Pregnancy Discrimination

In the Workplace
Webinar Technology

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Overview

0 Discrimination against pregnant women in the workplace remains common almost 35 years after being outlawed by the Pregnancy Discrimination Act.

0 In fact, workplace discrimination against pregnant women is on the rise.

0 Pregnancy discrimination includes refusal to make temporary accommodations for pregnant women who need them.
Many employers refuse to make simple accommodations for pregnancy, even when they routinely accommodate workers with disabilities, on-the-job injuries, and other conditions.

This webinar will contain an overview of the problem, current federal and state laws, as well as a policy agenda for change.

There will be time for Q&A at the end.
Women in Low-Wage & Physically Demanding Jobs Are Most Likely To Need Pregnancy Accommodations

Jobs in which women have sought and been denied accommodations include retail sales, food service workers, health care workers, stocking and package handlers, cashiers, cleaners, police officers, corrections officers, mail carriers, office clerks, and truck drivers.

Nontraditional jobs like laborers, freight, stock, and material movers are also likely to be physically demanding.

Women of color are particularly likely to work in low-wage jobs and are especially hard hit by pregnancy discrimination.
Guadalupe’s Story
Economic Consequences of Employer Refusals To Accommodate

0 Some workers are **fired** or **quit** to prevent health problems.

0 Other pregnant workers are **forced onto FMLA leave**, often using up all of their leave before the baby is born. At the end of their FMLA leave, many are fired.

0 Some workers who are forced out of the job must go on **public assistance** to get by.

0 Many workers who lose their jobs also lose their **health insurance**. In 2007 the average cost of prenatal care and delivery was **$7,600**.
Pregnant Women Are Family Breadwinners

0 In 2006-2008, almost **two-thirds** of first-time mothers worked while pregnant, and over **80 percent** of them worked into their last month of pregnancy.

0 Women are primary **breadwinners** in over 41% of families, and they are co-breadwinners in another 23% of families.

0 **Women in low-income families** are particularly likely to be the family breadwinner.
Potential Health Risks Associated with Failure to Accommodate

Dehydration, urinary tract infections, fainting and associated injuries, pre-term birth, low birth weight, pregnancy induced hypertension and preeclampsia, congenital anomalies, and miscarriage.
Hilda’s Story
Accommodation Examples

0 Accommodations for pregnant workers can usually be provided at low cost or no cost to the employer (e.g. altering start and end times, providing break time, and honoring lifting restrictions).

0 In fact, employers that provide accommodations to workers with disabilities and voluntary workplace flexibility programs report a strong return on investment.
The Current Legal Landscape: Three Key Federal Laws

0 The Americans with Disabilities Act

0 The Pregnancy Discrimination Act

0 The Family and Medical Leave Act
The Current Legal Landscape: The Americans with Disabilities Act

0 The Americans with Disabilities Act (ADA) (1991), as amended in 2008, requires employers to provide reasonable accommodations for employees with disabilities, unless it would cause an undue hardship.

0 The 2008 ADA Amendments Act (ADAAA) expanded the definition of disability to include temporary impairments.

0 EEOC regulations state that employers are required to accommodate pregnancy-related disabilities.
The Current Legal Landscape: The Pregnancy Discrimination Act

0 The Pregnancy Discrimination Act (PDA) (1978) prohibits discrimination in employment on the basis of pregnancy.

0 Requires employers to treat pregnant workers like other employees who are similar in their ability or inability to work.

0 Some courts have ignored this plain language and the Congressional intent behind the PDA and created loopholes.
The Current Legal Landscape: The PDA & ADAAA Work Together

0 The interaction between the PDA & ADAAA is important in providing protections to pregnant workers.

0 The ADAAA now requires accommodations of workers with temporary disabilities, like back injuries requiring a lifting restriction.

0 Thus, the PDA now also requires accommodations of pregnant workers with lifting restrictions as well—since employers must treat them as well as they treat workers with temporary disabilities.
The Current Legal Landscape: The Family and Medical Leave Act

The Family and Medical Leave Act (FMLA) (1993) provides eligible employees with up to 12 weeks of job-protected, unpaid leave for pregnancy-related illness, to care for a new child, or for a serious health condition of the employee or employee’s family member.

Unfortunately, this law is sometimes used against pregnant women—they are pushed onto FMLA leave when they could continue working with an accommodation.
The Current Legal Landscape: State Laws

0 Eight states require some or all employers to provide certain types of accommodations to pregnant workers: Alaska, California, Connecticut, Hawaii, Illinois, Louisiana, Maryland, and Texas.

0 Pregnancy accommodation legislation introduced in the past year in Illinois, Iowa, Maine, Minnesota, New Jersey, and New York.
Americans Support Protections for Pregnant Workers

Source: 2013 Democracy Corps Poll

- Total: 91% support, 70% strongly favor
- Unmarried Women: 93% support, 82% strongly favor
Federal Agenda for Action

0 Federal agencies should provide needed guidance about employers’ legal obligations to accommodate pregnancy.

0 Congress should pass the Pregnant Workers Fairness Act to provide necessary clarity.

0 State advocates have an important role to play.
The Case for State & Local Action

0 State action is necessary to address **ambiguity & gaps** in our current legal scheme.

0 Clear legal protections eliminate **employer & employee confusion**. There is great need for clarity for all involved.

0 **Time is of the essence**: pregnant women do not have time for agency action or lawsuits.

0 State and local human rights laws often cover **smaller employers** than federal law (<15 employees).
State legislative language will vary depending on existing laws—tailoring to **existing language** is key.

**California** has an inclusive law: It is an unlawful employment practice: “For an employer to refuse to provide reasonable accommodation for an employee for a condition related to pregnancy, childbirth, or a related medical condition, if she so requests, with the advice of her health care provider.”
In 2012, Dr. Willis treated a pregnant patient in the ER who had **fainted and collapsed** while working as a cashier because her boss would not let her drink water while on the job.
Equal Opportunity/Family Economic Security

0 This legislation is fundamentally about equal opportunity—not preferential treatment.

0 Employers are already required to provide accommodations to workers with disabilities; pregnant workers only want the same treatment.

0 Equal opportunity for pregnant women/new mothers boosts wages for women and promotes family economic security.
The Business Case
with special guest Cynthia DiBartolo, esq.,
Chairperson, Greater New York Chamber of Commerce
Chief Executive Officer, Tigress Financial Partners LLC

0 **Why** I support this issue.

0 **How** Chamber leaders & supportive businesses can help.
Messaging to Business

0 Explain to businesses that these protections are already required under federal law (& perhaps state law as well). Explicit protection provides them with **certainty & consistency**.

0 Reduces **risk** of litigation, as demonstrated in CA.

0 Other benefits like **reduced turnover** & absenteeism.

0 Good **public relations**—be a champion for women!

0 **Low cost** or no cost, undue hardship exemption, accommodations must be reasonable.
Coalition Building

Reach out to local organizations, individuals, and others:

- Labor
- Anti-poverty, civil rights, grassroots organizations
- Reproductive health
- Clergy
- Business
Questions?

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