NATIONAL WOMEN'S LAW CENTER
EXPANDING THE POSSIBILITIES

EMPLOYMENT

FACT SHEET

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

May 2013

More than thirty years after passage of the Pregnancy Discrimination Act, pregnant women still face challenges on the job. This is especially so in jobs that require physical activity like running, lifting, standing, or repetitive motion—activities that may pose challenges to some women during some stages of pregnancy. 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:

- Heather Wiseman was a Wal-Mart sales floor associate. When she became pregnant, she began to suffer from urinary and bladder infections and started carrying a water bottle at work on her doctor's advice to ensure she stayed hydrated. Because of a rule that only cashiers could have water bottles at work, she was terminated.[1]
- Amanda Reeves, a pregnant truck driver, was instructed by her obstetrician not to lift more than 20 pounds and sought light duty work as her usual duties required her to lift up to 75 pounds. Her employer terminated her, as it made such modifications only to those injured on the job.[2]
- Victoria Serednyj was fired from her job as activities director in a nursing home after her employer refused to adjust her work duties so she could avoid moving heavy objects and stretching while standing on a ladder, as instructed by her doctor following a threatened miscarriage. Only a few minutes of her workday was typically spent on these activities and coworkers routinely volunteered to assist her, even prior to her pregnancy.[3]
- Patricia Leahy was a stock supervisor in an Old Navy store and asked whether she could avoid climbing ladders or lifting heavy objects for the final month and a half before her maternity leave. According to Leahy, her supervisors harassed her to withdraw this request. Shortly thereafter she was fired.[4]
- Amber Walker was the only female truck driver for a beer distributor. When she became pregnant and asked if someone could assist her with heavy lifting during the later months of her pregnancy or if she could be assigned to a different position during those months, her employer refused, though it had previously provided assistance to truck drivers with injuries and also had a policy of letting truck drivers who lost their license for drunk driving apply for new positions in sales. She was forced onto unpaid leave, which she exhausted six days after her baby was born. When she failed to return to work one week after giving birth, she was terminated.[5]

In all of these examples, women challenged their termination in court and lost. Their cases are not unique.[6]

11 Dupont Circle NW, Suite 800, Washington, DC 20036 | 202.588.5180 Fax 202.588.5185 | www.nwlc.org

Pregnant Women's Work Is Crucial to Families' Economic Security

Today, women make up about half the workforce.[7] More women are continuing to work while they are pregnant, 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.[8]

The great majority of women also return to the workforce after pregnancy: 71 percent of mothers are in the labor force.[9] In 2010, 41 percent of working mothers were their family's primary breadwinner.[10] 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.

Mismatch between job duties and the demands of pregnancy tends to take a particular toll on low-income women, who are more likely to work in jobs that offer limited flexibility. It also harms women in relatively high-paying, physically demanding jobs traditionally held by men, such as trucking or policing—jobs that already are often particularly difficult for women to enter. When women face a physical conflict between work and childbearing, they will often lose their job, and their families will lose income at the very moment their financial needs increase.

Courts Have Opened Loopholes in Current Law

Before Congress passed the Pregnancy Discrimination Act of 1978 (PDA), it was common for employers to categorically exclude pregnant women from the workforce. The PDA changed this forever by guaranteeing the right not to be treated adversely because of pregnancy, childbirth, or related medical conditions, and the right to be treated at least as well as other employees "not so affected but similar in their ability or inability to work."[11] However, some courts have held that a woman cannot succeed in a pregnancy discrimination claim unless she identifies a non-pregnant employee with nearly identical symptoms working in the same role whom her employer treated better than her—a hurdle that can be impossible to meet. In addition, while the Americans with Disabilities Act (ADA) requires employers to make reasonable accommodations for employees with disabilities, courts have held that ordinary pregnancy is not a disability.

The Pregnant Workers Fairness Act Provides a Solution

The Pregnant Workers Fairness Act (PWFA), H.R. 1975 and S. 942, would let pregnant women continue to do their jobs and support their families by requiring employers to make the same sorts of accommodations for pregnancy, childbirth, and related medical conditions that they do for disabilities.

- The PWFA would require employers to make reasonable accommodations to employees who have limitations stemming from pregnancy, childbirth, or related medical conditions, unless the accommodation would impose an undue hardship on the employer. For example:
  - An employer might be required to modify a no-food-or-drink policy for a pregnant employee who experiences painful or potentially dangerous uterine contractions when she does not regularly drink water.
  - An employer might be required to provide a stool to a pregnant cashier who was experiencing leg pain and swelling from standing for long periods of time.
  - An employer might be required to reassign heavy lifting duties to other employees for some portion of an employee's pregnancy.
  - An employer might be required to make an available light duty position available to a pregnant police officer who was temporarily unable to go on patrol because no bulletproof vest would fit her.
- The PWFA would prohibit employers from discriminating against employees because they need this sort of reasonable accommodation. In other words, an employer would not be allowed to fire a pregnant employee to avoid making any job modifications.
- The PWFA would prohibit employers from requiring a pregnant employee to accept changes to her work when the pregnant employee doesn't want any modification. An employer could not unilaterally

decide to reassign a pregnant woman to a desk job because of her pregnancy, for example, if she wished to perform her usual job duties.

- The PWFA would prohibit employers from forcing a pregnant employee to take paid or unpaid leave when another reasonable accommodation would allow the employee to continue to work. While the employee would remain free to choose to use any leave available to her, she would not be forced onto leave against her will.

The PWFA relies on a reasonable accommodation framework already familiar to employers accustomed to the ADA's requirements. It would ensure that pregnant women are treated as well in the workplace as workers with disabilities and would provide real solutions to the pregnant workers currently being asked to choose between their health and their livelihood.

1 *Wiseman v. Wal-Mart Stores Inc.*, Mem. & Ord., Case No. 08-1244-EFM (D. Kan. July 22, 2009), *available at* https://ecf.ksd.uscourts.gov/cgi-bin/show_public_doc?2008cv1244-43.
2 *Reeves v. Swift Transportation*, 446 F.3d 637 (6th Cir. 2006).
3 *Serednyi v. Beverly Healthcare LLC*, 656 F.3d 540 (7th Cir. 2011).
4 *Leahy v. Gap, Inc.*, Civil Action No. 07-2008, 2008 WL 2946007 (E.D.N.Y. July 29, 2008).
5 *Walker v. Fred Nesbit Distributing Co.*, 156 Fed. Appx. 880, 2005 WL 3488501 (8th Cir. 2005).
6 *See also, e.g., Urbano v. Cont'l Airlines*, 138 F.3d 204 (5th Cir. 1998); *Spivey v. Beverly Enterprises, Inc.*, 196 F.3d 1309 (11th Cir. 1999); *Young v. United Parcel Service, Inc.*, 2011 WL 665321 (D. Md. Feb. 14, 2011); *Arnold v. N. Okaloosa Med. Corp.*, 2010 WL 3119886 (N.D. Fla. Aug. 6, 2010); *Dulina v. Hometown Nursing and Rehabilitation Center*, 2011 WL 1376242 (M.D. Pa. Apr. 12, 2011); *Garcia v. Renaissance Global Logistics LLC*, 2010 WL 5330494 (E.D. Mich. Dec. 21, 2010); *Bell v. Cabela's, Inc.*, 2009 WL 902266 (N.D. W.Va. Apr. 1, 2009), *Persky v. Dolgencorp, Inc.*, 2008 WL 542959(W.D. Okla. February 25, 2008).
7 U.S. Congress Joint Economic Committee, *Women and the Economy 2010:25 Years of Progress But Challenges Remain*, Majority Staff of the Joint Economic Committee (2010), *available at* http://jec.senate.gov/public/?a=Files.Serve&File_id=8be22cb0-8ed0-4a1a-841b-aa91dc55fa81.
8 U.S. Census Bureau, *Maternity Leave and Employment Patterns of First-Time Mothers 1961-2008*, 4, 6 (Oct. 2011).
9 NWLC Calculations from U.S. Census Bureau, America's Families and Living Arrangements Survey: 2011, Tables FG1, FG5 One parent, FG5 Two parent, and UC3, *available at* http://www.census.gov/population/www/socdemo/hh-fam/cps2011.html (last visited Feb. 7, 2012).
10 Center for American Progress, The New Breadwinners: 2010 Update (April 2012), *available at* http://www.americanprogress.org/issues/2012/04/epd_breadwinners.html.
11 42 U.S.C. § 2000e(k).