

The Pregnant Workers Fairness Act would promote nondiscrimination by ensuring that pregnant workers are not forced out of their jobs unnecessarily or denied reasonable job accommodations that would allow them to continue working while maintaining healthy pregnancies.

Existing Federal Laws Are Inadequate for Pregnant Workers Who Need Accommodations to Stay Healthy and Working

- Women now make up over half of the American workforce¹ and **families rely on women's salaries to make ends meet**: Women are the primary or co-breadwinners in almost two-thirds of families in the United States.²
- **Three-quarters of women entering the workforce in our country will be pregnant and employed at some point in their lives.**³ Some of these women—especially those in physically strenuous jobs—will face a conflict between their duties at work and the demands of pregnancy.
- **All too often, pregnant women are pushed out of their jobs, or forced to risk their health to continue earning a paycheck to feed their families.**
- Even after the Supreme Court's ruling in *Young v. UPS*, pregnant women remain vulnerable. A pregnant worker who seeks an accommodation must currently workers to identify someone else in the workplace who was provided accommodations in order to obtain their own medical necessary accommodation, a burden not placed workers with disabilities.
- According to a recent report by A Better Balance, **2/3 of workers lost their pregnancy accommodation cases post-Young v. UPS** — the majority of these losses owing to the fact that the workers could not produce evidence of other similar employees who had been provided accommodations.⁴
- The **Americans with Disabilities Amendments Act is inadequate** because Pregnancy is not itself a disability under the law,⁵ and hence a pregnant worker who has no complications but seeks an accommodation in order to avoid a complication, will not be able to get an accommodation under the ADAAA.
- Furthermore, even though Congress expanded the ADA in 2008 and in theory it should provide accommodations for workers with pregnancy- related disabilities, **courts have interpreted the ADA Amendments Act in a way that it did little to expand coverage even for those pregnant workers with serious health complications.**⁶

The Need for Pregnancy Accommodation Laws Has Been Recognized Across the Country

- **Twenty-seven states and five cities** including Alaska California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Jersey, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, Texas, Utah, Vermont, Washington, West Virginia, New York City, NY, Philadelphia, PA, Providence, RI, Central Falls, RI, and Washington, D.C. all explicitly require certain employers to provide some form of accommodations to pregnant employees.⁷
- The PWFA has already garnered broad support from prominent women's groups across the country, health groups, unions, and dozens of other organizations.⁸

The Pregnant Workers Fairness Act (H.R. 2694) Will Clarify Existing Law and Create a Uniform National Standard

- The **U.S. Chamber of Commerce** supports H.R. 2694 because “ensuring that expectant mothers have every option to stay active in the workplace is good for women, families, and business. This legislation reduces confusion by establishing clear guidelines and a balanced process that works for employers and employees alike.”⁹
- The Pregnant Workers Fairness Act will protect pregnant workers who face being pushed out on leave or terminated when they ask their employers for minor workplace accommodations.
- The law will require reasonable accommodations for pregnancy, childbirth, and related medical conditions, unless they cause an undue hardship for the employer.
- An employer cannot deny a pregnant worker employment opportunities or force the worker to take an accommodation that she does not want or need. An employer cannot unilaterally force a pregnant worker to take leave when another reasonable accommodation could help keep her on the job.
- The Pregnant Workers Fairness Act will direct the U.S. Equal Employment Opportunity Commission (EEOC) to make rules implementing the law within two years of enactment, including a list of exemplary accommodations that should be provided unless they pose an undue hardship for the employer.
- The Pregnant Workers Fairness Act addresses the problem through an existing and familiar reasonable accommodations framework, modeled after the Americans with Disabilities Act.

The Pregnant Workers Fairness Act (H.R. 2694) Will Benefit Working Women, Their Families, Their Employers, and the Public

- Women who need income but lack accommodations are often forced to continue working under unhealthy conditions, thus risking their own health as well as the health of their babies.¹⁰
- Research has shown that stress from job loss can increase the risk of having a premature baby and/or a baby with low birth weight.¹¹ There is no need for these risks if a simple accommodation will allow a woman to stay on the job.
- Working during pregnancy can be a beneficial choice for many women. By working extra months, women can earn additional income and achieve increased seniority.
- The PWFA would promote women’s economic security during a critical time that is often filled with financial hardship.¹² Keeping women employed also saves taxpayers money in the form of unemployment insurance and other public benefits.
- Providing reasonable accommodations also carries benefits for employers, including reduced turnover and increased productivity.¹³ The PWFA would provide clearer guidelines for employers so they can anticipate their responsibilities and avoid costly litigation. Clear statutory protection allows for informal resolutions and eliminates the need for legal intervention.

For more information, visit www.abetterbalance.org/resources.

¹ See Eric Morath & Amara Omeokwe, *As Jobs Cap 10 Years of Gains, Women Are Workforce Majority*, Wall Street Journal, (Jan. 10, 2020), <https://www.wsj.com/articles/december-jobs-report-11578657600>.

² Heather Boushey & Ann O’Leary, *The Shriver Report: A Woman’s Nation Changes Everything: Executive Summary*, (Oct. 2009), at http://www.americanprogress.org/issues/2009/10/womans_nation.html.

³ Alexandra Cawthorne & Melissa Alpert, *Labor Pains: Improving Employment and Economic Security for Pregnant Women and New Mothers*, (Aug. 2009), at http://www.americanprogress.org/issues/2009/08/pregnancy_support.html.

⁴ See DINA BAKST, ELIZABETH GEDMARK & SARAH BRAFMAN, *A BETTER BALANCE*, LONG OVERDUE 13–16 (2019), <https://www.abetterbalance.org/wp-content/uploads/2019/05/Long-Overdue.pdf>.

⁵ *Id.* (citing, e.g., *Serednyj v. Beverly Healthcare, LLC*, 656 F.3d 540, 553 (7th Cir. 2011) (citing EEOC guidance, that remains in place to this day in holding “[c]ourts that consider these regulations consistently find that pregnancy, absent unusual circumstances, is not a physical impairment”); *Brown v. Aria Health*, No. CV 17-1827, 2019 WL 1745653, at *4 (E.D. Pa. Apr. 17, 2019) (“A routine pregnancy is not considered a disability within the meaning of the ADA.”); *Hannis-Miskar v. N. Schuylkill Sch. Dist.*, No. 3:16CV142, 2016 WL 3965209, at *3 (M.D. Pa. July 22, 2016) (“Because plaintiff fails to assert complications with her pregnancy, she has failed to plead a disability under the ADA.”); *Selkow v. 7-Eleven, Inc.*, No. 11-456, 2012 WL 2054872, at *14 (M.D. Fla. June 7, 2012) (“Absent unusual circumstances, pregnancy is not considered a disability . . .”); see also 29 C.F.R. pt. 1630 app. (“Other conditions, such as pregnancy, that are not the result of a physiological disorder are also not impairments.”). See also Dina Bakst, Responses to Questions for the Record at 6, *Long Over Due: Exploring the Pregnant Workers’ Fairness Act (H.R. 2694): Hearing Before the Subcomm. on Civil Rights and Human Services of the H. Comm. on Ed. & Lab.*, 116th Cong. (2019) [hereinafter *Bakst Questions for the Record*] (on file with author) (citing *Tomiwa v. PharMEDium Servs., LLC*, No. 4:16-CV-3229, 2018 WL 1898458, at *5 (S.D. Tex. Apr. 20, 2018) (“Absent unusual circumstances, pregnancy and related medical conditions do not constitute a physical impairment.”).

⁶ See *Scheidt v. Floor Covering Assocs., Inc.*, No. 16-CV-5999, 2018 WL 4679582, at *6 (N.D. Ill. Sept. 28, 2018) (“Although the 2008 amendments broadened the ADA’s definition of disability, these changes only have had a modest impact when applied to pregnancy-related conditions.”).

⁷ *State Pregnant Worker Fairness Laws*, A Better Balance, <https://bit.ly/2yEKL6P>.

⁸ 2019 Organizational Support Letter for the Pregnant Workers Fairness Act, (Oct. 18, 2019), <https://www.abetterbalance.org/resources/2019-letter-of-support-for-the-pregnant-workers-fairness-act-from-over-100-supporting-organizations/>.

⁹ *U.S. Chamber of Commerce Applauds Committee Approval of Pregnant Workers Fairness Act* (Jan. 14, 2020), <https://www.uschamber.com/press-release/us-chamber-of-commerce-applauds-committee-approval-of-pregnant-workers-fairness-act>.

¹⁰ LOUISVILLE DEP’T OF PUBLIC HEALTH AND WELLNESS, *PREGNANT WORKERS HEALTH IMPACT ASSESSMENT 2019*, at 6–7 (2019), https://louisvilleky.gov/sites/default/files/health_and_wellness/che/pregnant_workers_hia_final_02182019.pdf.

¹¹ March of Dimes, *Stress and Pregnancy*, (Jan. 2012), http://www.marchofdimes.com/pregnancy/lifechanges_indepth.html.

¹² Almost half of all babies born in the United States are born to families receiving WIC food supplements. See Kimberly Brown, *Shocking Need: American Kids Go Hungry*, ABC News, (August 24, 2011), http://abcnews.go.com/US/hunger_at_home/hunger-home-american-children-malnourished/story?id=14367230#.Tu-55mC4Iy4.

¹³ Job Accommodation Network, *Workplace Accommodations: Low Cost, High Impact*, pg. 3, at <https://askjan.org/topics/costs.cfm>. The Job Accommodation Network is a service of the U.S. Department of Labor’s Office of Disability Employment Policy (ODEP).