

# EMPLOYMENT

## FACT SHEET

# The Delaware Pregnant Workers Fairness Act: Making Room for Pregnancy on the Job

May 2014

### Pregnant and Pushed Out of Work

Although many women can continue working safely throughout their pregnancies, some women find that at some point during pregnancy some job activities – such as lifting, bending, or standing for long periods – begin to pose a challenge. Many of these women could continue to work without risk to themselves or their pregnancies with slight job modifications. But in the absence of such a modification, they may face an impossible choice between the health of their pregnancies and their jobs.

For example, Nicole Villanueva worked for a hospital in Delaware doing a combination of patient care and clerical work when she got pregnant. When she developed shortness of breath and tightness in her chest, her doctor recommended that she just do clerical work that would allow her to stay off her feet during the remainder of her pregnancy. She was told that the employer would not accommodate her because she was not injured at work. However, her employer also told her that she could not return to her regular job because of her pregnancy-related health issues, and terminated her employment.<sup>1</sup>

Today, more women are continuing to work while they are pregnant, and through later stages of pregnancy. For example, two-thirds of women who had their first child between 2006 and 2008 worked during pregnancy, and 88 percent of these first-time mothers worked into their last trimester.<sup>2</sup> Approximately 68 percent of women who give birth in Delaware in any given year are working women.<sup>3</sup>

Women's wages are absolutely critical to the wellbeing of their families – in 2010, nearly two-thirds of mothers were primary or co-breadwinners for their families.<sup>4</sup> Because a new baby means increased expenses, a woman's wages will often be particularly important to her family when she is pregnant and immediately after she has given birth. But too many employers refuse to provide even simple, temporary accommodations when a pregnant worker has a medical need for them, like a stool that would allow a pregnant cashier to sit instead of stand, or an exception from a rule against drinking water while working. As a result, pregnant women's health is put at risk, or they are forced out of their jobs at the moment they and their families can least afford it.

### The Delaware Pregnant Workers Fairness Act (S.B. 212)

The Delaware Pregnant Workers Fairness Act, S.B. 212, would ensure that pregnant women can continue to do their jobs and support their families by making it unmistakably clear that employers must grant the same sorts of accommodations for pregnancy, childbirth, and related conditions that they already make for temporary disabilities that are not related to pregnancy. The bill would:

- Require employers to make reasonable accommodations for employees who have limitations in their ability to work stemming from pregnancy, childbirth, or related conditions, including lactation, unless the accommodation would impose an undue

hardship on the employer. These accommodations might include:

- o Providing a stool to a pregnant employee experiencing swelling of the legs as a result of standing for an entire shift;
  - o Modifying a no-food-or-drink policy so that an employee can drink water to prevent painful and potentially dangerous uterine contractions;
  - o Reassigning occasional heavy lifting duties for a pregnant employee who has been advised not to lift more than 20 pounds by her health care provider; or
  - o Allowing a pregnant worker to fill an alternative, available position for which she is qualified if her current position imposes particular medical risks to her pregnancy.
- Prohibit employers from firing or otherwise penalizing a pregnant employee because she needs this sort of reasonable accommodation.
  - Prohibit employers from requiring a pregnant employee to accept changes to her work when the pregnant employee does not need any modification to do her job.
  - Prohibit employers from forcing a pregnant employee to take paid or unpaid leave when another reasonable accommodation would allow her to continue to work.

- Prohibit employers from making accommodations or benefits available to workers with on-the-job injuries, disabilities, or other limitations while excluding pregnant workers from these same accommodations or benefits.
- Require employers to provide written notice to employees of these rights.

## Good for Workers, Good for Business

Only 1.4 percent of employed people in Delaware give birth each year, and only a fraction of those workers would require accommodations.<sup>5</sup> Employer experience with disability accommodations and workplace flexibility policies show that the costs of accommodating pregnant workers are likely to be small – and that providing accommodations can be expected to reduce workforce turnover, increase employee satisfaction and productivity, and save workers' compensation and other insurance costs.<sup>6</sup>

## A Commonsense Solution

The Pregnant Workers Fairness Act provides a commonsense solution for pregnant workers in Delaware who are being asked to choose between their health and their livelihood.

1 See *Villanueva v. Christiana Care Health Services, Inc.*, No. Civ.A. 04-258-JJF, 2007 WL 188111 (D. Del. Jan. 23, 2007). Ms. Villanueva was forced to file a pregnancy discrimination lawsuit against her employer; she and the employer eventually agreed to settle her claims out of court.

2 U.S. Census Bureau, *Maternity Leave and Employment Patterns of First-Time Mothers 1961-2008*, 4, 6 (Oct. 2011).

3 See National Partnership for Women & Families, *Pregnant Workers Need the Pregnant Workers Fairness Act* (May 2013), <http://www.nationalpartnership.org/research-library/workplace-fairness/pregnancy-discrimination/pregnant-workers-need-pregnant-workers-fairness-act.pdf>.

4 Center for American Progress, *The New Breadwinners: 2010 Update* (April 2012), [http://www.americanprogress.org/issues/2012/04/epd\\_breadwinners.html](http://www.americanprogress.org/issues/2012/04/epd_breadwinners.html).

5 See National Women's Law Center, *Pregnant Workers Make Up a Small Share of the Workforce and Can Be Readily Accommodated: A State-by-State Analysis* (2013), [http://www.nwlc.org/sites/default/files/pdfs/state\\_by\\_state\\_analysis.pdf](http://www.nwlc.org/sites/default/files/pdfs/state_by_state_analysis.pdf).

6 See National Women's Law Center, *The Business Case for Accommodating Pregnant Workers* (2012), [http://www.nwlc.org/sites/default/files/pdfs/pregnant\\_workers\\_business\\_case\\_12.04.12.pdf](http://www.nwlc.org/sites/default/files/pdfs/pregnant_workers_business_case_12.04.12.pdf).