



October 18, 2019

Subcommittee Chairwoman Bonamici and Ranking Member Comer
Civil Rights and Human Services Subcommittee
House Education and Labor Committee
2176 Rayburn House Office Building
Washington, DC 20515

Re: H.R. 2694, Pregnant Workers Fairness Act

Dear Chairwoman Bonamici and Ranking Member Comer:

The Women's Law Project urges passage of the Pregnant Workers Fairness Act, H.R. 2694, which will ensure reasonable accommodations in the workplace for pregnant workers unless an accommodation imposes an undue hardship on the employer.

The Women's Law Project is a nonprofit, legal advocacy organization based in Pennsylvania that seeks to advance the status of women and LGBTQ individuals through litigation, public policy advocacy, community education, and individual counseling. We represent Pennsylvania workers whose employers refuse to provide commonsense, reasonable accommodations. These refusals often force workers out of the workforce, reinforcing stereotypical gender roles related to parenting and caretaking. To eradicate sex discrimination, we must strengthen our laws to protect pregnant and parenting workers. Doing so will improve the health and wellbeing of women and children, and it will improve the economic security of struggling families.

No Worker Should Have to Choose Between Their Job and Their Health.

While many pregnant workers are able to work without needing any job modifications, some need reasonable accommodations to perform their jobs for the duration of their pregnancies. Workers in fields that involve frequent bending, heavy lifting, or standing for long periods of time may find it difficult to work under these conditions while they are pregnant. There are also many jobs that limit access to water or bathroom breaks, limitations that are often challenging for pregnant workers because of pregnancy-related physiological changes.¹ In these types of situations, the workplace poses a health risk to pregnant workers. For example, without regular access to a bathroom, a pregnant worker may be more likely to suffer from a urinary tract infection, which may increase the likelihood of preterm labor and delivery.²

When an employer refuses to provide an accommodation, the worker is either forced to continue working under hazardous conditions or is forced to leave their job. In many cases, they

¹ See K. L. Cheung & R.A. Lafayette, *Renal Physiology of Pregnancy*, 20 *Adv. Chronic Kidney Dis.* 209, 209-214 (2013).

² See N.M. Gilbert, et al., *Urinary Tract Infection as a Preventable Cause of Pregnancy Complications: Opportunities, Challenges, and a Global Call to Action*, 2 *Glob. Adv. Health Med.* 59, 59-69 (2013).

have no choice but to exhaust their parental leave—if they had any available to them in the first place—before the birth of their child. As a result, they may not have sufficient leave for post-childbirth recovery and may run out of leave before they are medically able to return to work, thus losing their right to return to work at all. The resulting gap in their employment affects their seniority and depresses their future earnings, contributing to life-long gender pay disparities and decreasing the worker’s ability to meet the economic needs of their family.

The Current Law Does Not Provide Adequate Protection for Pregnant Workers, Especially in Pennsylvania.

At the Women’s Law Project, we represent workers whose employers have denied their requests for such commonsense accommodations as access to water or use of a chair. In Philadelphia and Pittsburgh, where local anti-discrimination laws protect some pregnant workers in need of reasonable accommodations, we have more success obtaining accommodations than we have in other parts of the state where workers do not have a clear right to a reasonable accommodation due to pregnancy-related conditions. There is a growing number of states that have enacted state-wide protections for pregnant workers, but Pennsylvania is not yet among them. Pennsylvanians who work outside of Philadelphia and Pittsburgh must rely on existing federal and state laws, and these laws are often inadequate.

The Pregnancy Discrimination Act (PDA) of Title VII, the Pennsylvania Human Relations Act (PHRA), and the Americans with Disabilities Act (ADA) provide some protection for pregnant workers, but many workers have found that these laws do not go far enough.³ For example, pregnant workers often find it difficult to identify a non-pregnant, “similarly-situated” employee who received better treatment by the employer—a requirement courts impose when evaluating claims under the PDA or the PHRA⁴—because they simply do not know what accommodations their employers have given to other employees or what limitations those other employees have.

The ADA may provide some protection for pregnant workers because the definition of “disability” includes less severe and temporary impairments. However, there are still workers who fall through the cracks, especially when they are having healthy pregnancies and need only minor accommodations at work.⁵ Pregnant workers should not have to prove that their pregnancy-related impairment rises to the level of a disability in order to receive a temporary, reasonable accommodation that does not impose an undue hardship on their employer.

The PWFA Will Clarify Employer Obligations.

With the PWFA, Congress has an opportunity to fix the murky legal landscape that currently applies to pregnant workers and their employers. This law would clarify employers’ obligations by using a familiar framework from the ADA—requiring *reasonable* accommodations if doing so does not cause an *undue hardship on the employer*. This framework protects pregnant workers while minimizing the burden on employers. Similar laws have passed across the country, and businesses in these jurisdictions continue to thrive while pregnant workers are able to obtain the accommodations they need for their health and economic security. In places like Pennsylvania, where some localities have laws protecting pregnant workers and others do not, pregnant workers’ rights—and employers’ obligations—should not vary by zip code.

³ 42 U.S.C. § 2000(e)(k); 43 Pa. Cons. Stat. §§ 951-963; Philadelphia Code § 9-1103; ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553.

⁴ See, e.g., *Young v. United Parcel Service, Inc.*, 135 S.Ct. 1338 (2015).

⁵ See, e.g., *Swanger-Metcalf v. Bowhead Integrated Support Services, Inc.*, 2019 WL 1493342 (M.D. Pa.).

Conclusion

The PWFA will help workers stay healthy, keep their jobs, and support their families throughout and after their pregnancies. Its passage is especially important while we wait for our state government in Pennsylvania to follow in the footsteps of the growing number of states that have passed similar laws.

Sincerely,

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cc: Chairman Scott and Ranking Member Foxx