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SEPTEMBER 2019: UPDATES SINCE THE RELEASE OF *LONG OVERDUE*

In the three months since we released *Long Overdue* in May 2019 the pregnancy accommodation landscape has continued to change in two key respects. First, pregnant workers are continuing to lose their Pregnancy Discrimination Act cases because courts continue to misapply the pregnancy accommodation framework from *Young v. UPS*, leaving pregnant workers without the accommodations they need to stay healthy and on the job. Second, in recognition of this problem, two additional states have passed state-level pregnant worker fairness laws bringing the total number of states with additional protections for pregnant workers in need of accommodation to 27.

The Pregnancy Discrimination Act continues to fail pregnant workers in need of accommodation. For instance:

- On August 7, 2019, in *Santos v. Wincor Nixdorf*,¹ the 5th Circuit Court of Appeals affirmed a Texas District Court's decision granting the employer summary judgment on the plaintiff's PDA claim because Michelle Santos, who requested a modified work schedule and was terminated a few days before giving birth, could not provide sufficient comparators. Multiple times, and citing to pre-*Young* case law, the 5th Circuit reiterated she needed "nearly identical" comparators. This is yet another example of *Young*, and the comparator framework, proving to be a significant barrier for pregnant workers.

States are continuing to step in to pass legislation similar to the federal bill granting explicit protections to pregnant workers. But state by state action is not enough.

- On May 22, 2019, Oregon passed a pregnant workers fairness law with bipartisan support requiring employers to provide *reasonable accommodations* for applicants or employees with known limitations related to pregnancy, childbirth, or a related medical condition unless it would impose an *undue hardship*.²
- On June 27, 2019, Maine passed a law with bipartisan support requiring *employers* to provide *reasonable accommodations* for pregnancy-related conditions unless it would cause an undue hardship.³

¹ *Santos v. Wincor Nixdorf, Inc.*, No. 19-50046, 2019 WL 3720441 (5th Cir. Aug. 7, 2019). *See also Allred v. Home Depot USA, Inc.*, No. 1:17-CV-00483-BLW, 2019 WL 2745731, at *8 (D. Idaho June 28, 2019) (granting summary judgment to employer who denied a lifting/scheduling restriction to a pregnant employee and whose manager refused to schedule her breaks to pump).

² H.B. 2341, 80th Legis. Assemb., Reg. Sess. (Or. 2019).

³ L.D. 666, 129th Leg., Reg. Sess. (Me. 2019).