

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

Overview

- 0 Many employers refuse to make **simple accommodations** for pregnancy, even when they routinely accommodate workers with disabilities, on-the-job injuries, and other conditions.
- 0 This webinar will contain an overview of the **problem**, current federal and state **laws**, as well as a policy agenda for **change**.
- 0 **There will be time for Q&A at the end.**

Women in Low-Wage & Physically Demanding Jobs Are Most Likely To Need Pregnancy Accommodations

- 0 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.
- 0 **Nontraditional jobs** like laborers, freight, stock, and material movers are also likely to be **physically demanding**.
- 0 **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.

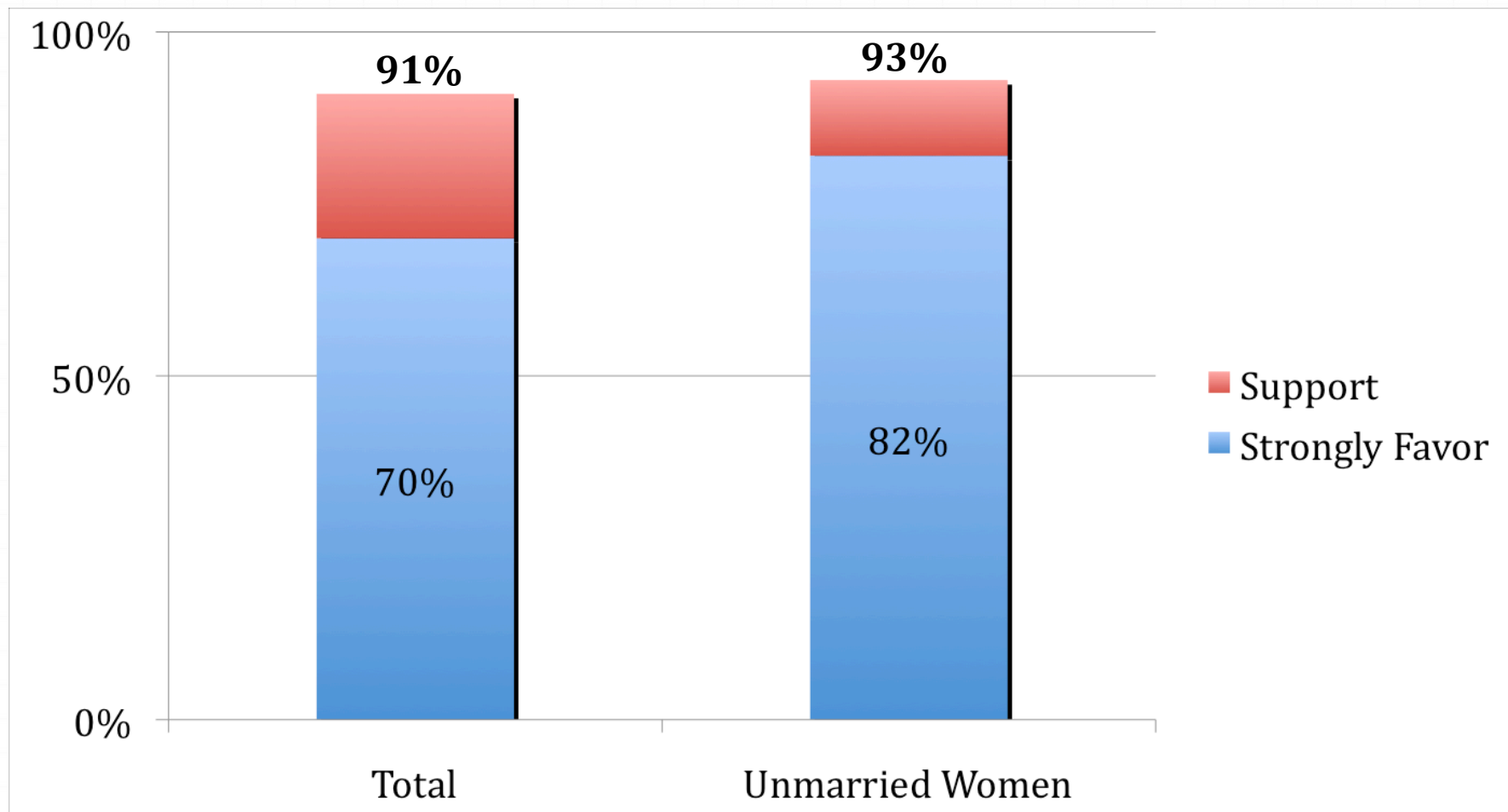
The Current Legal Landscape: The Family and Medical Leave Act

- 0 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.
- 0 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



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 Model Language

- 0 State legislative language will vary depending on existing laws—tailoring to **existing language** is key.
- 0 **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.”

Healthy Pregnancy

*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

- 0 Reach out to local organizations, individuals, and others:
 - 0 Labor
 - 0 Anti-poverty, civil rights, grassroots organizations
 - 0 Reproductive health
 - 0 Clergy
 - 0 Business

Questions?

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