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# Long Overdue

It Is Time for the Federal  
Pregnant Workers Fairness Act

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## It Is Time for the Federal Pregnant Workers Fairness Act

By Dina Bakst, Elizabeth Gedmark, and Sarah Brafman

**A Better Balance** is a national legal advocacy organization dedicated to promoting fairness in the workplace. We help workers across the economic spectrum care for themselves and their families without risking their economic security. Through legislative advocacy, litigation, and public education, A Better Balance leverages the power of the law to ensure that no workers have to make the impossible choice between their job and their family. We believe that when all working parents and caregivers have a fair shot in the workplace, our families, our communities, and our nation are healthier and stronger.

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# Executive Summary

More than forty years after the passage of the Pregnancy Discrimination Act (PDA), pregnant workers are still being forced to choose between their job and a healthy pregnancy.

As evidenced by story after story included in this report, pregnant workers, especially women in low-wage and physically demanding jobs, routinely jeopardize their health, and often their economic security, when denied medically necessary reasonable accommodations. States are stepping in to remedy this problem by passing state pregnant workers fairness laws, but state-by-state change is not enough. We need a federal fix. We need the Pregnant Workers Fairness Act (PWFA).

## 1. Federal law is not cutting it for pregnant workers in need of accommodations to stay healthy and on the job.

In 2015, in *Young v. UPS*, the Supreme Court set a new legal standard for evaluating pregnancy accommodation cases under the PDA, a standard that employers and employees alike hoped would provide clarity in a muddled legal landscape. Unfortunately, for too many women it did not.

**In an extensive review of post-Young pregnancy accommodation cases conducted for this report, A Better Balance found that in over two-thirds of cases, despite the new Young standard, courts held employers were permitted to deny pregnant workers accommodations under the PDA.**

In **Vassar, Michigan**, Lauri Huffman just wanted to continue working as a shift leader at a Speedway convenience store.<sup>1</sup> In **Memphis, Tennessee**, Cassandra Adduci needed the paycheck she brought home working at a FedEx warehouse.<sup>2</sup> In **Langhorne, Pennsylvania**, Janasia Wadley wanted to keep her job as a teaching assistant at a daycare facility.<sup>3</sup> In **Kingston, New York**, Anne Marie Legg took pride in her job as a corrections officer at the Ulster County Jail and wanted to continue working through her pregnancy.<sup>4</sup> In **Pell City, Alabama**, Kimberlie Durham needed and wanted to continue working as an EMT during her pregnancy.<sup>5</sup>

Unfortunately, a cruel thread connects these women: while they all requested modest accommodations at their doctor's orders and presented doctor's notes, their employers refused to accommodate them and courts or juries found they had no valid claims under the Pregnancy Discrimination Act.<sup>6</sup>



Post-Young, pregnant women are facing three main problems in these cases: 1) they are still being forced to show that other employees are accommodated to merit accommodations under the PDA;<sup>7</sup> 2) even if they are able to find “comparators,” women are still forced to discredit the employer’s justification for failing to accommodate them, and one way of doing this is by showing the employer’s policy imposed a “significant burden” on pregnant workers, but courts are struggling to correctly apply this standard;<sup>8</sup> and 3) many pregnant women need accommodations immediately and cannot afford—both in terms of their health and finances—to litigate a case for multiple years.<sup>9</sup> These problems can be succinctly summed up as **the “comparator problem,” the “significant burden” problem, and the “costly and time-consuming litigation” problem.**

## **2. A bipartisan movement to pass pregnant workers fairness laws is sweeping the nation.**

State legislators on both sides of the aisle have realized the health, economic, and business benefits of providing reasonable accommodations to pregnant workers and have stepped in to fill the gaps in federal law. As of May 2019, twenty-five states and five cities require certain employers to provide some form of accommodations to pregnant employees.<sup>10</sup>

Every one of the post-2013 state-level accommodation laws passed with bipartisan, and in many cases, unanimous support. The new wave of laws track the familiar Americans with Disabilities Act (ADA) accommodation framework, and include “reasonable accommodation” and “undue hardship” language.<sup>11</sup>



This report—through its deep analysis of state legislative histories—centers the voices of those state lawmakers, as well as business groups, who worked to pass pregnancy accommodation laws, recognizing the many health, economic, and government benefits such laws bring to workers, employers, and the state.

**A Better Balance is proud to have developed model language, worked with local advocates on most of these state and local laws, and helped pregnant workers gain immediate relief under these new laws.**

But even state legislators understand that the ultimate goal is a federal law. As former **Republican Delaware State Senator Colin Bonini**—who sponsored the Delaware pregnant workers fairness bill—said in a Congressional briefing on the federal PWFA:

**“This policy is so obvious that it's tremendously frustrating that it hasn't happened. This is a public policy slam dunk. Do we want women to keep their jobs? Of course we do.”<sup>12</sup>**

### **3. There is a solution: the bipartisan federal Pregnant Workers Fairness Act.**

The bipartisan federal Pregnant Workers Fairness Act, championed by Rep. Jerrold Nadler (D-NY), Rep. John Katko (R-NY), and Senator Bob Casey (D-PA), would require employers to provide reasonable accommodations to employees for pregnancy, childbirth, and related medical conditions, unless such accommodation would cause an undue hardship for the employer. Much like all the post-2013 state laws, the PWFA uses an existing reasonable accommodation framework, closely modeled after the Americans with Disabilities Act, that is familiar to employers. The federal PWFA would solidify the groundwork laid by the states and create a much-needed uniform federal standard. **Two decades into the 21st century, the time for true equality and fairness for pregnant women is overdue: now is the time to pass the bipartisan Pregnant Workers Fairness Act.**



# Introduction

When Congress passed the Pregnancy Discrimination Act (PDA)<sup>13</sup> in 1978, pregnant workers faced many challenges in the workplace. Employers routinely and openly pushed pregnant women off the job based on paternalistic stereotypes that women could not work while pregnant. At the same time, pregnant women needed and wanted to work.<sup>14</sup>

Congress stepped in to act. The PDA mandated that pregnant workers must be able to participate fully and equally in the workplace, and barred employers from discriminating against women, i.e. treating them unfairly, based on pregnancy, childbirth, or related medical conditions. In many ways, the PDA succeeded in fundamentally shifting norms in the American workplace. No longer could employers ask about an applicant's plans to start a family or refuse to hire a pregnant woman or cut a pregnant worker's hours. However, the PDA left out one key component to achieving true equality for pregnant workers: the need for pregnancy accommodations. On this point, the PDA was—and still is—lacking.

**Employers routinely refuse to grant pregnant workers modest accommodations, such as carrying a water bottle on the retail floor,<sup>15</sup> light duty,<sup>16</sup> or additional bathroom breaks to stay healthy and on the job.<sup>17</sup>**

A Better Balance runs a free and confidential legal helpline, and for years we have heard from pregnant women across the country who have faced the impossible choice of maintaining a healthy pregnancy or earning a paycheck. We've heard from women like **Yvette**, a supermarket worker with a lifting restriction who was sent home and forced onto disability insurance, which ran out a month after she gave birth and resulted in her losing her health insurance and needing to go onto Medicaid.<sup>18</sup> We heard from one doctor who treated a **pregnant retail worker** after she was rushed to the emergency room when she fainted on the job because her boss would not let her drink water.<sup>19</sup> We heard from **Betzaida**, who was pushed off the job because she had a lifting restriction and, with no paycheck, became homeless and had to rely on family and friends for shelter.<sup>20</sup>

The law is too often of little help. Gaps in federal law permit too many pregnant workers—especially low-income women in physically demanding jobs—to be forced off the job and robbed of critical income when they need it most. While the PDA bans pregnancy discrimination, it requires employers to make accommodations only if they accommodate other workers, or if an employee unearths evidence of discrimination. The Americans with Disabilities Act requires employers to provide reasonable accommodations to workers with disabilities, which can





include some pregnancy-related disabilities.<sup>21</sup> However, pregnancy itself is not a disability, leaving a gap wherein many employers are in no way obligated to accommodate pregnant workers in need of immediate relief to stay healthy and on the job.

In 2015, the Supreme Court attempted to clarify federal law in *Young v. UPS* when it took up the question of when, and under what circumstances, employers must provide workplace accommodations to pregnant workers under the PDA.<sup>22</sup> While the Court laid out a new standard that reaffirmed the purpose of the PDA and seemed promising, many courts have either misinterpreted the standard or interpreted it too narrowly, leaving pregnant workers without the relief they need.

**In a comprehensive review of pregnancy accommodation cases following the *Young v. UPS* decision, conducted for this report, we found that over two-thirds of courts held employers were not obligated to accommodate pregnant workers under the Pregnancy Discrimination Act. This is more than a devastating statistic. This number reflects a shameful reality that too many pregnant workers are forced to make the impossible choice between their job and a healthy pregnancy.**

There is a simple solution to the problem, one that A Better Balance Co-Founder and Co-President Dina Bakst laid out in a 2012 Op-Ed in *The New York Times*, and started to set in motion three years before the *Young* decision was even handed down—a solution that we still need today.<sup>23</sup> In order for pregnant workers to achieve true equality and equal opportunity in the workplace, the law must grant pregnant workers a clear right to reasonable accommodations.<sup>24</sup>



PHOTOGRAPH BY STOCKNROLL/ISTOCK

State legislators around the country agree. The *Times* Op-Ed and A Better Balance's call to action sparked a concerted legislative movement to create a clearer pregnancy accommodation standard. Prior to 2012, only six states had stronger legal protections for pregnant workers than federal law provides: Alaska, California, Connecticut, Hawaii, Louisiana, and Texas.<sup>25</sup>

**Since 2013, twenty states have passed accommodation laws similar to the federal Pregnant Workers Fairness Act, all with bipartisan and often unanimous support, as well as support from the business community.**

As this report lays out in detail, these states have paved the way for a federal law. A comprehensive review of state legislative testimony from the states that have passed these laws since 2013—everywhere from South Carolina to Kentucky to Nebraska to West Virginia—makes clear that this country is ready for the federal Pregnant Workers Fairness Act: one uniform and clear standard that applies to all fifty states.

In the states with pregnant workers fairness laws, we see the difference this type of law makes in the lives of pregnant workers and businesses. With clear law, pregnant workers can remain healthy and earn an income when they need it most, and businesses can avoid lengthy conflict by working with employees to determine an appropriate accommodation. This was exactly what happened to **Takirah Woods**.

Takirah worked in family services for a state agency and lives in a state with a pregnant workers fairness law. In 2018, when Takirah's doctor advised her not to lift over 15 pounds, HR pushed her out onto unpaid leave due to her lifting restriction. Desperate to keep earning an income, Takirah asked her doctor to lift the restriction even though it could compromise her health and pregnancy. Fortunately, her doctor knew about the state's pregnancy accommodation law and suggested she seek legal assistance. A Better Balance assisted Takirah in explaining the law to her employer and just two weeks later, the employer reinstated her and provided her with a light duty accommodation through the rest of her pregnancy.<sup>26</sup>

Contrast Takirah's experience with women in states without a pregnancy accommodation law, where we continue to see the heartbreaking consequences of the absence of such laws. A 2018 report in *The New York Times* shared the experiences of several women who miscarried during their time working at a warehouse in Memphis, Tennessee.<sup>27</sup>



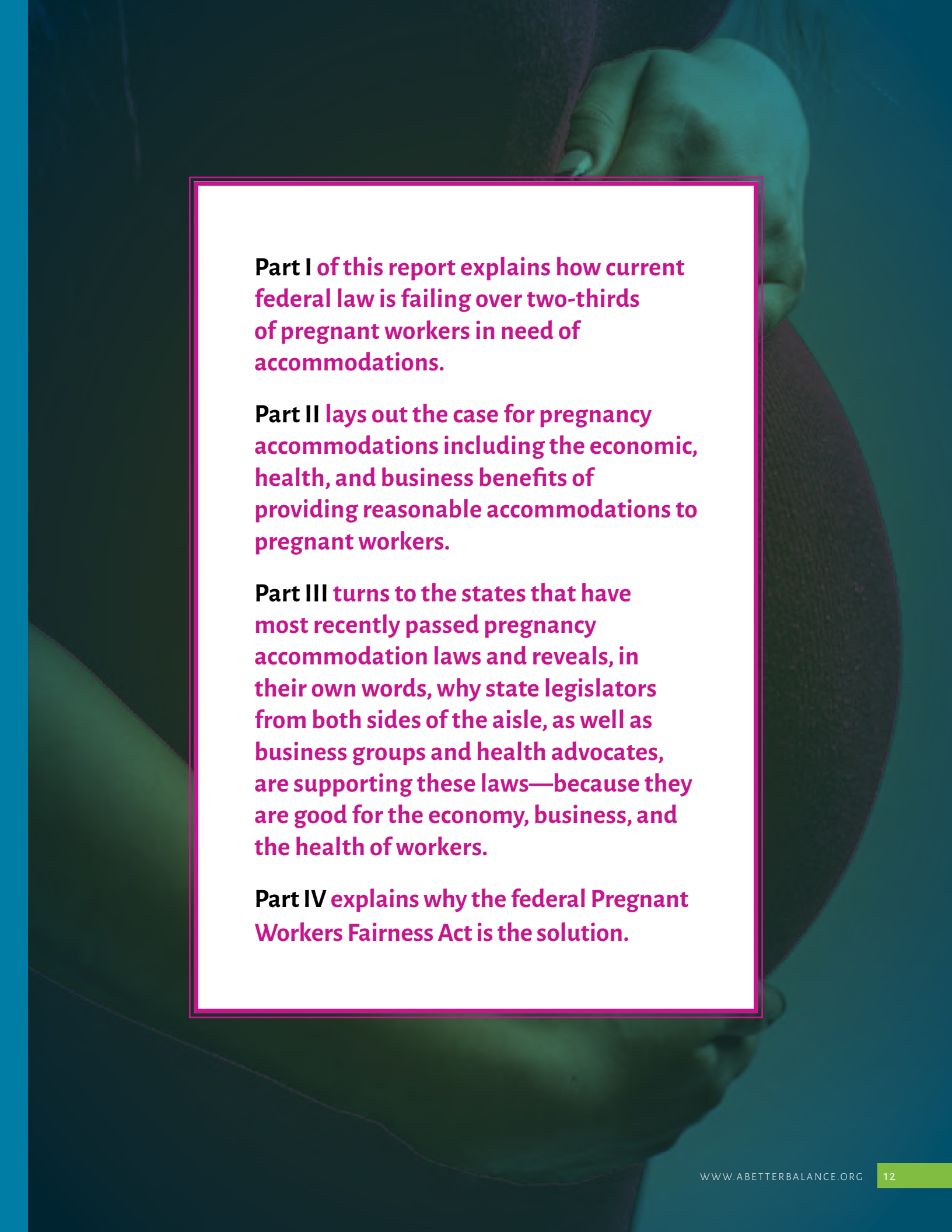
**Takirah Woods**

After becoming pregnant, **Ceeadria Walker** provided her supervisor with a doctor's note saying that she should not lift more than 15 pounds.<sup>28</sup> Her supervisor ignored her request and routinely instructed her to handle 45-pound boxes.<sup>29</sup> One day, after a long shift of handling these heavier boxes, Ceeadria miscarried.<sup>30</sup> "This was going to be my first," Ceeadria told *The New York Times*.<sup>31</sup>

Ceeadria was not alone.<sup>32</sup> At least two other women had provided a doctor's note to supervisors at the warehouse indicating they needed light duty, but supervisors ignored the notes and forced the women to continue to lift heavy boxes.<sup>33</sup> Ceeadria and her co-workers' stories underscore the urgent need for the PWFA.

## **State-by-state and company-by-company changes are not enough. It is time for a federal fix. Why?**

- 1. Current federal law is not cutting it for pregnant workers in need of accommodations.**
- 2. State legislators on both sides of the aisle have realized the health, economic, and business benefits of providing reasonable accommodations and have stepped in to fill the gaps in federal law.**
- 3. There is a solution: the federal Pregnant Workers Fairness Act.**



**Part I** of this report explains how current federal law is failing over two-thirds of pregnant workers in need of accommodations.

**Part II** lays out the case for pregnancy accommodations including the economic, health, and business benefits of providing reasonable accommodations to pregnant workers.

**Part III** turns to the states that have most recently passed pregnancy accommodation laws and reveals, in their own words, why state legislators from both sides of the aisle, as well as business groups and health advocates, are supporting these laws—because they are good for the economy, business, and the health of workers.

**Part IV** explains why the federal Pregnant Workers Fairness Act is the solution.

## Part I.

# Pregnant Women Are Not Getting the Relief They Need Under Federal Law

Pregnant women—even those with healthy pregnancies—sometimes need modest accommodations to stay healthy and on the job.<sup>34</sup> The problem is that too often federal law—as interpreted by courts—does not provide legal protections for pregnant women in need of accommodations.

In 2015, in *Young v. UPS*, the Supreme Court laid out a new multi-step test<sup>35</sup> in an attempt to clarify when employers must provide workplace accommodations to pregnant workers under the Pregnancy Discrimination Act (PDA).<sup>36</sup> Workers hoped the new standard would bring relief and clarity to a very muddled legal landscape,<sup>37</sup> and for some workers, *Young* has brought positive relief.<sup>38</sup> Unfortunately—for too many—it has not.

**In an extensive review of post-*Young* pregnancy accommodation cases conducted for this report, A Better Balance found that in over two-thirds of cases, despite the new *Young* standard, courts held employers were permitted to deny pregnant workers accommodations under the PDA.**

The table on the following pages details those cases and reveals how women across the country—from Alabama to Florida to Michigan to Pennsylvania to Wyoming—working in a wide range of jobs, fell victim to an inadequate federal standard for pregnancy accommodations.



## Post-Young v. UPS Cases With Negative Results for Pregnant Workers\*†

Case	Location	Year	Why Did the Court Rule Against the Pregnant Worker's Pregnancy Discrimination Act Claim?
<i>Swanger-Metcalf v. Bowhead Integrated Support Servs., LLC</i>	Pennsylvania	2019	The court granted employer's motion to dismiss a PDA claim brought by an auto worker who was forced to take leave after her employer refused to grant her physician-advised accommodation request not to work in a poorly-ventilated room with hazardous chemicals while pregnant. The court dismissed her claim because she "failed to identify any similarly situated individuals outside of her class who were accommodated" and provided "no factual details as to how other employees. . . were so accommodated." <sup>39</sup>
<i>Portillo v. IL Creations, Inc.</i>	District of Columbia	2019	The court granted employer's motion for summary judgment on a PDA claim brought by a cashier who was denied a stool to sit on while pregnant because, among other things, she did not offer evidence that the employer "granted similar accommodations to other employees who had difficulty standing for extended periods of time, but refused her the same accommodation based on her pregnancy." <sup>40</sup>
<i>Dudhi v. Temple Health Oaks Lung Center</i>	Pennsylvania	2019	The court granted the employer's motion to dismiss a medical assistant's PDA claim that her employer failed to provide her with breastfeeding accommodations, finding she could not meet the <i>Young</i> standard because she could not cite to another employee who received accommodations. <sup>41</sup>
<i>Luke v. C Place Forest Park SNF</i>	Louisiana	2019	The court affirmed a grant of summary judgment to the employer, dismissing a certified nursing assistant's PDA claim that she was denied light duty, because she could not point to other CNAs who were granted accommodations when they had medical restrictions on heavy lifting. <sup>42</sup>
<i>Sorah v. New Horizons Home Healthcare L.L.C.</i>	Indiana	2018	The court granted employer's summary judgment motion on plaintiff's PDA claim, finding that it was not pregnancy discrimination to fire a director of HR almost immediately after returning from bed rest due to a pregnancy complication and short recovery period following childbirth. <sup>43</sup>
<i>Waite v. Bd. of Trustees of Univ. of Alabama</i>	Alabama	2018	The court granted the university's motion to dismiss a graduate student and university employee's PDA claim that the school denied her a modified schedule following childbirth and ultimately withdrew her from her classes, forcing her out onto leave. <sup>44</sup>
<i>Durham v. Rural/Metro Corp.</i>	Alabama	2018	The court granted the employer's motion for summary judgment, dismissing the PDA claim of an EMT who was denied light duty even though the employer provided accommodations for on-the-job injuries. <sup>45</sup>
<i>Wadley v. Kiddie Acad. Int'l, Inc.</i>	Pennsylvania	2018	The court granted the employer's motion to dismiss a daycare assistant's PDA claim that she was denied light duty and extra breaks because she could not point to a valid comparator. <sup>46</sup>
<i>Lee v. TransAm Trucking, Inc.</i>	Kansas	2018	The court granted employer's motion for summary judgment on a PDA claim brought by a sales manager who was fired after requesting to go on bed rest because, among other things, she did not provide evidence that other employees were treated differently from her. <sup>47</sup>
<i>Adduci v. Fed. Express Corp.</i>	Tennessee	2018	The court denied a FedEx employee's motion to reconsider a grant of summary judgment in favor of the employer with respect to her PDA claim that the employer failed to provide her light duty, finding that she did not provide a valid comparator even though she could point to other employees in her same position who were provided accommodations. <sup>48</sup>
<i>Santos v. Wincor Nixdorf, Inc.</i>	Texas	2018	The court granted the employer's motion for summary judgment, dismissing a PDA claim by a project analyst who requested a modified work arrangement and was terminated a few days before giving birth, because she could not offer information such as "names, titles, and other information" of "similarly situated" employees. <sup>49</sup>

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## Post-*Young v. UPS* Cases With Negative Results for Pregnant Workers (continued)<sup>\*†</sup>

Case	Location	Year	Why Did the Court Rule Against the Pregnant Worker's Pregnancy Discrimination Act Claim?
<i>Jones v. Brennan</i>	Oklahoma	2017	The court granted the employer's motion for summary judgment, dismissing a postal worker's PDA claim that the employer failed to accommodate her standing restriction. <sup>50</sup>
<i>Everett v. Grady Mem'l Hosp. Corp.</i>	Georgia	2017	The court affirmed the employer's motion for summary judgment, dismissing a hospital program manager's PDA claim that the employer forced her out onto leave after she requested light duty because she could not point to "specific" enough evidence showing her employer was motivated by "animus." <sup>51</sup>
<i>Vidovic v. City of Tampa</i>	Florida	2017	The court granted an employer's motion for summary judgment, dismissing a firefighter's PDA claim that she was denied light duty, because she could not point to "nearly identical" comparators. <sup>52</sup>
<i>Webster v. U.S. Dep't. of Energy</i>	District of Columbia	2017	The court granted the employer's motion for summary judgment on a PDA claim brought by an attorney who was denied a different chair and a modified schedule as an accommodation. <sup>53</sup>
<i>Legg v. Ulster Cty.</i>	New York	2017	A jury found a corrections officer who was denied a light duty accommodation did not have a valid PDA claim. At trial, the judge gave confusing jury instructions about the <i>Young</i> standard. <sup>54</sup> In addition, the court later held that Legg could also not prove that the employer's policy disproportionately impacted pregnant women even though the policy permitted accommodations only for on-the-job injuries. <sup>55</sup>
<i>Turner v. Hartford Nursing and Rehab</i>	Michigan	2017	The court granted an employer's motion for summary judgment on a PDA claim by a certified nursing assistant fired due to her high-risk pregnancy and lifting restriction because she could not point to non-pregnant employees with lifting restrictions who were accommodated. <sup>56</sup>
<i>LaCount v. South Lewis SH OPCO</i>	Oklahoma	2017	The court denied a certified nursing assistant's motion for reconsideration of dismissal of her PDA claim. LaCount was pushed out onto FMLA leave and then fired when her only request was to refrain from lifting one particular patient. The court dismissed her motion because her evidence of comparators was too general. <sup>57</sup>
<i>Anfeldt v. United Parcel Serv., Inc.</i>	Illinois	2017	The court granted UPS's motion to dismiss a PDA claim where the plaintiff was challenging the exact same policy at issue in <i>Young v. UPS</i> , finding she could not provide enough detail about the comparators she presented. <sup>58</sup>
<i>Jackson v. J.R. Simplot Co.</i>	Wyoming	2016	The court affirmed a grant of summary judgment to the employer on a PDA claim by an operator at a fertilizer plant who was pushed out after she requested light duty. <sup>59</sup>
<i>Brown v. OMO Group, Inc.</i>	South Carolina	2016	The court granted employer's motion for summary judgment on PDA claim brought by a dental hygienist who was fired because she needed emergency surgery related to her pregnancy. <sup>60</sup>
<i>Diaz v. Florida</i>	Florida	2016	The court granted employer's motion for summary judgment on a PDA claim brought by an administrative assistant who alleged she was terminated because her employer did not want to accommodate her need to move a bit more slowly on the job and, among other things, the court found she could not show she was treated less favorably than her non-pregnant co-workers. <sup>61</sup>
<i>Mercer v. Gov't of the Virgin Islands Dep't of Educ.</i>	U.S. Virgin Islands	2016	The court entered a judgment against an employee who brought a PDA claim after her employer denied her accommodations following a stillbirth, finding that she could not point to other similar employees who were provided accommodations. <sup>62</sup>

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## Post-Young v. UPS Cases With Negative Results for Pregnant Workers (continued)<sup>\*†</sup>

Case	Location	Year	Why Did the Court Rule Against the Pregnant Worker's Pregnancy Discrimination Act Claim?
<i>Lawson v. City of Pleasant Grove</i>	Alabama	2016	The court granted the employer's motion for summary judgment with respect to a PDA claim brought by a police officer who was denied light duty, because she could not point to non-pregnant comparators. <sup>63</sup>
<i>Salmon v. Applegate Homecare &amp; Hospice, LLC</i>	Utah	2016	The court granted the employer's motion for summary judgment on a PDA claim brought by a certified nursing assistant who was terminated after being forced out onto unpaid FMLA leave when she requested a light duty assignment, finding her claim failed because there was no evidence that another CNA was accommodated at the same time she needed the accommodation. <sup>64</sup>
<i>Mejdoub v. Desjardins Bank, N.A.</i>	Florida	2016	The court granted the employer's motion for summary judgment on a PDA claim brought by a bank teller who missed work due to a pregnancy-related condition right after which the supervisor chastised her for absenteeism, finding her claim failed because she could not show she was treated differently than non-pregnant employees. <sup>65</sup>
<i>Brown v. Sam's E., Inc.</i>	South Carolina	2015	The court granted summary judgment to an employer with respect to a PDA claim brought by a cashier who argued her compensation suffered because she did not carry a 25-pound bag of flour to a customer's car even though she asked for help and received none. Among other issues, the court found her comparators were "far from specific enough" and found it problematic she could not point to specific personnel records. <sup>66</sup>
<i>Sanchez-Estrada v. MAPFRE PRAICO Ins. Co.</i>	Puerto Rico	2015	The court granted the employer's motion for summary judgment on a PDA claim brought by an employee at an auto-repair company who was fired after she needed to be absent for pregnancy-related reasons, even though the court did "not doubt" that her absences were pregnancy-related. <sup>67</sup>
<i>Huffman v. Speedway LLC</i>	Michigan	2015	The court affirmed a grant of summary judgment to the employer on a state pregnancy discrimination claim that the lower court "analyzed under the same framework as Title VII" because even though Huffman's co-worker told Huffman she was provided an accommodation, the court would not permit the co-worker's statement since she did not work for the company's HR department. <sup>68</sup>

<sup>\*</sup>In conducting this survey, we reviewed over 200 cases decided after *Young v. UPS* in which a plaintiff alleged a PDA claim. Our analysis and two-thirds statistic are based on narrowing those 200-plus cases down to forty-three cases that 1) involved a plaintiff who had an issue related to the need for a pregnancy accommodation; 2) alleged a PDA claim (or the court made explicit that a state law pregnancy discrimination claim tracked the Title VII analysis); and 3) cited to and/or analyzed *Young* in the case opinion. We did not count cases in the analysis if the plaintiff alleged only a retaliation claim and not an underlying PDA claim. We also excluded accommodation cases that did not reach the merits of the PDA claim (e.g. they were dismissed for procedural reasons such as issues of timeliness). Finally, we did not research cases where a PDA claim could have been, but was not, brought. In cases where the accommodation was related to time off or leave, we factored cases into our analysis only when the leave was related to a pregnancy-related complication or the clear need for the worker to recover from childbirth, but not cases where the leave could have been solely for bonding purposes. In making the determination that a court's result came out "negatively" or "positively" for a pregnant worker, we considered both published and unpublished opinions and only took into account the court's analysis of the worker's PDA claim and the court's holding as to that claim, and not any other claims the worker may have also alleged. If a pregnant worker prevailed on a defendant's dispositive motion (a motion to dismiss or motion for summary judgment) on the PDA claim, then we categorized that as a "positive" case. Likewise, if a pregnant worker's PDA claim did not survive a defendant's dispositive motion, then we categorized that as a "negative" case. Appeals were also analyzed similarly. In motion to dismiss cases, we viewed the facts in the light most favorable to the plaintiff and in motion for summary judgment cases, we viewed the facts and reasonable inferences in the light most favorable to the nonmoving party, in accordance with the legal standards for dispositive motions. In a very small number of cases, the court assessed the validity of a jury verdict or rendered a judgment following a bench trial. We recognize other methodology may have yielded slightly different outcomes.

<sup>†</sup>If, in a post-*Young* case in which a plaintiff alleged a PDA claim, the court did not cite to *Young* at all, that case was not included in the analysis and two-thirds statistic because the focus of this survey is on post-*Young* case law that cites to this important Supreme Court precedent. That said, we do believe there are some post-*Young* PDA accommodation cases wherein a court did not cite to, or analyze *Young*, but should have done so as part of analyzing the plaintiff's PDA claim, and that failing to do so may have been at least part of the reason for the court's dismissal of the claim. Had the court applied the *Young* burden-shifting test, we believe the results may have been different for the pregnant workers, further demonstrating the confusion around this legal standard. See, e.g., *Tomiwa v. PharMEDium Servs., LLC*, No. 4:16-CV-3229, 2018 WL 1898458, at \*4-5 (S.D. Tex. Apr. 20, 2018) (granting employer's motion for summary judgment on a PDA claim brought by a pharmacy technician who was fired after requesting to go on bed rest because, among other reasons, she could not point to similarly situated employees who were provided accommodations); *Pawlow v. Dep't of Emergency Servs. & Pub. Prot.*, 172 F. Supp. 3d 568, 575 (D. Conn. 2016) (granting employer's motion to dismiss a PDA claim brought by a police officer who alleged that she was punished for needing to pump breastmilk, finding she had no claim even though she was required to go home to express breast milk and was forced to pump in an area used to make bullets); *Agee v. Mercedes-Benz U.S. Intern., Inc.*, No. 7:12-cv-4014-SLB, 2015 WL 1419080, at \*2 (N.D. Ala. Mar. 26, 2015) (granting employer's motion for summary judgment, dismissing an assembly line worker's PDA claim that she was terminated after requesting to work no more than 40 hours per week because, even though she provided information about other people who were accommodated, those names were not based on her "personal knowledge").



Federal law—even with the new *Young* standard—is too often unresponsive to the reality of pregnant women’s needs. The *Young* standard presents **three** key problems:

1. **The comparator problem** Even under the new *Young* test, workers must still find “comparators,” meaning that they must show that the employer accommodated others “similar in their ability or inability to work.”<sup>69</sup> This standard presents many issues for both workers and employers:
  - a. Courts are continuing to construe the comparator requirement narrowly;
  - b. The standard is tone deaf to the realities of the American workplace; and
  - c. The standard places a unique burden on pregnant workers not placed on workers with disabilities.
2. **The significant burden problem** Even if a pregnant worker is able to produce valid comparators, the worker is still not done proving her case. The worker must then disprove any “legitimate, non-discriminatory reason” the employer offers, and one way of doing this is by “providing sufficient evidence that the employer’s policies impose a *significant burden* on pregnant workers” and that the employer’s reasons do not outweigh the burden on the worker.<sup>70</sup> As if the comparator standard were not confusing enough, the “significant burden” standard has only confounded courts further.
3. **The costly and time-consuming litigation problem** Confusion in applying the *Young* standard can extend litigation.<sup>71</sup> Without clear, strong protections for pregnant workers, we can expect continued costly and lengthy litigation clogging up the courts—a lose-lose for both employers and workers, no matter the outcome.



# The Comparator Problem

**Cassandra Adduci**, a former Fed-Ex employee, knows the burdens of the comparator standard all too well.

Cassandra worked part-time at a FedEx facility in Memphis, Tennessee loading and unloading boxes off of FedEx freight vehicles. When she became pregnant in 2014, her doctor gave her a 25-pound lifting restriction.<sup>72</sup> When she informed FedEx of the restriction, they refused to re-assign her to temporary work, even though they had a Temporary Return to Work (TRW) program.<sup>73</sup> They pushed her out onto unpaid leave and ultimately terminated her. Though FedEx claimed part-time employees did not qualify for the program, Adduci produced a spreadsheet showing 261 FedEx employees, some of them part-time, who were given temporary work reassignments or light duty during 2014, at the same time the TRW program was in effect.<sup>74</sup>

The court refused to accept those *hundreds* of employees as comparators even though it also indicated that some of the employees accommodated were Material Handlers in the Offload area, Adduci's exact position.<sup>75</sup>

The court found that since the spreadsheet did not have detailed information about the other employees' "ability or inability to work similar to Adduci's," they were insufficient comparators.<sup>76</sup>

In addition to the spreadsheet, Adduci also pointed to a specific co-worker who directly told her that she was accommodated but because Adduci did not have her co-worker's "medical documentation, personnel file, or other first-hand information," and was unable to obtain it during discovery, the court refused to credit her as a comparator.<sup>77</sup> As a result, the court found in 2018 that Adduci could not make out a case of pregnancy discrimination based on disparate treatment<sup>78</sup> and, ultimately, threw out her case entirely.<sup>79</sup>

While *Young* should have ideally put an end to categorical bans on groups of comparators<sup>80</sup>—such as the ability to grant light duty for on-the-job injuries, but not for limitations incurred off-the-job—courts are continuing to impose those bright-line rules. Workers like **Kimberlie Dunham**, an EMT in Alabama, are paying the price.

A court in Alabama held in late 2018 that Kimberlie, who was an EMT, did not have a valid pregnancy discrimination claim even though she could point to three other people who were given light or modified duty when they too had lifting restrictions.<sup>81</sup> The reason: those three people had on-the-job injuries.<sup>82</sup> The Durham decision is even more troubling, and indicative of the confusion in case law post-*Young*, given that three years prior, in *Bray v. Town of Wake Forest*, the Eastern District of North Carolina came to the exact opposite conclusion.<sup>83</sup>

**Lauri Huffman** worked as a shift leader at a convenience store in Vassar, Michigan.<sup>84</sup> When she became pregnant and requested light duty, her employer forced her out onto unpaid leave and ultimately terminated her.<sup>85</sup> She heard from three separate co-workers that another employee, Chelsea, with similar working restrictions, was provided an accommodation for a knee injury.<sup>86</sup> Nevertheless, the court would not consider the facts of Chelsea's accommodation.<sup>87</sup>

**The Court's stringent standard is tone deaf to the realities of the American workplace. Workers, especially low-wage workers, do not have access to their co-workers' personnel files or medical records and if they are able to glean comparator information at all, it may often be through word of mouth.**

As A Better Balance Co-President Dina Bakst pointed out in a U.S. News & World Report Op-Ed, “many pregnant workers who need temporary adjustments to their work duties are new to their jobs, lack bargaining power, are unfamiliar with company policies (if there are any) and simply do not have the luxury of time to sort out these questions.”<sup>88</sup> Above all, pregnant workers need immediate relief to remain healthy and working. Yet, the current process is far from expeditious: it requires pregnant workers to go through a long, complicated, tedious, and opaque process to determine if their employer potentially accommodates others, and even if they are able to produce that information, courts will often find that it comes up short.

**Pregnant workers' own experiences should be enough to prove discrimination, irrespective of comparators or a significant burden showing, just as it is for workers with disabilities, who do not have to jump through these evidentiary hoops in order to receive the accommodations they need.**<sup>89</sup>

Consider **Janasia Wadley's** harrowing experience: Wadley worked as a teaching assistant at a daycare facility in Pennsylvania. She previously miscarried due to a UTI-related infection and when she became pregnant again, she requested a pregnancy accommodation of additional bathroom breaks which were necessary to prevent contracting a UTI.<sup>90</sup> Soon after, in October 2016, she asked for assistance so that she could use the restroom.<sup>91</sup> She had to wait over an hour for someone to cover for her so that she could use the restroom.<sup>92</sup> She was fired later that day.<sup>93</sup> The court dismissed Janasia's PDA claim because she could not point to a comparator.<sup>94</sup>



## The Significant Burden Problem

As if the comparator standard were not confusing enough, the “significant burden” standard has only confounded courts further. **Anne Marie Legg**—among others<sup>95</sup>—can attest to this.

Anne Marie was a corrections officer at a jail in upstate New York.<sup>96</sup> When she became pregnant, she brought in a note from her doctor requesting to be temporarily re-assigned to a shift that would not require her to work directly with inmates, many of whom were violent offenders.<sup>97</sup> The jail had a policy of accommodating only on-the-job injuries and refused to accommodate Legg.<sup>98</sup>

Anne Marie needed to continue earning an income, so she got a revised doctor's note to remove the restriction.<sup>99</sup> After that, she was again assigned to work in a sector of the jail with violent offenders, including sex offenders.<sup>100</sup> Later in her pregnancy, a dormitory fight broke out among the inmates and Legg was physically unable to respond.<sup>101</sup> At that point, she decided to take a leave of absence until she gave birth, even though she faced significant economic harm for doing so.<sup>102</sup>

Legg filed a lawsuit. At trial, the judge gave confusing instructions to the jury, conflating different steps of the *Young* analysis, and wholly misinterpreting the standard.<sup>103</sup> The judge instructed the jury that evidence of discrimination could be found if “the light-duty policy places a significant burden on pregnant women as opposed to all other employees who are similar in their ability or inability to work and were not granted a light-duty accommodation.”<sup>104</sup> This instruction wholly misinterpreted the *Young* “significant burden” standard. Nowhere in *Young* does it say that to show pretext under the “significant burden” standard the worker must show they are “similar in their ability or inability to work.” That language pertains to an earlier step in the analysis. Legg lost at trial, and one is left wondering if that is owing to the judge's confusing and misstated jury charge.

## The Costly and Time-Consuming Litigation Problem

The confusion in applying the *Young* standard can also lead to lengthy litigation which is harmful to both employers and employees. While, following *Young*, some employers proactively changed their policies to provide reasonable accommodations to pregnant employees in order to avoid the confusion of the federal standard, many employers still maintain no policies or confusing policies that can lead them into long, drawn-out legal battles. And even in cases that resulted in a positive

outcome for workers, the years it took courts to parse through the legal standard could have been avoided had a clearer law, like a reasonable accommodation law, been in place.

*Legg*, for example, was initially filed in 2009. Since then, the case has gone to trial twice and, after a recent decision in the district court, is heading back up to the Second Circuit on appeal.<sup>105</sup> In another case, a firefighter in Chicago challenged a pattern and practice the City has of placing pregnant employees on immediate leave.<sup>106</sup> While the firefighter's Title VII claims were permitted to proceed, the court held that her Illinois reasonable accommodation claims could not because the Illinois pregnancy accommodation law is not retroactive.<sup>107</sup> Had the court been able to apply the Illinois pregnancy accommodation law, this policy likely would have been challenged long ago, and may have avoided this costly and lengthy litigation.

Moreover, many attorneys do not have the expertise to properly parse the *Young* standard, and even those who do have expertise may be unwilling to take on a case, especially on behalf of low-wage workers, because they do not want to assume the risk when the law is so unclear. As such, workers, especially low-wage workers, are unable to access attorneys and exercise their rights under the law.

The vast majority of women A Better Balance hears from do not want to sue their employers. They just want the accommodations they need to remain healthy and on the job. Women should have an immediate remedy before they face devastating health or economic consequences.

**The current federal framework fails to recognize the grave consequences that can unfold for workers if not accommodated. It places a unique burden on pregnant workers to find comparators when other workers, such as those with disabilities, are legally entitled to reasonable accommodations.**

For example, under federal disability law, the Americans with Disabilities Amendments Act, people with disabilities are entitled to a reasonable accommodation simply by requesting one, unless their employer can show that the requested accommodation would “impose an undue hardship.”<sup>108</sup> Pregnant workers should be entitled to the same reasonable accommodations, which is the standard laid out in the Pregnant Workers Fairness Act. Twenty-five states and five cities have stepped in to remedy the shortcomings of federal law. Now, drawing on lessons learned from the states, it is time for Congress to do its job and create a clear, workable standard for pregnancy accommodations.



## Part II.

# The Case for Pregnancy Accommodations

As of May 2019, twenty-five states and five cities require certain employers to provide some form of accommodations to pregnant employees.<sup>109</sup> In a sign of renewed frustration with federal law and a recognition that federal law remains inadequate for pregnant workers, twenty of these state laws have passed since 2013.

**Legislators on both sides of the aisle, as well as business groups, have made consistent arguments in favor of reasonable accommodations for pregnant workers including a desire to:**

- provide clarity to federal law<sup>110</sup>
- combat pregnancy discrimination in the workplace<sup>111</sup>
- support healthy pregnancies<sup>112</sup>
- promote women’s economic security<sup>113</sup>
- keep women in the workforce<sup>114</sup>
- reduce costly litigation for businesses<sup>115</sup>
- reduce the number of workers receiving public assistance<sup>116</sup>
- improve employee retention, morale, and productivity<sup>117</sup>

In her testimony in support of a state-level pregnant workers fairness bill, **Iris Wilbur, Director of Government Affairs at Greater Louisville Inc.**—the metro Louisville, Kentucky chamber of commerce—underscored that “[i]n today’s historically tight labor market, we need to make sure that anyone who wants to work is able to work and participate in the workforce. . . . [This bill] balances the need to support women in the workplace while clearly and concisely defining what constitutes reasonable accommodations and when an employer is and is not obligated to provide them.”<sup>118</sup>

Testifying in support of a state-level accommodation bill in another state, **small business owner Dean Cycon** said, “If a water bottle or restroom breaks are all that is standing in the way of a pregnant worker putting food on her family’s table, then it’s a no-brainer.”<sup>119</sup>



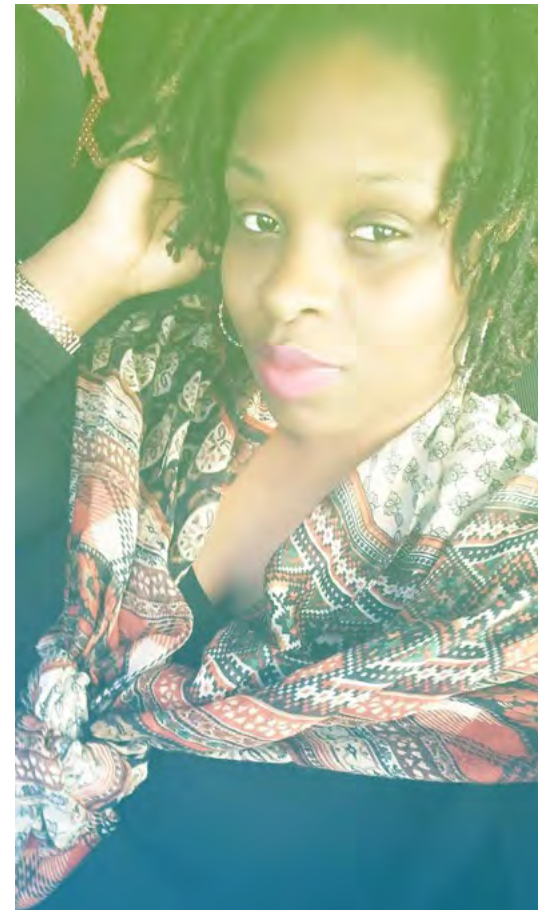
**Pregnancy accommodation laws are a no-brainer for three key reasons:**

- 1. They help ensure workers can support themselves and their families when they need it most;**
- 2. Accommodations are pivotal to pregnant workers' health and safety; and**
- 3. Accommodation laws clear up confusion for businesses and help employers retain valuable, dedicated workers and benefit our economy.**

## The Economic Case for Pregnancy Accommodations

Seventy-five percent of women will be pregnant and employed at some point in their careers.<sup>120</sup> Pregnant women want and need to keep working. Census data shows that 88 percent of all women work into their last trimester of pregnancy, and 65 percent during their last month of pregnancy.<sup>121</sup> At the same time, many pregnant women need a modest accommodation while working, with modest being the key word. As one survey showed, the most common type of accommodation pregnant workers need are more frequent breaks, such as bathroom breaks.<sup>122</sup> Families rely on pregnant workers' paychecks to meet basic needs—needing to use the bathroom a few more times while pregnant should not be a reason to push a woman off the job and force her to risk her economic security.<sup>123</sup>

As advocates have pointed out, “mothers are breadwinners in half of families with children under 18” and “nearly 15 million households in the United States are headed by women.”<sup>124</sup> And a staggering 78 percent of Americans live paycheck to paycheck.<sup>125</sup> As A Better Balance illustrated in story after story in the 2015 *Pregnant and Jobless* report, losing out on even one paycheck, let alone multiple, can spell financial ruin for families.<sup>126</sup> It remains true for too many pregnant workers today.



**Natasha Jackson**

A Better Balance Community Advocate **Natasha Jackson** knows this all too well. Natasha was the highest-ranking account executive and the only female employee at the business where she worked. When she became pregnant, she was forced to take unpaid leave, and eventually terminated. Appearing before the South Carolina legislature, Natasha testified that:

“My husband and I had just made a down payment on a house and were about to close the deal. Without my income, we were forced to back out of the contract. . . so I was out of a job and no longer able to support my family. And my husband and I saw our dream to own a home vanish.”<sup>127</sup>

In a matter of months, Natasha went from earning a stable income and nearly buying a home to needing emergency public housing.<sup>128</sup>

Natasha’s not alone. Some pregnant workers who are pushed off the job risk losing not just their paycheck but also their health insurance. Women who lose their health insurance shortly before going into labor could be looking at astronomical childbirth costs, which average \$30,000 for a vaginal delivery and \$50,000 for a C-section in the U.S.<sup>129</sup> And pregnant workers who are pushed out of the workplace might feel the effects for decades, losing out on everything from 401K or other retirement contributions to short-term disability benefits to seniority, pensions, social security contributions, life insurance, and more.<sup>130</sup>

After **Armanda Legros** pulled a muscle while working at an armored truck company, she asked her employer to avoid heavy lifting for the duration of her pregnancy. Her employer refused and sent her home without pay. As a result, Armanda lost her health insurance, and she had to apply for food stamps to feed her four-year-old son. Struggling to make ends meet, she used water in her son's cereal because she could not afford milk.<sup>131</sup>

For those workers who need to address a health need while pregnant, accommodations are the surest way to stay both healthy and providing for themselves and their families. As the American College of Obstetricians and Gynecologists has emphasized, “Accommodations that allow a woman to keep working are the most reliable way to guarantee pay, benefits, and job protection.”<sup>132</sup>



**Armanda Legros**



# The Health Case for Pregnancy Accommodations

Many women can work through their pregnancies without needing a single accommodation and for the most part, it is absolutely safe for women to work their regular job duties while pregnant.

That said, women, especially those in physically demanding jobs,<sup>133</sup> may need modest accommodations to stay healthy and on the job. **Outlined here are several of the health risks that may be avoided if workers request reasonable accommodations.** Of course, many pregnant workers will not need accommodations to avoid these health risks and it is entirely up to a worker to consult with her healthcare provider and determine necessary accommodations. Accommodations will never be a one-size-fits-all solution and public health advocates are sure to never imply that pregnant women are not entitled to continue their regular duties.

- **Miscarriage:**

- » A recent large study conducted in Denmark showed that **heavy, extensive lifting** can increase the risk of miscarriage.<sup>134</sup>
- » **Working the night shift** has also been linked to miscarriage.<sup>135</sup>

- **Preterm Birth:**

- » Multiple studies have shown that physically demanding work—including **extensive standing, long work hours, heavy lifting, elevated physical exertion, and working at night**<sup>136</sup> have been associated with a statistically significant increased risk of preterm delivery and low birth weight.<sup>137</sup>
- » **The risks associated with premature birth are staggering:**
  - According to the March of Dimes,<sup>138</sup> premature babies are at risk for the following health problems:
    - ♦ Apnea (temporary cessation of breathing)
    - ♦ Respiratory distress syndrome
    - ♦ Intraventricular hemorrhage (bleeding into the brain)
    - ♦ Patent ductus arteriosus (an unclosed hole in the heart's aorta)
    - ♦ Necrotizing enterocolitis (serious intestinal illness)
    - ♦ Retinopathy of prematurity (a potentially blinding eye disorder)
    - ♦ Jaundice
    - ♦ Anemia (condition that develops when your blood lacks enough healthy red blood cells or hemoglobin)
    - ♦ Bronchopulmonary dysplasia (a form of chronic lung disease)
    - ♦ Infections



- **Falls & Injuries:**

- » Pregnant workers who engage in hazardous work may also be at an increased risk for falls due to their shifting center of gravity.<sup>139</sup>

- **Other Maternal and Infant Health Problems:**

- » According to a 2019 Health Impact Assessment conducted by the Louisville, Kentucky Department of Public Health and Wellness, “Accommodating pregnant workers, upon their request, is critical for reducing poor health outcomes including:

- **low birth weight**
- **birth defects**
- **dehydration**
- **insufficient amniotic fluid** and related birth outcomes
- **unnecessary pain** resulting from excessive standing, bending, or lifting
- **urinary tract infections and related risk of preeclampsia** (dangerous high blood pressure); and
- **mastitis** (an infection) due to insufficient, safe locations for pumping breastmilk.”<sup>140</sup>

Every pregnant worker has individual health needs and works in a unique workplace environment. Granting modest workplace accommodation requests can go a long way in reducing these grave health disparities, the Louisville Department concluded. For instance:

- **Additional water breaks** could help “prevent dehydration and maintain amniotic fluid.”<sup>141</sup>
- **A few additional bathroom breaks** could help reduce “urinary tract infections and the associated risk of preeclampsia and preterm birth.”<sup>142</sup>
- **A stool** for a worker that ordinarily stands all day could go a long way in “alleviat[ing] the pain and discomfort of standing” during pregnancy.<sup>143</sup>
- **A reduction in the amount of heavy lifting**, bending, or standing could help “avoid preterm births and miscarriages.”<sup>144</sup>

**Women of color are especially impacted as they are more likely to work in low-wage, physically demanding jobs.<sup>145</sup> According to the Centers for Disease Control and Prevention, the maternal mortality rate for Black women is over three times that of white women, at forty deaths per 100,000 live births.<sup>146</sup> Black infants are twice as likely to die in their first year of life than white infants.<sup>147</sup> The PWFA is one crucial step we need to reduce these disparities by ensuring that all pregnant women, and especially women of color, can remain safe and healthy at work.**



# The Business Case for Pregnancy Accommodations

Across the country, many employers are supporting pregnancy accommodation laws because they create a clear standard that borrows from the well-established ADA reasonable accommodation framework. As one business publication wrote after the South Carolina pregnancy accommodation law—which also uses the ADA framework—passed there in 2018, “The mutual uncertainty that employees and employers often face in this situation is why a new state law, the South Carolina Pregnancy Accommodations Act, is a welcome development for both employees and employers in the state. . . . [T]he SCPAA contains specific guidance regarding the requirements for accommodating workers with medical needs arising from pregnancy that should be particularly helpful for small businesses.”<sup>148</sup>

## The business benefits of the PWFA are manifold:

- **Greater clarity** The PWFA, unlike current federal law, provides specific guidance so that employers can understand their obligations. Clarity is especially important for small businesses that cannot afford to hire attorneys or turn to in-house counsel to help them navigate the confusing web of current laws.
- **Smother business operations** For larger employers with a presence in multiple states, one clear, consistent standard will make it easier for HR departments to comply with the law rather than having to navigate a patchwork of state and local laws.
- **Reduction in litigation** At least two states with pregnant workers fairness laws have reported a reduction in litigation since the state laws went into effect,<sup>149</sup> and this number is likely to increase as the more recent laws take effect.
- **Increase in employee retention and morale, and reduction in employee turnover and training costs** Providing accommodations can help employers maintain a consistent, happy, and steady workforce, free from high turnover and the costs that go with it.
- **Reduction in healthcare costs** Providing accommodations also stands to reduce healthcare costs for employers. According to the March of Dimes, each premature/low birth weight baby costs employers an additional \$49,760 in newborn health care costs. When maternal costs are added, employers and their employees pay \$58,917 more when a baby is born prematurely.<sup>150</sup>



No one can make the business case for pregnant workers fairness laws better than businesses themselves, and they have done so over and over again. As our state timeline reveals, business groups in states across the country have made clear why accommodation laws make good business sense. Here's just a sampling:

**Greater Louisville Inc. (the metro Louisville, Kentucky chamber of commerce):** “[This] legislative proposal also results in important health and safety benefits and should cut down on hiring and retraining costs for employers. Survey data shows that these sorts of policies have led to increased talent attraction and retention, improved productivity, and reduced absenteeism. There's a clear bottom line here: [Sen.] Kerr's bill to support pregnant workers and new mothers is pro-business, pro-workforce legislation that will be good for our state's economy.”<sup>151</sup>

**Davis Chamber of Commerce (Utah):** “We not only think it's the right thing to do, but we think that keeping women in the workforce is smart,” and citing research that helping women stay in the workforce helps the economy in general, especially if it places no undue burdens on the corporate world.<sup>152</sup>

Business leaders across the country are supporting reasonable accommodations for pregnant workers—not just because it is the right thing to do, but because of the benefits to the bottom line. Businesses also realize that given the time-limited nature of pregnancy, accommodations are often short-term and relatively minor.<sup>153</sup>

Finally, keeping pregnant women in the workforce is not only beneficial to employers and workers, but also crucial to the American economy. A 2018 report by the International Monetary Fund revealed that the U.S. ranks behind most other advanced economies in female labor force participation. And studies show labor force participation rates for pregnant women are even worse,<sup>154</sup> and failing to increase the number of women in the workforce will hurt the U.S. economy in coming years.<sup>155</sup> Pregnancy accommodations are a crucial policy the U.S. must adopt to help jumpstart the stalled labor participation of women in the workforce and boost our economic growth.

## Part III.

# From Statehouses to Congress: The Bipartisan Pregnancy Accommodation Movement

The data proves that pregnancy accommodations are good for workers' health and economic security, and businesses' bottom lines. Half of all states agree. This report lifts up state voices to provide both a lesson and roadmap to Congress: extend accommodation protections by passing the federal Pregnant Workers Fairness Act so that pregnant workers across the nation have a clear legal right to remain safe and healthy on-the-job. Since passage, workers in these states have greatly benefited from legal protections allowing them to continue to support their families without risking their health or safety. Every pregnant worker, no matter where they live, deserves equality, dignity, and fairness in the workplace.

**Every one of the post-2013 state-level accommodation laws passed with bipartisan, and in many cases, unanimous support.** The new wave of laws tracks the ADA reasonable accommodation framework. The post-2013 state laws include “reasonable accommodation” and “undue hardship” language. Moving in chronological order from those cities and states that have passed laws from 2013 onward, this report centers the voices of those state lawmakers and business groups who recognized the need to further stamp out pregnancy discrimination and worked to pass these accommodation laws, and those who recognized the many health, economic, and government benefits accommodation laws bring to workers, employers, and the state. **A Better Balance is proud to have worked with local advocates on most of these state and local campaigns and to witness pregnant workers benefitting from these new critical protections.**



## Comparison of State Pregnant Workers Fairness Laws

State	Effective Date	Employee Threshold	Covered Employees	Reasonable Accommodation	Undue Hardship	Administrative Enforcement	Private Right of Action
Alaska <sup>156</sup>	1992	1 or more	Public only	No <sup>157</sup>	No	Alaska Department of Labor and Workforce Development	No
California <sup>158</sup>	2000	5 or more	Private and public	Yes	No	California Department of Fair Employment and Housing	Yes
Colorado <sup>159</sup>	2016	1 or more	Private and public	Yes	Yes	Colorado Civil Rights Commission	Yes
Connecticut <sup>160</sup>	2017	3 or more	Private and public	Yes	Yes	Connecticut Commission on Human Rights and Opportunities	Yes
Delaware <sup>161</sup>	2014	4 or more	Private and public	Yes	Yes	Delaware Department of Labor, Division of Industrial Affairs, Office of Anti-Discrimination	Yes
D.C. <sup>162</sup>	2015	1 or more	Private and public	Yes	Yes	DC Office of Human Rights	Yes
Hawaii <sup>163</sup>	1990	1 or more	Private and public	Yes <sup>164</sup>	No	Hawai'i Civil Rights Commission	Yes
Illinois <sup>165</sup>	2015	1 or more	Private and public	Yes	Yes	Illinois Department of Human Rights	Yes
Kentucky <sup>166</sup>	2019	15 or more	Private and public	Yes	Yes	Kentucky Commission on Human Rights	Yes
Louisiana <sup>167</sup>	1997	25 or more	Private and public	No <sup>168</sup>	No	Louisiana Commission on Human Rights	Yes
Maryland <sup>169</sup>	2013	15 or more	Private and public	Yes	Yes	Maryland Commission on Civil Rights	Yes
Massachusetts <sup>170</sup>	2018	6 or more	Private and public	Yes	Yes	Massachusetts Commission Against Discrimination	Yes
Minnesota <sup>171</sup>	2014	21 or more	Private and public	Yes	Yes	Minnesota Division of Labor Standards and Apprenticeship	Yes
Nebraska <sup>172</sup>	2015	15 or more	Private and public	Yes	Yes	Nebraska Equal Opportunity Commission	Yes
Nevada <sup>173</sup>	2017	15 or more	Private and public	Yes	Yes	Nevada Equal Rights Commission	Yes
New Jersey <sup>174</sup>	2014	1 or more	Private and public	Yes	Yes	New Jersey Division on Civil Rights	Yes
New York <sup>175</sup>	2016	4 or more	Private and public	Yes	Yes	New York Division of Human Rights	Yes
North Carolina <sup>176</sup>	2018	1 or more	Public only	No <sup>177</sup>	Yes	North Carolina Office of State Human Resources	No
North Dakota <sup>178</sup>	2015	1 or more	Private and public	Yes	Yes	North Dakota Department of Labor and Human Rights	Yes
Rhode Island <sup>179</sup>	2015	4 or more	Private and public	Yes	Yes	Rhode Island Commission for Human Rights	Yes
South Carolina <sup>180</sup>	2018	15 or more	Private and public	Yes	Yes	South Carolina Human Affairs Commission	Yes
Texas <sup>181</sup>	2001	1 or more	Public only	Yes	No	No	No
Utah <sup>182</sup>	2016	15 or more	Private and public	Yes	Yes	Utah Antidiscrimination & Labor Division	No
Vermont <sup>183</sup>	2018	1 or more	Private and public	Yes	Yes	Vermont Human Rights Commission	Yes
Washington <sup>184</sup>	2017	15 or more	Private and public	Yes	Yes	Washington State Office of the Attorney General	Yes
West Virginia <sup>185</sup>	2014	12 or more	Private and public	Yes	Yes	West Virginia Human Rights Commission	Yes

Current as of May 1, 2019



# NEW YORK CITY

UNANIMOUS  
PASSAGE

## History

In response to Dina Bakst's 2012 Op-Ed in *The New York Times*, "Pregnant, and Pushed Out of a Job," the New York City Council introduced and unanimously passed the Pregnant Workers Fairness Act in October 2013 and Mayor Bloomberg (I) signed it into law.<sup>186</sup> Council Members' primary goals for this legislation were to combat pregnancy discrimination in the workplace and promote pregnant workers' economic security.<sup>187</sup> Emphasizing that current federal and state laws were inadequate, Council Members recognized the necessity of a law explicitly requiring reasonable accommodations for pregnant workers.<sup>188</sup>

### DID YOU KNOW?

Motherhood is a key driver of poverty and economic inequality. In New York City, single, childless women under age 35 earn 96 cents for every dollar men earn, whereas women between the ages of 35 and 65, who are likely to have children, earn only 78 cents to the dollar.<sup>192</sup>

## Key Quotes

"I wish that this bill was not needed; that in 2013 pregnant women were not in danger of losing their jobs or positions of authority based on pregnancy. The Federal Pregnancy Discrimination Act was passed more than 30 years ago, but still the problem persists."<sup>189</sup>

—**Council Member Deborah Rose (D)**

"ACOG's National Office has recognized and is supporting the federal Pregnant Workers Fairness Act. . . . The New York City Pregnant Workers Fairness Act closely resembles this federal legislation through its inclusion of clear definitions for 'reasonable accommodations' and 'undue hardship.' These clear definitions provide an essential protection not only to the working mother and unborn child but also to the businesses that employ these women."<sup>190</sup>

—**American College of Obstetricians and Gynecologists District II testimony in support of the New York City PWFA**

"Physically demanding work—including prolonged standing, long work hours, irregular work schedules, heavy lifting, and high physical activity—has consistently been shown to be associated with a statistically significantly [sic] 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."<sup>191</sup>

—**Dr. Wendy Chavkin, MD, MPH, Professor of Population and Family Health and Obstetrics-Gynecology, Columbia University in a letter to bill sponsor Council Member James Vacca**

# PHILADELPHIA

UNANIMOUS  
PASSAGE

## History

In December 2013, soon after New York City passed the NYC PWFA, the Philadelphia City Council passed an ordinance requiring accommodations for pregnant workers, and Mayor Michael Nutter signed it into law in January 2014.<sup>193</sup> Philadelphia City Council Member William Greenlee emphasized the importance of hearing and recognizing real women's stories of being pushed out of the job after becoming pregnant.<sup>194</sup>

### DID YOU KNOW?

According to one survey conducted on the experiences of expecting and new mothers, over 40 percent of pregnant women who needed more frequent bathroom breaks did not ask their employers for an accommodation.<sup>198</sup>

## Key Quotes

"I think it just addresses a very basic need, and we use the words that I think make it really clear, reasonable accommodations for pregnant workers. Those reasonable accommodations, things like letting women take a little extra break, letting them drink water at their workplace, using restrooms a little more frequently, that kind of thing most employers do anyway, but unfortunately sometimes we have to pass the laws that deal with folks that do not."<sup>195</sup>

—*Council Member William Greenlee (D, sponsor)*

"The economic security of Philadelphia families depends on the job security of working women. About 53 percent of Philadelphia children are raised by just one parent, the vast majority in female-run households. . . . Very simply put, women cannot afford to lose their jobs or income due to pregnancy or childbirth."<sup>196</sup>

—*Rue Landau, Executive Director, Philadelphia Commission on Human Relations*

"At the Commission, we have seen cases of pregnant women working in Philadelphia who have been forced to choose between their wages and their health. In many of these cases, the Commission was powerless to help the women because of the limits of current law. . . . The Commission supports this bill because it would make these kinds of employer actions illegal and fill an important gap in employment protections for pregnant women."<sup>197</sup>

—*Reynelle Staley, Deputy Director of Compliance Division, Philadelphia Commission on Human Relations*



# NEW JERSEY

BIPARTISAN,  
NEAR  
UNANIMOUS  
PASSAGE

## History

The New Jersey law requiring reasonable accommodations for pregnant workers passed just one vote shy of unanimity in 2013 and Governor Chris Christie (R) signed it into law in January 2014.<sup>199</sup> Senator Loretta Weinberg, the bill's sponsor, argued that the legislation was necessary to prevent workplace discrimination against pregnant women.<sup>200</sup> She emphasized that low-wage pregnant workers have a particular need for reasonable accommodations in order to remain working and supporting their families.<sup>201</sup>

### DID YOU KNOW?

According to the U.S. Department of Labor Job Accommodation Network, 58 percent of accommodations for disabilities cost nothing, and for one-time accommodations, employers spent only \$100 more than they otherwise would have.<sup>204</sup>

## Key Quotes

"This bill quite simply prohibits workplace discrimination against women affected by pregnancy, childbirth, or related medical conditions, and only asks for reasonable accommodations so that a woman can continue to earn a living while pregnant, affording security to her and her family."<sup>202</sup>

—*Sen. Loretta Weinberg (D, sponsor)*

"The impact of the legislation can also be positive for companies. For example, retaining pregnant employees throughout their pregnancies will allow employers to benefit from continued work by trained employees. This in turn allows for continuity of operations and job performance and is likely cost efficient—job skills and institutional knowledge are maintained and training of others is possibly avoided, or at a minimum delayed. And workers who are able to be accommodated will have fewer reasons to be absent."<sup>203</sup>

—*New Jersey Law Journal, "N.J.'s Pregnant Worker's Fairness Act: The Impetus, Impact and Hidden Benefits for Employers"*



BIPARTISAN  
PASSAGE

# MINNESOTA

## History

The Minnesota reasonable accommodation law, passed with strong bipartisan support, and went into effect on Mother's Day 2014.<sup>205</sup> The law was part of the Women's Economic Security Act, a package of bills intended to promote equal opportunities for women.<sup>206</sup> Representative Carly Melin, the bill's sponsor, was pregnant herself when the bill was debated, and offered a personal perspective on the issue.<sup>207</sup>

**“Being that I am expecting myself, it has really opened my eyes to the problems in the workplace facing women,”** she said.<sup>208</sup>

In a sign that the law is working for both workers and employers, in a 2018 enforcement assessment, the Minnesota Department of Labor and Industry reported only one pregnancy accommodation complaint between September 2017 and August 2018.<sup>209</sup>

## Key Quotes

“This is not about giving people special treatment. This is about not discriminating against people.”<sup>210</sup>

—Rep. Carly Melin (D, sponsor)

“This is about economic security for working families and lifting women out of poverty.”<sup>211</sup>

—Rep. Carly Melin (D, sponsor)

## DID YOU KNOW?

According to data analyzed by the Institute for Women's Policy Research, “As of 2014, nearly six in ten women aged 16 and older (57.0 percent) worked outside the home. . . . Women now comprise nearly half of the U.S. labor force at 46.8 percent. In each state, however, women are still less likely to be in the workforce than men.”<sup>212</sup>



BIPARTISAN,  
NEAR  
UNANIMOUS  
PASSAGE

# WEST VIRGINIA

## History

The West Virginia Pregnant Workers' Fairness Act passed in 2014, just one vote shy of unanimous passage, with the intent of eliminating discrimination and promoting women's health and economic security.<sup>213</sup> West Virginia legislators argued that the bill would protect the health of women and children while allowing pregnant workers to keep their jobs.<sup>214</sup>

**A local Chamber of Commerce "did not oppose" the bill.**<sup>215</sup>

### DID YOU KNOW?

Even the most conservative estimates show that women with children face a 3 percent to 5 percent pay penalty per child, with some researchers estimating the penalty is closer to 10 percent per child.<sup>217</sup>

## Key Quotes

"It was something that we had pursued for several years. We had heard reports over the years of pregnant women being discomforted by their employers. We were very much compelled to do something because of the anecdotal evidence we had, and we also knew it was a burgeoning national issue. I'm very proud that we were able to get this done."<sup>216</sup>

—*Delegate Don Perdue (D, sponsor)*



**Paul Espinosa**

@PaulEspinosa\_WV



Voted "Yes" on HB 4284, Pregnant Workers' Fairness Act. Passed 94-0. — at West Virginia Legislature. . . .<sup>218</sup>

12:44 PM - Feb. 5, 2014

—*Delegate Paul Espinosa (R)*

# DELAWARE

## History

Delaware legislators unanimously passed a law requiring reasonable accommodations for pregnant workers in 2014.<sup>219</sup> State Senator Colin Bonini (R), the bill's sponsor, argued that reasonable accommodations would allow pregnant women to remain working and keep them from seeking public assistance.<sup>220</sup>

**The Delaware State Chamber of Commerce had “no issues with the bill.”<sup>221</sup>**

### DID YOU KNOW?

Low-income pregnant women face a much tougher economic reality. Nearly 70 percent of women in the bottom income quintile are the sole or primary breadwinners for their families.<sup>226</sup>

## Key Quotes

“From a fiscal-conservative standpoint, we don't want people to lose their jobs and get on public assistance. We want women to work and to have successful pregnancies and successful families. This just made so much sense.”<sup>222</sup>

—*Sen. Colin Bonini (R, sponsor)*

“We want to encourage women to be able to keep their jobs. . . . And we want to encourage women to have successful families.”<sup>223</sup>

—*Sen. Colin Bonini (R, sponsor)*

“Nobody had any problem at all with this bill. Nothing from the Chamber (of Commerce).”<sup>224</sup>

—*Sen. Colin Bonini (R, sponsor)*

“This policy is so obvious that it's tremendously frustrating that it hasn't happened. This is a public policy slam dunk. Do we want women to keep their jobs? Of course we do.”<sup>225</sup>

—*Delaware State Senator Colin Bonini (R) speaking at a Congressional briefing in support of the federal Pregnant Workers Fairness Act*

# ILLINOIS

UNANIMOUS  
PASSAGE

## History

Illinois passed a law requiring reasonable accommodations for pregnant workers in August 2014 with unanimous, bipartisan support and the law went into effect on January 1, 2015.<sup>227</sup> Illinois state legislators spoke about the need to supplement existing laws in order to eliminate discrimination against pregnant women, protect women's economic security, and protect women's health.<sup>228</sup> They also argued that the law would benefit businesses and decrease litigation.<sup>229</sup>

Among the lawmakers who voiced support for the bill were Representative Emily McAsey, a new mother, and Representative Jehan Gordon-Booth, who was currently pregnant.<sup>230</sup> Illinois governor Pat Quinn signed the bill into law, saying, "Women should not have to choose between being a mother and having a job. These common-sense accommodations will provide peace of mind, safety and opportunity for moms-to-be and also help strengthen our workforce across the state."<sup>231</sup>

**The Illinois Chamber of Commerce's Employment Law Council took a neutral stance on the bill, saying that opposing the law was "like being against motherhood."<sup>232</sup>**

## Key Quotes

"I was a small business employer, so I looked at this language very seriously. I employed 20 architects and various employees, over half of them were female employees. . . . I would argue that this language in this Bill is reasonable. To be able to allow reasonable accommodation so that my female employees could serve our clients is good for an employer. It allows me to keep on deadline, to keep serving our clients, and to allow women to be able to contribute to the workforce and work through their pregnancy."<sup>233</sup>

—Rep. Carol Sente (D)

"Sorry for rising so slowly, but luckily, I serve here in the General Assembly where I can prop my feet up underneath my desk on a garbage can that's been flipped over. Those accommodations have been provided to me by the General Assembly, so thank you so very much. . . . All women in this state don't have the same privileges that myself, Representative McAsey, yourself, and other women who have had children, while they also worked and helped to take care and provide for their families."<sup>234</sup>

—Rep. Jehan Gordon-Booth (D)

## DID YOU KNOW?

The preterm birth rate is on the rise in the U.S. As of 2017, close to 1 in 10 pregnancies result in preterm birth.<sup>235</sup>



UNANIMOUS  
PASSAGE

# DISTRICT OF COLUMBIA

## History

The District of Columbia passed the Protecting Pregnant Workers Fairness Act in October 2014, and it went into effect in March 2015.<sup>236</sup> The bill was intended to eliminate discrimination and promote women's health and economic security.<sup>237</sup> The report on the bill from the Committee on Business, Consumer, and Regulatory Affairs noted that the bill was "essential to closing the gap between the intent of the PDA and the current reality, where pregnant women can face health risks and financial ruin."<sup>238</sup> The report also noted that the law would benefit business by reducing turnover costs, improving retention, increasing employee morale and productivity, and reducing litigation costs.<sup>239</sup>

## Key Quotes

"The overall arch of this bill is to provide opportunities for pregnant women to continue to be able to work in the workplace."<sup>240</sup>

—*Council Member Vincent Orange (D, sponsor)*

"This bill will help provide for a better quality of life for pregnant workers as they go through the processes of providing new life in this city."<sup>241</sup>

—*Council Member Vincent Orange (D, sponsor)*

## DID YOU KNOW?

Low-wage workers are particularly impacted by employers' failure to accommodate their pregnancies. For instance, in general, women who are nursing assistants earn a median income of just \$11.83 per hour but are 3.5 times more likely to face workplace injuries due to the physically strenuous nature of their work.<sup>242</sup>

# NEBRASKA

UNANIMOUS  
PASSAGE

## History

The Supreme Court decided *Young v. UPS* while the Nebraska legislature was considering a state pregnancy accommodation bill.<sup>243</sup> Before the final vote, Senator Heath Mello argued that a law giving pregnant workers the affirmative right to reasonable accommodations was still necessary after *Young*, saying, “What the Supreme Court did in its decision was to create a new adjudication process within the constraints of the existing law that lays out how to compare a pregnant worker with other employees. . . . L.B. 627 is still needed because it moves Nebraska from using the confusing and complicated comparative standard used in the Pregnancy Discrimination Act to using a reasonable accommodation standard similar to current laws regarding workers with disabilities.”<sup>244</sup>

**Bob Hallstrom, a lobbyist for the Nebraska Federation of Independent Businesses (NFIB), said the bill was “not a big concern” and Senator Mello emphasized, “There’s a reason why the Nebraska Chamber of Commerce did not oppose this bill. There’s a reason the Nebraska Federation of Independent Businesses did not oppose this bill, and those are the voices for small business and big business in our state because right now, under current law, there is a lot of gray matter as it relates to pregnancy in regards to trying to provide accommodation to a pregnant worker.”<sup>245</sup>**

## Key Quotes

“I believe this is a bill that we need to ensure that women can confidently remain employed as they are nursing children and that’s an important part of. . . our workforce.”<sup>246</sup>

—*Sen. Lydia Brasch (R)*

“The temporary nature of pregnancy accommodations indicate[s] that they would be similarly inexpensive. Providing accommodations for employees have also been shown to improve employee retention, morale, and productivity.”<sup>247</sup>

—*Sen. Heath Mello (D, sponsor)*

## DID YOU KNOW?

Supporting lactation is a public health issue. Mothers who breastfeed have lower rates of type 2 diabetes, breast cancer, and ovarian cancer.<sup>248</sup> Non-breastfed children are three times more likely to be hospitalized for respiratory or other infections of the immune system.<sup>249</sup> Yet due to gaps in federal law, nearly 1 in 4 women—or over 9 million women of childbearing age—do not have a federal right to time and space to express milk.<sup>250</sup>

# NORTH DAKOTA

## History

North Dakota passed a bill requiring reasonable accommodations for pregnant workers in April 2015 and Republican Governor Jack Dalrymple signed it into law.<sup>251</sup> Representative Naomi Muscha, the bill's sponsor, argued that the law was needed to provide protections to pregnant workers that are not provided under the American with Disabilities Act, Pregnancy Discrimination Act, and Family and Medical Leave Act, and noted that employers sometimes use FMLA leave against pregnant workers by insisting that they take leave time instead of providing them with simple accommodations.<sup>252</sup> Representative Muscha also noted how businesses can benefit from providing reasonable accommodations through the resulting increase in employee morale.<sup>253</sup>

## Key Quotes

"Statistics show that the majority of pregnant workers who need some slight accommodations are low-wage earners or in nontraditional occupations. Very frequently the women are primary breadwinners in the family or even the sole-breadwinner. If they are forced to leave work unpaid, it's not just the woman who suffers, but rather the whole family."<sup>254</sup>

—Rep. Naomi Muscha (D, sponsor)

"[This legislation] would add pregnancy to the list of circumstances where an employer must provide a reasonable accommodation. The Department [of Labor] would interpret HB 1463 to require the same type of accommodations that an employer must provide to an individual with a disability or sincerely held religious belief. Therefore, the Department would use the same analysis and factors to complaints from a pregnant employee that it currently uses for complaints from individuals with disabilities or sincerely held religious beliefs."<sup>255</sup>

—Troy Seibel, Commissioner of Labor to Republican Governor Jack Dalrymple

## DID YOU KNOW?

According to the U.S. Department of Labor Job Accommodation Network, 90 percent of employers reported that providing an accommodation for a worker with disabilities allowed them to retain valued employees.<sup>256</sup>



# RHODE ISLAND

UNANIMOUS  
PASSAGE

## History

After two Rhode Island cities, Providence and Central Falls, passed city pregnancy accommodation laws in 2014, Rhode Island legislators unanimously passed a law requiring employers to make reasonable accommodations for pregnant workers in June 2015.<sup>257</sup> Representative Shelby Maldonado, who had supported the Central Falls ordinance as a city councilwoman there, spoke about the need to “make sure that [pregnant workers are] able to earn their paycheck and be able to support their families. The last thing we want to do is to have a pregnant woman. . . . have a miscarriage, or. . . be out of work for a period of time therefore depending on our taxes and social services.”<sup>258</sup> Representative Elaine Coderre spoke about how her interest in the bill was sparked after she loaned a legislative employee her office as a location to pump breastmilk, saying, “I felt it was a common-sense humanitarian kind of thing to do. There was a problem presented, I wanted to solve it, and I came up with a solution.”<sup>259</sup>

## Key Quotes

“This is what I believe is a human rights issue as well as a workplace issue. These are accommodations that must be afforded to our women in the workplace. They’re very modest. . . . And to me that attitude streamlines and makes for a more efficient and happier workplace than saying, oh that bathroom break is going to take away from my worker’s productivity. Their opinion of their job and their coworkers will improve, and that will improve their efficiency. So any counter concern to this bill to me has no credit whatsoever.”<sup>260</sup>

—*Asher Schofield, small business owner*

“The legislation that’s before you is designed to close a gap between current discrimination and disability laws in order to increase the protection for both pregnant women and new mothers in the workplace.”<sup>261</sup>

—*Rep. Shelby Maldonado (D, sponsor)*

“Having worked as a housekeeper for the past 20 years, I have seen firsthand that appropriate accommodations are not always provided to pregnant women in the workplace. The Council’s passage of this ordinance will help expectant mothers protect their health and the health of their babies.”<sup>262</sup>

—*Providence City Council member Carmen Castillo testifying in support of the Providence pregnant workers fairness bill in 2014*

## DID YOU KNOW?

When workers are unable to use the bathroom when needed it can cause urinary tract infections (UTI) and UTIs can lead to preterm birth. Not only that, E. coli based UTI, a particularly aggressive infection, can put women at risk of miscarriage.<sup>263</sup>

# NEW YORK

## History

New York unanimously passed its pregnant workers' fairness law in October 2015, as part of the New York Women's Equality Agenda, a package of bills intended to eliminate discrimination and inequality based on gender.<sup>264</sup> The law went into effect January 2016. Senator Kemp Hannon (R), the bill's sponsor, said the law was necessary to fill gaps in existing law and prevent employers from discriminating against pregnant workers.<sup>265</sup> Other New York lawmakers argued that the law was necessary to protect women's health.<sup>266</sup>

## Key Quotes

"We all know today that many more women work and are a large percentage of the workforce, and many women work through their entire pregnancy, right up to being 8 ½ months, almost to the day that they deliver. . . . While pregnancy is not a disability. . . . all we're asking for in this is some reasonable considerations."<sup>267</sup>

—*Sen. Betty Little (R)*

"In the absence of this legislation what we're doing is saying to somebody who is pregnant: 'No, you can't continue to work. No, you can't continue to have your usual routine.' And that just puts an economic burden on the rest of society."<sup>268</sup>

—*Sen. Kemp Hannon (R, sponsor)*

"It's common sense. We want to make sure women who are pregnant are helped in all ways possible to carry to term healthy infants. We want to make sure they don't end up losing their jobs and their source of income so they're not able to care for themselves and their children."<sup>269</sup>

—*Sen. Elizabeth Krueger (D)*

"Businesses depend on a female workforce, so issues affecting women's health, safety, and economic stability must be a priority. . . . The PWFA would ensure consistency and certainty for employers while ending a particularly pernicious form of sex discrimination."<sup>270</sup>

—*Greater New York Chamber of Commerce in a letter supporting the federal Pregnant Workers Fairness Act*

## DID YOU KNOW?

Census data shows 88 percent of all women work into their last trimester of pregnancy.<sup>271</sup>

# UTAH

**BIPARTISAN  
PASSAGE**

## History

In March 2016, Utah passed a law requiring reasonable accommodations for pregnant workers.<sup>272</sup> The legislation's sponsors, two Republicans, argued it was necessary to provide additional protections not provided under federal and state antidiscrimination law.<sup>273</sup> Republican Senator Todd Weiler, the bill's sponsor, explained that because the bill borrowed language from the Americans with Disabilities Act, the law would provide clarity to employers already familiar with their responsibilities under the ADA.<sup>274</sup>

Lawmakers and members of the public testifying in support of the bill also focused on its health benefits for both mothers and babies, particularly the health benefits of providing reasonable accommodations for mothers to support breastfeeding.<sup>275</sup>

**The bill passed with strong support from the business community, including support from the Salt Lake City Chamber of Commerce and the Davis Chamber of Commerce.**<sup>276</sup>

## Key Quotes

"I'm not suggesting that either pregnant or nursing mothers are disabled, but the language is borrowed from the ADA, and the good news is that we know exactly what reasonably accommodate means and what it doesn't mean, and we know exactly what unduly burdensome means and what it doesn't mean, because those issues have been litigated under the ADA for the last 25 years."<sup>277</sup>

—*Sen. Todd Weiler (R, sponsor)*

"This is a necessary bill just to make sure there's a process in place, and protects both the employer and the employee."<sup>278</sup>

—*Sen. Luz Escamilla (D)*

"Utah is a family friendly state, and this legislation reflects Utah's values. The costs to businesses for providing reasonable accommodations are small, particularly in relation to the benefits. And no woman should be placed in the untenable position of having to choose between her job and a healthy pregnancy or her job and breastfeeding her baby. In conclusion, as a small business owner and a lifelong member of the Salt Lake City community, I completely support this bill and urge all of you to do the same."<sup>279</sup>

—*Jonathan Ruga, CEO of Sentry Financial, a small business employing 20 people in Salt Lake City*

## DID YOU KNOW?

Small businesses in other states agree with Ruga's assertion. Helen Halton, an owner of a self storage facility in Kentucky, said: "As an owner of a storage facility, the benefits of a happy, healthy and productive pregnant worker far outweigh the 'cost' of providing basic accommodations necessary. The challenges that small business owners such as myself would face would be limiting physical activity such as heavy lifting which co-workers could cover and scheduling. A great employee is a valuable asset to a business and it makes business sense to offer basic accommodations for pregnant workers."<sup>280</sup>

# COLORADO

## History

Colorado passed a law requiring employers to provide reasonable accommodations for pregnant workers for health conditions related to pregnancy or the physical recovery from childbirth in 2016.<sup>281</sup> Representative Faith Winter, the bill's Democratic sponsor in the Colorado General Assembly, argued that the law was necessary to clarify a convoluted area of existing law and that this clarity would benefit both workers and businesses and reduce litigation.<sup>282</sup> Senator Beth Martinez Humenik (R), another bill sponsor, emphasized that the law would protect pregnant workers' economic security and keep them from needing support from public assistance programs.<sup>283</sup>

**The Colorado Chamber of Commerce worked to “make the bill fair to workers and reasonable for manufacturers” and ultimately took a neutral position on the bill as did the Colorado Association of Commerce and Industry (CACI), the state chapter of the National Federation of Independent Business (NFIB), Denver Chamber of Commerce, and the Colorado Civil Justice League.**<sup>284</sup>

## Key Quotes

“When women are pushed out of the workplace because of their desire to have a healthy pregnancy, not only do they lose income, but they lose economic security, health benefits, insurance, especially at a time when they need it most and they need more stability for their families. This lack of stability increases the amount of people needing Medicaid and other government programs rather than being self-sustaining.”<sup>285</sup>

—*Sen. Beth Martinez Humenik (R, sponsor)*

“What this bill is designed to do is ensure that no pregnant woman has to choose between having a healthy pregnancy and keeping her job and having a paycheck.”<sup>286</sup>

—*Rep. Faith Winter (D, sponsor)*

## DID YOU KNOW?

Nearly half of all U.S. births occur on Medicaid,<sup>287</sup> and women living in poverty are more likely to have costly health complications during their pregnancies that impact both maternal and infant health.<sup>288</sup> This same population is disproportionately affected by the lack of clear law providing simple accommodations so they can stay healthy and on the job.

# NEVADA

BIPARTISAN  
PASSAGE

## History

The Nevada Pregnant Workers' Fairness Act passed in June 2017.<sup>289</sup> Senator Nicole Cannizzaro focused on the need to give pregnant workers the right to a reasonable accommodation following *Young v. UPS*, because "unless we are enacting policies that specifically require employers to provide these accommodations, the PDA may not cover them unless employers are providing similar accommodations for injured or disabled workers."<sup>290</sup> Senator Cannizzaro emphasized the common-sense nature of the legislation and the minimal cost of most accommodations.<sup>291</sup>

**The Nevada Resort Association, Las Vegas Metro Chamber of Commerce, Nevada Restaurant Association, Reno + Sparks Chamber of Commerce, and Retail Association of Nevada all took a neutral position on the bill.**<sup>292</sup>

## Key Quotes

"I rise in firm support of this bill. We need to support families."<sup>293</sup>

—*Sen. Joe Hardy (R, co-sponsor)*

"From West Virginia to Utah to California, lawmakers have concluded that accommodating pregnant workers who need accommodations is a measured approach grounded in family values and basic fairness."<sup>294</sup>

—*Sen. Nicole J. Cannizzaro (D)*

### DID YOU KNOW?

Ensuring pregnant workers stay safe on the job will reduce employers' healthcare costs. According to the March of Dimes, each premature/low birth weight baby costs employers an additional \$49,760 in newborn health care costs. When maternal costs are added, employers and their employees pay \$58,917 more when a baby is born prematurely.<sup>295</sup>

# WASHINGTON

UNANIMOUS  
PASSAGE

## History

In 2017, the Washington state legislature passed a bill requiring reasonable accommodations for pregnant workers.<sup>296</sup> Washington legislators speaking in support of the bill, which also established a Healthy Pregnancy Advisory Committee, emphasized that reasonable accommodations for pregnant workers improve health outcomes for pregnant women and babies.<sup>297</sup> Washington state lawmakers spoke passionately about the role the law would play in protecting pregnant workers' economic security and in remedying discrimination in the workplace.<sup>298</sup>

**The Washington Federation of Independent Business (the NFIB Chapter) and the Washington Retail Association supported the bill.**<sup>299</sup>

### DID YOU KNOW?

Access to a healthy pregnancy is a racial justice issue. Black women are more than three times as likely to die due to pregnancy and childbirth as white women.<sup>303</sup> The PWFA is one of numerous solutions the U.S. must adopt to address the racial disparities in maternal mortality.

## Key Quotes

"Certainly every member of this body appreciates the challenges of a woman when she is trying to stay in the labor force. And I think this is a pretty simple and straightforward bill, that if employers do the right thing, do the reasonable thing, everything should work out all right."<sup>300</sup>

—*Sen. Michael Baumgartner (R)*

"Every single woman, whether she works in the tech industry, is making beds working in a hotel, standing in a checkout line as a cashier. . . . every single woman should have access to a healthy pregnancy. And reasonable accommodation on the job is a key ingredient to that. I am urging a yes vote tonight. A vote on this bill is to stand with women."<sup>301</sup>

—*Rep. Jessyn Farrell (D, sponsor)*

"[The Washington Retail Association] has worked on this issue for several years. WRA was able to negotiate a bill that in essence sets in place common practice in the employer community. The bill is a reasonable compromise to ensure both pregnant employees and their employers are protected."<sup>302</sup>

—*Washington Retail Association, 2017 Laws and Legislative Review*



**NFIB Washington**

@nfib\_wa



Congratulations #waleg Sen. @KarenKeiser1. SB 5835, Healthy Outcomes for Pregnant Workers, passed 48-0. We appreciate cooperative approach.<sup>304</sup>

2:56 PM - Mar. 8, 2017



# CONNECTICUT

BIPARTISAN  
PASSAGE

## History

Connecticut passed a law requiring reasonable accommodations for pregnant workers in July 2017.<sup>305</sup> Connecticut legislators argued that the bill was needed to clarify and strengthen existing law, protect women's financial security, and promote healthy pregnancies.<sup>306</sup> Connecticut lawmakers also noted that the reasonable accommodations contemplated by the law are not expensive to employers, but end up benefiting businesses by reducing turnover and increasing employee satisfaction and productivity.<sup>307</sup>

## Key Quotes

"HB 6668. . . . emerged a far better bill thanks to bipartisan cooperation, with lawmakers considering its impact on businesses."<sup>308</sup>

—*Connecticut Business and Industry Association*

"Just as women should be given equal pay for equal work, they should not face discrimination when pregnant in the workplace."<sup>309</sup>

—*Rep. Cristin McCarthy Vehey (D)*

## DID YOU KNOW?

The wage gap between men and women has stayed stubbornly stuck around 20 percent for the last decade.<sup>310</sup> And the figure is much worse for women of color. In Connecticut, for example, Black women are paid only 58 cents and Latina women only 47 cents for every dollar earned by white, non-Hispanic men. And in other states the gap is much worse. For instance, Wyoming has a state-wide gap of 36 percent and Indiana has a gap of 27 percent.<sup>311</sup>

# VERMONT

## History

The Vermont law calling for reasonable accommodations for pregnant workers passed in 2017<sup>312</sup> and went into effect January 2018. The bill, signed into law by Governor Phil Scott (R), was sponsored in the House of Representatives by Representative George Till, an obstetrician and gynecologist who had seen the need for this law in his own patients' struggles to maintain their jobs while pregnant, and argued that pregnant workers should be entitled to reasonable accommodations in the same way workers with disabilities are.<sup>313</sup> Lawmakers pointed to the shortcomings of existing law, particularly the PDA following *Young*, and argued that pregnant workers should be entitled to reasonable accommodations in the same way workers with disabilities are.<sup>314</sup>

## Key Quotes

"I've seen people fired for asking for a completely reasonable accommodation. I've seen people too afraid to ask for an accommodation because they feared losing their job just for asking. I look forward to telling these women that Vermont law now protects them."<sup>315</sup>

—Rep. George Till (D, sponsor) and OB-GYN

"Madam Speaker, this bill demonstrates that the Green Mountain State is a kind state, ad [sic] the kind of state where young people and their families can work, live and play."<sup>316</sup>

—Rep. Valerie Stuart (D)

## DID YOU KNOW?

Nearly 40 percent of women who feel they need an accommodation never request one, likely out of fear of retaliation.<sup>317</sup>





# MASSACHUSETTS

UNANIMOUS  
PASSAGE

## History

The Massachusetts Pregnant Workers Fairness Act passed unanimously in July 2017<sup>318</sup> and went into effect April 2018. Massachusetts lawmakers focused on the need to protect the economic security of pregnant workers and their families.<sup>319</sup> Legislators recognized that women are valued members of the workforce and that a law requiring reasonable accommodations was necessary to ensure that pregnant workers are able to remain at work and continue earning paychecks to support their families.<sup>320</sup>

**The Associated Industries of Massachusetts—one of the largest business lobbies in the state with 4,000 employer members—outspokenly supported the bill.**<sup>321</sup>

### DID YOU KNOW?

Women who lose their health insurance shortly before going into labor could be looking at astronomical childbirth costs, which average \$30,000 for a vaginal delivery and \$50,000 for a C-section in the U.S.<sup>327</sup>

## Key Quotes

“A woman’s healthy pregnancy should not be incompatible with her ability to earn a paycheck, maintain economic security and retain insurance benefits all of which are of vital importance as a family is about to grow.”<sup>322</sup>

—*Sen. Bruce Tarr (R)*

“It doesn’t seem unreasonable to ask employers to provide accommodations for an expectant mother to be able to do their job. It’s a fair compromise.”<sup>323</sup>

—*Rep. Brad Jones (R)*

“I write on behalf of 4,000 member employers of Associated Industries of Massachusetts (AIM) to urge you to sign H.3680, an act establishing the pregnant workers fairness act. H.3680 was passed unanimously in both branches. . . . [it] allows employees to make arrangements that permit them to remain on the job through a pregnancy while creating a pathway for employers to create reasonable accommodations.”<sup>324</sup>

—*Richard C. Lord, President and CEO of Associated Industries of Massachusetts in a letter urging Governor Charlie Baker to sign the PWFA*

“Many people might call this long overdue in common sense reforms. But I think for all of us today, we’ll just leave it as a job well done.”<sup>325</sup>

—*Governor Charlie Baker (R)*

“Pregnant workers and their families deserve the protections contained in this law to ensure their health, safety and prosperity. It is a clear recognition of the important role these individuals play in our households, economy and society.”<sup>326</sup>

—*Sen. Joan Lovely (D, sponsor)*

# SOUTH CAROLINA

## History

The South Carolina Pregnancy Accommodations Act passed with overwhelming bipartisan support on May 18, 2018.<sup>328</sup> South Carolina legislators argued existing federal and state laws did not directly address the issue of pregnancy accommodations, and that accommodations were needed in order to keep women in the workplace throughout their pregnancies.<sup>329</sup> Legislators also noted that reasonable accommodations are simple and inexpensive to employers, and benefit them by improving retention.<sup>330</sup>

**The South Carolina Chamber of Commerce took a “neutral” position on the bill.<sup>331</sup>**

## Key Quotes

“My big thing was, do people really not give their pregnant employees some accommodations, I mean, is this a problem that we’re really having, and some of the testimony that we heard was that yes, that they’re not able to be accommodated. . . . I would like to think that if you’ve got a good employee you’re going to want to keep her, and therefore you would make accommodations that are reasonable.”<sup>332</sup>

—*Sen. Sandy Senn (R, sponsor)*

“This legislation is aimed at helping women, pregnant women, to continue to work when they are pregnant through the later stages of pregnancy. And current federal law addresses pregnant [sic] discrimination, leave, and disability in the workplace, those are too limited.”<sup>333</sup>

—*Rep. Beth Bernstein (D, sponsor)*

## DID YOU KNOW?

Sixty-five percent of women work through their last month of pregnancy.<sup>334</sup>

# KENTUCKY

BIPARTISAN  
PASSAGE

## History

The Kentucky Pregnant Workers Act passed in March 2019 with overwhelming bipartisan support,<sup>335</sup> and Governor Bevin (R) signed the bill into law on April 9, 2019. The legislation was inspired in part by Florence, Kentucky police officers Lyndi Trischler and Sam Riley, who bravely spoke out after they were pushed off their jobs for requesting light duty.<sup>336</sup> As Officer Trischler explained, “My heavy gun belt was causing abdominal pains, my bullet-proof vest was so tight I could barely breathe, and I was having heart palpitations. But my employer, the City of Florence, would not accommodate me”<sup>337</sup> because they had a policy of not accommodating off-the-job injuries. Officers Trischler and Riley fought for the bill’s passage so that no pregnant worker would have to go through what they did. The bill sponsor, Senator Alice Forgy Kerr (R), emphasized the “rare opportunity” to support legislation that “helps employers and helps a vital, growing part of our workforce.”<sup>338</sup>

**The bill garnered outspoken support from Greater Louisville Inc., the metro Louisville, Kentucky chamber of commerce.**<sup>339</sup>

## Key Quotes

“If there had been a clear law on the books, then this likely never would have happened. I am fighting for the Kentucky Pregnant Workers’ Rights Act so that no other woman in my home state has to go through what I did.”<sup>342</sup>

—*Lyndi Trischler, police officer for the City of Florence, Kentucky*

“[This] is a simple, straightforward bill that answers a difficult and complex question: What are an employer’s responsibilities when it comes to making reasonable accommodations for employees affected by pregnancy?”<sup>343</sup>

—*Sen. Alice Forgy Kerr (R, sponsor)*

“This is pro-business, pro-workforce legislation that will be good for our state’s economy.”<sup>344</sup>

—*Iris Wilbur, Director of Government Affairs for Greater Louisville Inc.*

“Making reasonable accommodations to the physical transitions of pregnancy can help alleviate health concerns, and the related disparities, while allowing pregnant workers to continue earning an income during this important stage of their lives.”<sup>345</sup>

—*Louisville Department of Public Health*

## DID YOU KNOW?

According to the Louisville Department of Public Health, Kentucky has the fifth highest rate of preterm birth in the country, with more than 11 percent of babies born preterm.<sup>340</sup> Reasonable accommodations can help reduce the risk of preterm birth.<sup>341</sup>



**In addition to the laws outlined, laws in Alaska,<sup>346</sup> California,<sup>347</sup> Hawaii,<sup>348</sup> Louisiana,<sup>349</sup> Maryland,<sup>350</sup> North Carolina,<sup>351</sup> and Texas<sup>352</sup> also require reasonable accommodations or greater protections to be made for certain pregnant workers.**



## Part IV.

# Conclusion

## It Is Time for a Federal Pregnant Workers Fairness Act

As state legislators have said time and again, federal law is confusing and needs to be fixed. It is time for the federal government to step in and do just that.

The bipartisan Pregnant Workers Fairness Act would ensure that pregnant workers can stay safe and healthy at work. The law would require employers to provide reasonable accommodations to employees for pregnancy, childbirth, and related medical conditions, unless such accommodation would cause an undue hardship for the employer. Examples of reasonable accommodations might include more frequent or longer breaks, access to a stool to sit on, and access to a water bottle. An employer cannot unilaterally force a pregnant worker to take leave when another reasonable accommodation could help keep her on the job. Much like all the post-2013 state laws, the PWFA uses an existing reasonable accommodation framework, closely modeled after the Americans with Disabilities Act, that is familiar to employers. All the state laws that have passed since 2013 use this reasonable accommodation framework.<sup>353</sup>

**The PWFA would solidify the groundwork laid by the states. As one conservative state senator said in a letter to Congress supporting the federal PWFA, “This is a necessary, simple and logical approach to ensuring equality.”<sup>354</sup>**

The United States is failing its pregnant workers, and in turn its families. Current federal law failed Ceedria, Cassandra, Janasia, and all the other women featured in this report, who deserved so much better. In order to ensure that pregnant women stand on an equal plane in the workplace, and that no woman ever has to face what these women did, this country needs an explicit right to reasonable accommodations for pregnant workers.

When Democratic New Jersey Senator Harrison Williams introduced the Pregnancy Discrimination Act (PDA) in 1978, he said, “The Congress has consistently recognized that there cannot be a place for unequal treatment of men and women in a country that takes pride in its heritage of freedom and democracy.”<sup>355</sup> Yet, nearly two decades into the 21st Century, pregnant workers still face terribly unequal treatment in the workplace. It is time for Congress to finally make good on its promise to pregnant workers by passing the Pregnant Workers Fairness Act.



# Endnotes

- 1 *Huffman v. Speedway LLC*, 621 Fed. App'x 792, 793 (6th Cir. 2015).
- 2 *Adduci v. Fed. Express Corp.*, 298 F. Supp. 3d 1153, 1156 (W.D. Tenn. 2018).
- 3 *Wadley v. Kiddie Acad. Int'l, Inc.*, No. CV 17-05745, 2018 WL 3035785, at \*1 (E.D. Pa. June 19, 2018).
- 4 *Legg v. Ulster Cty.*, No. 1:09-CV-550 (FJS/RFT), 2017 WL 3207754, at \*5 (N.D.N.Y. July 27, 2017), *appeal docketed*, No. 17-2861 (2d Cir. Sept. 14, 2017).
- 5 *Durham v. Rural/Metro Corp.*, No. 4:16-CV-01604-ACA, 2018 WL 4896346, at \*1 (N.D. Ala. Oct. 9, 2018), *appeal docketed*, No. 18-14687 (11th Cir. Nov. 7, 2018). *See also* Brief of A Better Balance & Ctr. for WorkLife Law et al. as Amici Curiae Supporting Plaintiff-Appellant, *Durham v. Rural/Metro Corp.*, No. 18-14687 (11th Cir. Feb. 8, 2019) [hereinafter *Durham Amicus Brief*], <https://www.abetterbalance.org/resources/brief-of-amici-curiae-a-better-balance-center-for-worklife-law-et-al-in-support-of-plaintiff-appellant-urging-reversal/>.
- 6 *See Huffman*, 621 Fed. App'x at 793, 799–800; *Adduci*, 298 F. Supp. 3d at 1156, 1161–63; *Legg*, 2017 WL 3207754, at \*5–10; *Wadley*, 2018 WL 3035785, at \*1, \*4; *Durham*, 2018 WL 4896346, at \*1, \*3–4.
- 7 *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338, 1354 (2015).
- 8 *Id.*
- 9 Dina Bakst, Op-Ed., *Peggy Young's Victory Is Not Enough*, U.S. NEWS & WORLD REPORT (Mar. 26, 2015), <https://www.usnews.com/opinion/economic-intelligence/2015/03/26/peggy-young-supreme-court-victory-is-not-enough-for-pregnant-workers>.
- 10 *See infra* Part III.
- 11 *See infra* p. 30.
- 12 *Sen. Bonini Testifies in Support of Pregnant Workers Fairness Act*, CAPE GAZETTE (Apr. 2, 2016), <https://www.capegazette.com/article/sen-bonini-testifiessupport-pregnant-workers-fairness-act/101508>.
- 13 42 U.S.C. § 2000e(k) (2019).
- 14 123 Cong. Rec. 29,385 (1977), *reprinted in* Legislative History of the Pregnancy Discrimination Act of 1978, Public Law 95-555: Prepared for the Comm. on Labor and Human Resources, United States Senate 3 (1980) (Senator Harrison Williams, the PDA's sponsor, said in his introductory remarks, "There are more women in the workforce than ever before. . . . Twenty-five million of these women are [working] because of the basic need to support their families.>").
- 15 *See* Wendy Chavkin, Op-Ed., *Congress Should Help Pregnant Workers Stay Healthy and On the Job*, THE HILL (June 4, 2015, 11:30 AM), <http://thehill.com/blogs/congress-blog/healthcare/243899-congress-should-help-pregnant-workers-stay-healthy-and-on-the>.
- 16 *See Enforcing the Rights of Pregnant Workers*, A BETTER BALANCE (May 3, 2017), <https://www.abetterbalance.org/resources/enforcing-the-rights-of-pregnant-workers-success-stories/> (highlighting the stories of two pregnant police officers who were pushed off the job when they needed light duty).
- 17 *See* A BETTER BALANCE, PREGNANT AND JOBLESS: THIRTY-SEVEN YEARS AFTER PREGNANCY DISCRIMINATION ACT, PREGNANT WOMEN STILL CHOOSE BETWEEN A PAYCHECK AND A HEALTHY PREGNANCY 11 (2015) [hereinafter *PREGNANT AND JOBLESS*], <https://www.abetterbalance.org/wp-content/uploads/2017/01/PregnantandJobless.pdf>; OXFAM AMERICA, WOMEN ON THE LINE: A REVIEW OF WORKPLACE GENDER ISSUES IN THE US POULTRY INDUSTRY 11–12 (2018) (citing interview of Ahmed Ali, Lead Organizer at the Greater Minnesota Worker Center in St. Cloud, Minnesota, on January 7, 2016), [https://s3.amazonaws.com/oxfam-us/www/static/media/files/Women\\_on\\_the\\_Line\\_Poultry\\_Workers.pdf](https://s3.amazonaws.com/oxfam-us/www/static/media/files/Women_on_the_Line_Poultry_Workers.pdf).
- 18 *See* A BETTER BALANCE & NAT'L WOMEN'S LAW CTR., IT SHOULDN'T BE A HEAVY LIFT: FAIR TREATMENT FOR PREGNANT WORKERS 11 (2013), [hereinafter *IT SHOULDN'T BE A HEAVY LIFT*], <https://www.abetterbalance.org/resources/it-shouldnt-be-a-heavy-lift/>.
- 19 *Id.* at 12.
- 20 *PREGNANT AND JOBLESS*, *supra* note 17, at 21.
- 21 *See* Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act, 29 C.F.R. § 1630.2(h) (2018); *see also* EQUAL EMP. OPPORTUNITY COMM'N, ENFORCEMENT GUIDANCE: PREGNANCY DISCRIMINATION AND RELATED ISSUES (2015), [https://www.eeoc.gov/laws/guidance/pregnancy\\_guidance.cfm](https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm).
- 22 *See Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338, 1349 (2015); *see also* Brief of Am. Civil Liberties Union & A Better Balance et al. as Amici Curiae Supporting Petitioner, *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338 (2015) (No. 12-1226) [hereinafter *Young Amicus Brief*], <https://www.abetterbalance.org/resources/supreme-court-pregnancy-decision-young-v-ups/>.
- 23 Dina Bakst, Op-Ed., *Pregnant, and Pushed Out of a Job*, N.Y. TIMES, Jan. 30, 2012, <http://www.nytimes.com/2012/01/31/opinion/pregnant-and-pushed-out-of-a-job.html>.
- 24 *Id.*

- 25 See A BETTER BALANCE, PREGNANCY ACCOMMODATIONS IN STATES & CITIES (2019) [hereinafter PREGNANCY ACCOMMODATIONS IN STATES & CITIES], [https://www.abetterbalance.org/wp-content/uploads/2019/01/PWFA\\_StateList.pdf](https://www.abetterbalance.org/wp-content/uploads/2019/01/PWFA_StateList.pdf).
- 26 See *Client Victory: New Jersey Worker Illegally Pushed Off the Job Is Reinstated!*, A BETTER BALANCE (Oct. 17, 2018), <https://www.abetterbalance.org/client-victory-new-jersey-worker-illegally-pushed-off-the-job-is-reinstated/>.
- 27 Jessica Silver-Greenberg & Natalie Kitroeff, *Miscarrying at Work: The Physical Toll of Pregnancy Discrimination*, N.Y. TIMES, Oct. 21, 2018, <https://www.nytimes.com/interactive/2018/10/21/business/pregnancy-discrimination-miscarriages.html>.
- 28 *Id.*
- 29 *Id.*
- 30 *Id.*
- 31 *Id.*
- 32 *Id.*
- 33 *Id.*
- 34 See *infra* Part II: The Health Case for Pregnancy Accommodations.
- 35 See PREGNANT AND JOBLESS, *supra* note 17, at 5.
- 36 See *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338, 1349 (2015).
- 37 Young Amicus Brief, *supra* note 22, at 8–9 (discussing the circuit split on the issue of accommodations prior to *Young*).
- 38 See, e.g., *Hicks v. City of Tuscaloosa*, 870 F.3d 1253, 1261 (11th Cir. 2017) (affirming judgment on PDA claim in favor of a patrol officer who was denied a breastfeeding accommodation); *Brown v. Aria Health*, No. CV 17-1827, 2019 WL 1745653, at \*8 (E.D. Pa. Apr. 17, 2019) (denying employer's motion for summary judgment on a PDA claim brought by an operating room nurse who was forced out of work after, on the advice of her doctor, she requested to be re-assigned to operating rooms where she could avoid exposure to dangerous substances during her pregnancy); *Thomas v. Fla. Parishes Juvenile Justice Comm'n*, No. 18-2921, 2019 WL 118011, at \*8 (E.D. La. Jan. 7, 2019) (denying employer's motion for summary judgment on a PDA claim by a juvenile detention officer who was denied a request to be excused from a physical fitness test); *Clark v. City of Tucson*, No. CV 14-02543-TUC-CKJ, 2018 WL 1942771, at \*17 (D. Ariz. Apr. 25, 2018) (denying defendant's motion for summary judgment on PDA claim brought by a fire department employee penalized for needing breastfeeding accommodations, finding "reasonable minds could differ as to whether Defendant's actions were discriminatory on the whole"); *Norris v. City Portland*, No. 2:16-cv-390-NT, 2017 WL 3613024, at \*3 (D. Me. Aug. 22, 2017) (denying employer's motion for summary judgment on PDA claim brought by a financial eligibility specialist terminated very shortly after telling her employer she was pregnant and requesting reasonable accommodation related to temporary pregnancy-related restrictions); *Taylor v. C&B Piping, Inc.*, No. 2:14-cv-01828-MHH, 2017 WL 1047573, at \*4 (N.D. Ala. Mar. 20, 2017) (denying an employer's motion to dismiss a PDA claim brought by an accounting clerk who was denied a lifting restriction); *Boyne v. Town & Country Pediatrics & Family Med.*, No. 3:15-CV-1455 (MPS), 2017 WL 507212, at \*4 (D. Conn. Feb. 7, 2017) (denying employer's motion to dismiss a PDA claim brought by a medical assistant who was refused receptionist duty as an accommodation following a complicated birth); *Thomas v. Monroe Cty. Sheriff's Dep't.*, No. 15-11344, 2016 WL 5390860, at \*8 (E.D. Mich. Sept. 27, 2016) (denying employer's motion for summary judgment on a PDA claim brought by a plaintiff who was not rehired as a deputy sheriff while on light duty); *Oliver v. Scranton Materials, Inc.*, No. 3:14-CV-00549, 2016 WL 3397679, at \*5–6 (M.D. Pa. June 13, 2016) (denying employer's motion for summary judgment on a PDA claim brought by a plaintiff who was fired after requesting additional leave as an accommodation after giving birth to triplets); *Allen-Brown v. D.C.*, 174 F. Supp. 3d 463, 480 (D.D.C. 2016) (denying employer's motion for summary judgment on a PDA claim brought by a patrol officer who was denied a limited-duty accommodation); *Gonzales v. Marriott Int'l, Inc.*, 142 F. Supp. 3d 961, 978 (C.D. Cal. 2015) (denying employer's motion to dismiss a PDA claim brought by an accountant who was denied lactation accommodations after giving birth as a surrogate); *Martin v. Winn-Dixie Louisiana, Inc.*, 132 F. Supp. 3d 794, 822 (M.D. La. 2015) (denying employer's motion for summary judgment on a PDA claim brought by a store manager forced onto unpaid leave after requesting lifting accommodation); *Bray v. Town of Wake Forest*, No. 5:14-CV-276-FL, 2015 WL 1534515, at \*6 (E.D.N.C. Apr. 6, 2015) (denying employer's motion to dismiss a PDA claim brought by a police officer who was denied a light duty accommodation); *LaSalle v. City of New York*, No. 13-cv-5109, 2015 WL 1442376, at \*4 (S.D.N.Y. Mar. 30, 2015) (denying employer's motion to dismiss a PDA claim brought by a van driver who was denied a light duty accommodation).
- 39 *Swanger-Metcalf v. Bowhead Integrated Support Servs., LLC*, No. 1:17-cv-2000, 2019 WL 1493342, at \*8 (M.D. Pa. Mar. 31, 2019).
- 40 *Portillo v. IL Creations, Inc.*, No. CV 17-1083 (RDM), 2019 WL 1440129, at \*6 (D.D.C. Mar. 31, 2019).
- 41 *Dudhi v. Temple Health Oaks Lung Ctr*, No. 18-3514, 2019 WL 426145, at \*6 (E.D. Pa. Feb. 4, 2019).
- 42 *Luke v. CPlace Forest Park SNF*, 747 Fed. App'x. 978, 980 (5th Cir. 2019).
- 43 *Sorah v. New Horizons Home Healthcare L.L.C.*, No. 1:16-CV-291-TLS, 2018 WL 5830753, at \*5 (N.D. Ind. Nov. 7, 2018).
- 44 *Waite v. Bd. of Trustees of Univ. of Alabama*, No. 2:16-CV-01244-JEO, 2018 WL 5776265, at \*16 (N.D. Ala. Nov. 2, 2018).
- 45 *Durham v. Rural/Metro Corp.*, No. 4:16-CV-01604-ACA, 2018 WL 4896346, at \*4 (N.D. Ala. Oct. 9, 2018).
- 46 *Wadley v. Kiddie Acad. Int'l, Inc.*, No. CV 17-05745, 2018 WL 4732479, at \*5 (E.D. Pa. Oct. 1, 2018).
- 47 *Lee v. TransAm Trucking, Inc.*, No. 17-2150, 2018 WL 3432045, at \*7 (D. Kan. July 16, 2018).

- 48 *Adduci v. Fed. Express Corp.*, 298 F. Supp. 3d 1153, 1160–63 (W.D. Tenn. 2018). The court allowed Adduci’s disparate impact claim to proceed, but subsequently dismissed that claim following a bench trial. *See* Opinion and Order Following Non-Jury Trial, *Adduci v. Fed. Express Corp.*, No. 17-cv-2017-JPM-tmp (W.D. Tenn. July 26, 2018), ECF No. 106.
- 49 *Santos v. Wincor Nixdorf, Inc.*, No. 16 Civ. 440-RP, 2018 WL 1463710, at \*8 (W.D. Tex. Mar. 23, 2018).
- 50 *Jones v. Brennan*, 16-CV-0049-CVE-FHM, 2017 WL 5586373, at \*6–7 (N.D. Okla. Nov. 20, 2017).
- 51 *Everett v. Grady Mem’l Hosp. Corp.*, 703 Fed. App’x 938, 949 (11th Cir. 2017).
- 52 *Vidovic v. City of Tampa*, No. 8:16-cv-T-17AAS, 2017 WL 10294807, at \*9 (M.D. Fla. Oct. 12, 2017).
- 53 *Webster v. U.S. Dep’t of Energy*, 267 F. Supp. 3d 246, 264 (D.D.C. 2017).
- 54 *See* Jury Instructions, *Legg v. Ulster Cty.*, No. 1:09-CV-550 (FJS/RFT) (N.D.N.Y. Aug. 30, 2016), ECF No. 185.
- 55 *Legg v. Ulster Cty.*, No. 1:09-CV-550 (FJS/RFT), 2017 WL 3207754, at \*8 (N.D.N.Y. July 27, 2017), *appeal docketed*, No. 17-2861 (2d Cir. Sept. 14, 2017).
- 56 *Turner v. Hartford Nursing and Rehab*, No. 16 Civ. 12926, 2017 WL 3149143, at \*6 (E.D. Mich. July 25, 2017).
- 57 *LaCount v. South Lewis SH OPCO*, No. 16-CV-0545-CVE-TLW, 2017 WL 2821814, at \*2 (N.D. Okla. June 29, 2017).
- 58 *Anfeldt v. United Parcel Serv., Inc.*, No. 15 Civ. 10401, 2017 WL 839486, at \*3 (N.D. Ill. Mar. 3, 2017).
- 59 *Jackson v. J.R. Simplot Co.*, 666 Fed. App’x 739, 743 (10th Cir. 2016).
- 60 *Brown v. OMO Group, Inc.*, No. 15–cv–01473–MSK–CBS, 2016 WL 11200704, at \*6 (D.S.C. Dec. 12, 2016).
- 61 *Diaz v. Florida*, 219 F. Supp. 3d 1207, 1218 (S.D. Fla. 2016).
- 62 *Mercer v. Gov’t of the Virgins Islands Dep’t of Educ.*, No. 2014-50, 2016 WL 5844467, at \*11–12 (D.V.I. Sept. 30, 2016).
- 63 *Lawson v. City of Pleasant Grove*, No. 2:14-CV-0536-JEO, 2016 WL 2338560, at \*10–11 (N.D. Ala. Feb. 16, 2016), *rep. and recommendation adopted*, No. 2:14-CV-536-KOB, 2016 WL 1719667 (N.D. Ala. Apr. 29, 2016).
- 64 *Salmon v. Applegate Homecare & Hospice, LLC*, No. 1:13-cv-00109-DN, 2016 WL 389987, at \*10 (D. Utah Feb. 1, 2016).
- 65 *Mejdoub v. Desjardins Bank, N.A.*, No. 15–cv–01473–MSK–CBS, 2016 WL 4369968, at \*5 (S.D. Fla. Jan. 11, 2016).
- 66 *Brown v. Sam’s E., Inc.*, No. CA 3:13-1149-MBS, 2015 WL 5671436, at \*15 (D.S.C. Sept. 25, 2015).
- 67 *Sanchez-Estrada v. MAPFRE PRAICO Ins. Co.*, 126 F. Supp. 3d 220, 231–35 (D.P.R. 2015).
- 68 *Huffman v. Speedway LLC*, 621 Fed. App’x 792, 799 (6th Cir. 2015).
- 69 *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338, 1354 (2015).
- 70 *Id.*
- 71 *Legg*, for example, was initially filed in 2009. Since then, the case has gone to trial twice and, after a 2017 decision in the district court, is back up on appeal to the Second Circuit. *See Meadors v. Ulster Cty.*, 984 F. Supp. 2d 83, 88 (N.D.N.Y. 2013) (complaint filed May 11, 2009); *vacated sub nom.*, *Legg v. Ulster Cty.*, 820 F.3d 67 (2d Cir. 2016); *Legg v. Ulster Cty.*, No. 1:09-CV-550, 2017 WL 3207754 (N.D.N.Y. 2017); *appeal docketed*, No. 17-2861 (2d Cir. Sept. 14, 2017).
- 72 *Adduci v. Fed. Express Corp.*, 298 F. Supp. 3d 1153, 1156 (W.D. Tenn. 2018).
- 73 *Id.*
- 74 *Id.* at 1160.
- 75 *Id.* at 1164.
- 76 *Id.* at 1161–62. It should be noted that while the court dismissed Adduci’s disparate treatment claim, it did permit her disparate impact claim to move forward on the theory that “those employees’ [the employees in the spreadsheet] requests were granted means that less than 100% of TRW requests were denied when made by members outside of the protected class: pregnant women.” *Id.* at 1164. Several months later, the case went to a bench trial and Adduci lost. The court dismissed the case with prejudice finding Adduci “failed to show by a preponderance of the evidence that she has standing to challenge FedEx’s former AGFS exclusion to the TRW policy.” *See* Opinion and Order Following Non-Jury Trial, *Adduci v. Fed. Express Corp.*, No. 17-cv-2017-JPM-tmp (W.D. Tenn. July 26, 2018), ECF No. 106.
- 77 *Adduci*, 298 F. Supp. 3d. at 1161.
- 78 *Id.* at 1163.
- 79 *See* Opinion and Order Following Non-Jury Trial, *Adduci v. Fed. Express Corp.*, No. 17-cv-2017-JPM-tmp (W.D. Tenn. July 26, 2018), ECF No. 106.
- 80 *See Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338, 1354 (2015) (holding that making a prima facie case under the PDA does not “require the plaintiff to show that those whom the employer favored and those whom the employer disfavored were similar in all but the protected ways”).



- 81 *Durham v. Rural/Metro Corp.*, No. 4:16-CV-01604-ACA, 2018 WL 4896346, at \*3–4 (N.D. Ala. Oct. 9, 2018), *appeal docketed*, No. 18-14687 (11th Cir. Nov. 7, 2018). *See also* Durham Amicus Brief, *supra* note 5.
- 82 *Durham*, 2018 WL 4896346, at \*3.
- 83 The court in *Bray v. Town of Wake Forest* found that Bray, a police officer who was denied a light duty accommodation, met the comparator prong of the test by pointing to two other officers who were given light duty assignments. *Bray v. Town of Wake Forest*, No. 5:14-CV-276-FL, 2015 WL 1534515, at \*6 (E.D.N.C. Apr. 6, 2015). While the court opinion does not specify whether the injuries were on-the-job or off-the-job injuries, the Town's briefing documents in the case made clear that the officers' injuries were on-the-job injuries. *See* Memorandum of Law in Support of Defendant's Motion to Dismiss, *Bray v. Town of Wake Forest*, No. 5:14-CV-276-FL (E.D.N.C. June 17, 2014), ECF No. 11.
- 84 *Huffman v. Speedway LLC*, 621 Fed. App'x 792, 793 (6th Cir. 2015).
- 85 *Id.* at 793–95.
- 86 *Id.* at 799.
- 87 *Id.*
- 88 Bakst, *supra* note 9.
- 89 42 U.S.C. §§ 12101–12213 (2012).
- 90 *Wadley v. Kiddie Acad. Int'l, Inc.*, No. CV 17-05745, 2018 WL 3035785, at \*1 (E.D. Pa. June 19, 2018).
- 91 *Id.*
- 92 *Id.*
- 93 *Id.*
- 94 *Id.* at \*4 (granting employer's motion to dismiss because “Wadley does not allege however, any facts that allow the Court to infer that Kiddie accommodated others ‘similar in their ability or inability to work’”).
- 95 *See, e.g., Everett v. Grady Mem'l Hosp. Corp.*, 703 F. App'x 938, 947–49 (11th Cir. 2017); *Salmon v. Applegate Homecare & Hospice, LLC*, No. 1:13-cv-00109-DN, 2016 WL 389987, at \*7–10 (D. Utah Feb. 1, 2016).
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