a better balance
the work and family legal center

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Fairness for Pregnant Workers after *Young v. UPS*:

Why We Still Need the Pregnant Workers Fairness Act

Background: The U.S. Supreme Court's Ruling in *Young v. UPS*

Peggy Young, a former driver for UPS, was pushed onto unpaid leave while pregnant because of a modest lifting restriction. UPS pointed to a company-wide policy stating that, although they accommodated requests for many other groups of workers, they would not accommodate any pregnant workers. Young sued and her case went all the way to the U.S. Supreme Court. In its decision in March 2015, the Supreme Court told employers that if they are accommodating most non-pregnant workers with injuries or disabilities, while refusing to accommodate most pregnant workers, they are likely violating the Pregnancy Discrimination Act by placing a significant burden on pregnant workers.

But who has to show that there's a significant burden? The pregnant woman. That's why we still need the federal Pregnant Workers Fairness Act (PWFA).

Under the framework established by the Court, a pregnant worker in Young's shoes must go through a multi-step process and investigate how other workers at her job are treated. For example, if you are pregnant and need light duty, you have to find out who else needed an accommodation and whether or not they got it. Sound daunting? That's because it is, especially if you don't have much bargaining power at work to begin with. Not only are pregnant workers expected to produce enough evidence to prove their employer's intention was discriminatory, they must often do so in places where employers have no official policies or have obscured them for their own benefit. Most women simply don't have the luxury of time or the resources to make that happen.

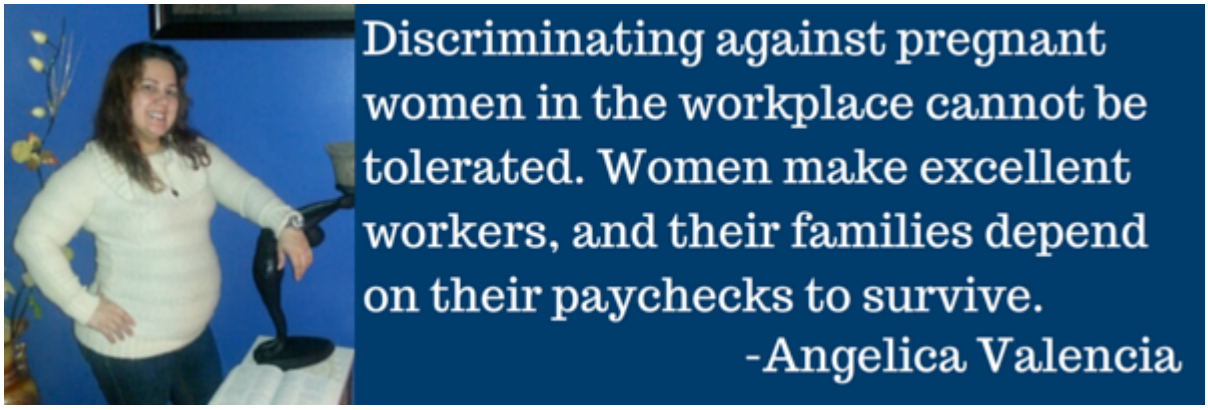
Why A Legislative Fix is Still Necessary

- The federal PWFA would require employers to reasonably accommodate workers with "known limitations" arising from pregnancy, childbirth, or related medical conditions, unless to do so would impose an undue hardship on the employer—just like employers have to do for workers with disabilities.
- Because it is often difficult for women in smaller workplaces, those who are new to the job, or those with little bargaining power to know what percentage of their coworkers are being accommodated or what their employers' specific accommodation policies are, these pregnant women desperately need the Pregnant Workers Fairness Act for *immediate* relief.
- Pregnant workers need an affirmative, proactive right to obtain what they need to stay healthy, and should not have to jump through hoops gathering evidence of other workplace practices, as the Supreme Court's ruling currently requires.
- Enacting the PWFA would establish a clear, national standard and ensure protection for women across the country.

Proven Track Record at the State & Local Level

- The New York City Pregnant Workers Fairness Act (NYC PWFA) has been in effect for over three years and we have seen firsthand how it is used to keep pregnant women healthy and on the

job—preventing problems before they even start, or quickly resolving issues without need for resorting to litigation.



- A Better Balance client, Angelica Valencia (pictured above), was pushed out of her job at a potato-packing factory in the Bronx in 2014 while pregnant, because she asked for a modest accommodation—her doctor said she could not work overtime. She had experienced a previous miscarriage and was unwilling to risk her health with this pregnancy. Using the NYC PWFA, the matter was resolved to the satisfaction of both parties, and Valencia was returned to work and made whole.
- We have used this law over and over again to support pregnant workers when they need it the most. Other states and localities,[1] including Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Louisiana, Maryland, Minnesota, Nebraska, North Dakota, New Jersey, New York, Texas, Utah, Vermont, West Virginia, Philadelphia, Central Falls & Providence (Rhode Island), and Washington, DC have been using similar laws as well.

The PWFA Is An Important Public Health Measure that also Reduces Costs to the Country and Employers

- Women who need income but lack accommodations are often forced to continue working under unhealthy conditions, risking their own health as well as the health of their babies.[2] 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.[3] Clear law not only ensures healthier and safer women and babies, but reduced health care costs, supporting our economy.
- The March of Dimes New York chapter estimated that encouraging healthy pregnancies could save that state *$1 billion* annually in healthcare costs[4]—the savings for our entire country would be much more pronounced.
- And legislation would provide clarity so employers can anticipate their responsibilities and avoid costly litigation. The March of Dimes New York has also noted that employers spend more than $12 billion annually on claims related to prematurity and complicated births nationwide—preventing these complications with more clear safety standards is paramount.[5]
- After California passed similar legislation, litigation of pregnancy cases decreased, even as pregnancy discrimination cases around the country were increasing.[6] The Hawaii Civil Rights

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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.

For more information, contact Dina Bakst at A Better Balance at 212-430-5982 or dbakst@abetterbalance.org

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[1] For a complete list, visit: http://www.abetterbalance.org/resources/pregnant-worker-fairness-legislative-successes/.
[2] Renee Bischoff & Wendy Chavkin, *The Relationship between Work-Family Benefits and Maternal, Infant and Reproductive Health: Public Health Implications and Policy Recommendations*, (June 2008), pg. 13–17, http://otrans.3cdn.net/70bf6326c56320156a_6j5m6fupz.pdf; *see also* Mayo Clinic Staff, *Working During Pregnancy: Do's and Don'ts*, http://www.mayoclinic.com/health/pregnancy/WL00035; *see also* Joanna L. Grossman, *Pregnancy, Work, and the Promise of Equal Citizenship*, 98 Geo. L.J. 567, 582-84 (March 2010); Brief amici curiae of Health Care Providers, et al., *Young v. UPS*, (September 11, 2014), available at: http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/BriefsV4/12-1226_pet_amcu_hcp-etal.authcheckdam.pdf.
[3] See, e.g. Monique van Beukering et al., *Physically Demanding Work and Preterm Delivery: A Systematic Review and Meta-Analysis*, Int'l Archives of Occupational & Envtl. Health (2014) (discussing association of prolonged standing, lifting and carrying, physical exertion, and a combination of those tasks with preterm birth).
[4] March of Dimes—New York Chapter, *Protect New York's Moms From Pregnancy Discrimination*, http://www.marchofdimes.org/pdf/newyork/Pregnancy_Discrimination_Fact_Sheet.pdf.
[5] *Id.*
[6] Equal Rights Advocates, *Expecting A Baby, Not A Lay-Off*, pg. 25, http://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.