



the work and family legal center

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May 6, 2014

VIA U.S. MAIL & ELECTRONIC SUBMISSION

Senator Lamar Alexander
455 Dirksen Senate Office Building
Washington, DC 20510

Re: Legislative Memo: The Pregnant Workers Fairness Act (HR 1975/ S 942)

Dear Senator Alexander:

As organizations concerned for the health and economic security of Tennessee's women and families, we urge you to cosponsor the Pregnant Workers Fairness Act (PWFA; HR 1975/S 942), a bill that would promote nondiscrimination by ensuring that pregnant workers are not forced out of their jobs when they need simple work modifications in order to keep working and supporting their families.

U.S. businesses, and the economy, depend on a female workforce that makes up almost half of all workers. Three-quarters of women entering the workforce will be pregnant and employed at some point. Some of these pregnant workers—especially those in physically strenuous jobs—will face a conflict between their duties at work and the demands of pregnancy.

Under current federal law, the Pregnancy Discrimination Act (PDA), employers cannot discriminate against workers based on pregnancy, childbirth, or related medical conditions. Despite these existing protections, pregnant workers are all too often forced out of their jobs when they need adjustments at work for their health or their baby's health. Women in low-wage jobs are particularly likely to be affected by this form of pregnancy discrimination. Unfortunately, it is estimated that *more than one quarter million* pregnant workers are denied requests for accommodations each year, and many more do not even request changes at work, likely because of fear of retaliation.¹

For example, a retail worker in Salina, Kansas, was fired because she needed to carry a water bottle to stay hydrated and prevent bladder infections.² An activity director at a nursing home in Valparaiso, Indiana, was terminated because she required help with some physically strenuous aspects of her job to prevent having another miscarriage.³ Here in Tennessee, a truck driver was fired because she needed light work while pregnant, but her company only provided light work for employees injured on-the-job.⁴

These women lost in court, even though workers covered by the Americans with Disabilities Act Amendments Act (ADAAA) are entitled to reasonable accommodations from employers. Pregnant women are often treated worse than other workers who are similar in their limitations. A pregnant worker who is denied reasonable accommodations may have no choice but to



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continue working, risking injury. Ironically, if injured, she would likely then receive better treatment, either through our Worker's Compensation system or because she would qualify for coverage under the ADAAA. Our legal system should be placing a premium on prevention, stopping problems before they arise, instead of merely dealing with them after the fact.

The Pregnant Workers Fairness Act, modeled after the ADAAA, uses an existing and familiar reasonable accommodations framework. This legislation explicitly prevents employers from forcing pregnant women out of the workplace and ensures that, where a minor job modification would allow a woman to continue working, an employer must provide it unless doing so would pose an undue hardship. Alaska, California, Connecticut, Hawaii, Illinois, Louisiana, Maryland, New Jersey, Texas, Philadelphia, and New York City also explicitly require certain employers to provide some reasonable accommodation to pregnant employees. Similar bills introduced in West Virginia and Wisconsin have garnered bipartisan support—there is growing momentum for this issue across the country. There is widespread support for the PWFA from almost 150 groups across the U.S., including business groups, health organizations, and labor unions, among others.

Minor job modifications for pregnant women are a public health necessity. Women in need of income may have no choice but to continue working under dangerous conditions. According to Dr. Wendy Chavkin, “Physically demanding work...has consistently been shown to be associated with a statistically significant increased risk of preterm delivery and low birth weight. High levels of physical activity at work and work-related stress have also been found to be associated with increased risk for pregnancy-induced hypertension.”⁵ Tennessee has the third highest infant mortality rate in the country.⁶ Pregnant workers should never have to put their health on the line just to earn a paycheck.

Pregnancy-related adjustments at work also promote family economic security. By continuing to work, pregnant women can maintain income and seniority at work, whereas forced leave sets new mothers back with lost wages and missed advancement opportunities. On the other hand, providing reasonable accommodations carries benefits for employers, including reduced turnover and increased productivity. Employers would also benefit from the clarity this law would provide. Only explicitly clear legislation can provide assurance for both employees and employers alike, leading to informal resolutions and reduced litigation.

No pregnant woman should be forced to choose between her job and a healthy pregnancy. At a time when families are struggling to make ends meet, it is critical that we make every effort to combat pregnancy discrimination and keep women healthy and on the job.

We urge you to co-sponsor the Pregnant Workers Fairness Act and would welcome the opportunity to provide you with detailed information on these recommendations and to speak with you further about the critical needs of pregnant women and new mothers. For more information, please contact: Elizabeth Gedmark, Director of the Southern Office/Staff Attorney, A Better Balance, (615) 915-2417; egedmark@abetterbalance.org.



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Sincerely,

A Better Balance: The Work and Family Legal Center
American Association of University Women - Tennessee State Organization
American Civil Liberties Union of Tennessee
American Congress of Obstetricians and Gynecologists - Tennessee Section
Black Children's Institute of Tennessee
Business and Professional Women of Tennessee Inc.
Center for Research on Women
CHOICES. Memphis Center for Reproductive Health
Healthy & Free Tennessee
Julie's Village: Breastfeeding Pathways for Moms-To-Be
Knoxville Center for Reproductive Health
Mid-South Peace and Justice Center
Nashville Birth Network
Nashville Breastfeeding Coalition
OUR Vanderbilt
Planned Parenthood Greater Memphis Region
Planned Parenthood of Middle and East Tennessee
SEIU Local 205
Shelby County Breastfeeding Coalition
SisterReach
Statewide Organizing for Community eMpowerment
Tennessee Breastfeeding Coalition
Tennessee Citizen Action
Tennessee United Methodist Church Conference Committee on Church and Society
United Campus Workers
The Women's Network of UFCW Local 1995
Women's Political Collaborative of TN
Workers' Dignity
Worker's Interfaith Network
YWCA of Nashville and Middle Tennessee

¹ Bryce Covert, "Why Are Workplaces Still Not Ready for Pregnant Workers?," January 31, 2014, available at: <http://thinkprogress.org/economy/2014/01/31/3235471/pregnant-workers-survey/>.

² *Wiseman v. Wal-Mart Stores, Inc.*, No. 08-1244-EFM, 2009 WL 1617669 (D. Kan. June 9, 2009).

³ *Serednyj v. Beverly Healthcare*, 656 F.3d 540 (7th Cir. 2011).

⁴ *Reeves v. Swift Transp. Co., Inc.*, 446 F.3d 637 (6th Cir. 2006).

⁵ Dr. Wendy Chakin, Letter to New York City Councilmember James Vacca, November 29, 2012, available at: http://www.abetterbalance.org/web/images/stories/Chavkin_letter_FINAL.pdf.

⁶ Centers for Disease Control, "Infant Deaths Per 1,000 Live Births, By State: 2010," available at: http://www.cdc.gov/nchs/pressroom/states/INFANT_MORTALITY_RATES_STATE_2010.pdf.