do's and Don'ts*; Grossman at 582-84.

¹³⁷ Letter from Pregnant Workers Fairness Act Coalition, to Members of Congress (July 15, 2015), available at www.nationalpartnership.org/research-library/workplace-fairness/pregnancy-discrimination/pregnant-workers-fairness-act-coalition-letter.pdf.

¹³⁸ See H.R. 2654: Pregnant Workers Fairness Act, GOVTRACK, www.govtrack.us/congress/bills/114/hr2654; S. 1512: Pregnant Workers Fairness Act, GOVTRACK, <https://www.govtrack.us/congress/bills/114/s1512>.

¹³⁹ See *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338, 1368 (2015) (Kennedy, J., dissenting).



A Better Balance is a national legal advocacy organization dedicated to promoting fairness in the workplace and helping workers care for their families without risking their economic security.

80 Maiden Lane, Suite 606, New York, NY 10038 | t: 212.430.5982 | info@abetterbalance.org

abetterbalance.org