

**Testimony of Elizabeth Johnston
Skadden Fellow at National Women's Law Center**

**Before the Council of the District of Columbia
Committee on Business, Consumer & Regulatory Affairs**

April 27, 2015

Thank you for the opportunity to submit this testimony on behalf of the National Women's Law Center in support of adequate funding to implement the Protecting Pregnant Workers Fairness Act. The National Women's Law Center has been working since 1972 to secure and defend women's legal rights, including their rights to equal opportunity in the workplace. The Protecting Pregnant Workers Fairness Act ensures that pregnant workers in the District of Columbia may no longer be forced to choose between their health and their jobs. But without sufficient funding for public education, outreach and enforcement, the law cannot fulfill its promise of ensuring that women can continue working safely during pregnancy.

I. Too Many Pregnant Workers Are Denied the Simple Accommodations They Need to Continue Doing Their Jobs Safely

The vast majority of women can work through their pregnancies without any changes to their jobs. However, for some pregnant workers, particular job activities—such as lifting, bending, or standing for long periods—can pose a challenge at some point during a pregnancy. These workers may have a medical need for temporary adjustments to their job duties or work rules so that they can continue to work safely and support their families. However, all too often when pregnant workers ask for modest accommodations like a stool to sit on during a very long shift or to stay off high ladders, they are instead forced onto unpaid leave or even fired.¹ This is a particular problem for women who work in physically demanding jobs that have been traditionally held by men, and for women in low-wage occupations where work rules can be especially inflexible.²

It is increasingly common for women to continue working while 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.³ And mothers' earnings are crucial to most families' financial security and well-being—in 2010, nearly two-thirds of mothers were either the primary breadwinner or a co-breadwinner for their families nationally.⁴ In D.C., 40 percent of families are headed by single mothers whose families may have no income at all if they are forced out of work during pregnancy.⁵

One recent survey estimated that a quarter of a million pregnant workers are denied their requests for reasonable workplace accommodations nationally every year.⁶ When women who have physical limitations stemming from pregnancy are forced off the job instead of being accommodated, their families can suffer a devastating loss of income at the very moment their

financial needs are increasing. Other women who are denied the simple adjustments they need to work safely during pregnancy may continue working despite the risk to their pregnancies because they simply cannot afford to lose their jobs. These women may risk serious health consequences, such as pre-term birth, low birth weight, pregnancy-induced hypertension and preeclampsia, congenital anomalies, and even miscarriage.⁷ With full implementation, the Protecting Pregnant Workers Fairness Act can provide vital protections to families in the District of Columbia.

II. The Protecting Pregnant Workers Fairness Act Ensures that Pregnant Workers May Not Be Forced Off the Job Because of Physical Limitations That Can Be Accommodated

The Protecting Pregnant Workers Fairness Act makes unmistakably clear that employers are required to provide reasonable accommodations for pregnant women who have a medical need for them unless the accommodation would impose an undue hardship on the employer—just as employers already must do when workers need accommodations because of temporary disabilities.

The simple adjustments that pregnant workers have needed to their job duties have been vitally important to enabling pregnant workers to maintain both their jobs and the health of their pregnancies. For example, some pregnant workers have needed modification of a no-food-or-drink policy so that they can drink water to prevent painful and potentially dangerous uterine contractions. Other pregnant workers have been instructed by their doctors to avoid lifting over a certain amount and have needed to have their heavy lifting duties temporarily reassigned. Still others have needed accommodations allowing them to stay off high ladders to avoid risking a fall. Research on the accommodations provided under the Americans with Disabilities Act shows that the typical accommodations that workers need usually do not cost anything at all, and when they do have a cost, the majority of employers reported a one-time cost of \$500 or less.⁸

Only about 1.4 percent of employed people in Washington, D.C. give birth each year, and only a fraction of those workers would require accommodations.⁹ Employer experience with both 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 have benefits like reducing workforce turnover and increasing employee satisfaction and productivity.¹⁰

Moreover, the definitions of “reasonable accommodation” and “undue hardship” used in this bill mirror those used in the Americans with Disabilities Act. These definitions will therefore be familiar to employers and, with appropriate public education and outreach, will be easy for employers and courts alike to implement.

III. To Ensure That the Protecting Pregnant Workers Fairness Act Delivers on Its Promise, This Committee Must Provide Adequate Funding for Robust Implementation

Effective guidance for employers about their obligations under the new law will benefit employees and employers alike. California adopted a law protecting pregnant workers in

1999.¹¹ In 2000, that law was amended to explicitly require reasonable accommodations for pregnancy. Advocacy organizations in California report that when employers have been reluctant to provide accommodations to pregnant workers or have denied those accommodations, advocates have been able to achieve a successful resolution to the matter by explaining the clear accommodation requirement under California law.¹² Further, a study by Equal Rights Advocates (ERA) found that the accommodations sought were modest, reasonable, and easily implemented by employers. ERA also found that the law was particularly important for protecting low-wage hourly workers; and that pregnancy accommodations often involve practices helpful to all employees and benefit the employer's bottom line.¹³ A testament to the added clarity that the California law provides, at the same time that pregnancy discrimination charges brought under federal law have risen nationwide, the number of pregnancy discrimination charges filed in California has decreased.¹⁴

Once notified of the California law, employers have often been quick to respond. For example, a client of the Legal Aid Society, Laura, worked as a counselor for people with disabilities, and her duties occasionally involved securing wheelchairs to a bus.¹⁵ Four months before she was due to give birth to her first child, her doctor restricted Laura from the bending and twisting associated with this particular task. However, Laura's employer refused to provide Laura with the modest accommodation of having someone help her secure wheelchairs, and instead forced her onto unpaid leave immediately after she made the request for an accommodation. The company then threatened to terminate Laura if she did not return to work in exactly four months, which coincided with the baby's due date and meant she would have no time off after the baby was born. After the Legal Aid Society informed Laura's employer of California's law requiring reasonable accommodations for pregnant women, the company immediately reinstated Laura to her job, gave her the accommodation her doctor had advised, and paid her for the shifts she had missed. Laura ultimately gave birth to a healthy baby boy.

In New York City, which enacted its pregnancy accommodation law in 2013, the legal advocacy organization A Better Balance found out that one of the largest employers in Brooklyn, SUNY Downstate Hospital, had an outdated policy, under which pregnant workers in need of reasonable accommodations were forced on to leave. A Better Balance informed the hospital that their policy violated the new law and SUNY quickly responded by updating its policy.¹⁶

These stories illustrate the importance of public education and outreach efforts to ensure that employers and employees alike are aware of their rights and obligations under the law. They also underscore the importance of funding efforts to distribute information, and guarantee enforcement. The National Women's Law Center urges the Committee to include adequate funding for the Protecting Pregnant Workers Fairness Act as part of this year's budget. This funding will allow the D.C. Department of Employment Services to undertake the following crucial steps to ensure effective implementation of the law.

A. To Ensure Effective Implementation, the D.C. Department of Employment Services Needs to Issue Rules and Regulations, and Public Education Materials Regarding the New Law.

This year's budget should include funding for the D.C. Department of Employment Services (DOES) to issue user-friendly guidance on the Protecting Pregnant Worker Act. As

demonstrated by the stories above, when employers have a clear understanding of their obligations under the law, they quickly comply. In California, the Department of Fair Employment and Housing issued a FAQ for employers, outlining their obligations under the new law.¹⁷ Another useful tool is a technical assistance manual, outlining the types of accommodations that a pregnant worker might need, such as the manual created by the Job Accommodation Network which is funded through the United States Department of Labor.¹⁸ In addition to these public education and outreach materials, DOES will need to issue rules and regulations interpreting the new law.¹⁹ Providing clear guidance for employers and employees alike will ensure that employees receive the accommodations they need, without delay.

B. DOES Needs to Train Investigators to Ensure that the Law is Adequately Enforced

It is critical for DOES to take a comprehensive and consistent approach to reducing pregnancy discrimination in the workplace. To that end, DOES needs funding to train its investigators on how to investigate violations and enforce the law. Specifically, the investigators need training on the types of accommodations workers may need. Investigators should also explore new strategies for maximizing the impact of agency enforcement efforts, perhaps targeting selected industries or occupations for both enforcement and outreach.

C. DOES Should Engage in a Public Awareness Campaign to Ensure that Employees are Aware of their Rights

The Protecting Pregnant Workers Fairness Act requires employers to post and maintain a notice of rights regarding employees' right to needed reasonable accommodations. A good example is the poster made and distributed by the New York City Commission on Human Rights, which provides a concise summary of protections available for pregnant women under the NYC Human Rights Law.²⁰ The poster also contains examples of reasonable accommodations that a woman can request from her employer during the course of her pregnancy. Creating this notice is just the first step toward ensuring that employees are aware of their rights. The law also requires that DOES conduct ongoing public education efforts. This public education is crucial. A model for such a campaign is WMATA's recent Anti-Sexual Harassment Campaign.²¹ The Committee should fund efforts to create and distribute materials on pregnancy discrimination and provide training for employers and employees about the protections provided by the new law.

IV. Conclusion

The importance of this new law to keeping pregnant workers on the job and ensuring healthy pregnancies is clear. To realize its promise, it is necessary that the Committee include adequate funding for the Protecting Pregnant Workers Fairness Act in this year's budget.

¹ To learn more about how women have been forced out of work because they were denied the temporary accommodations that they sought during pregnancy, see generally NATIONAL WOMEN'S LAW CENTER AND A BETTER BALANCE, *IT SHOULDN'T BE A HEAVY LIFT: FAIR TREATMENT FOR PREGNANT WORKERS* (2013), available at http://www.nwlc.org/sites/default/files/pdfs/pregnant_workers.pdf. See also Perry Stein, *Pregnant D.C. Chipotle Worker Sues, Says Manager Limited her Bathroom and Water Breaks*, WASHINGTON CITY PAPER, Feb. 25, 2014,

available at <http://www.washingtoncitypaper.com/blogs/citydesk/2014/02/25/pregnant-d-c-chipotle-worker-sues-says-manager-limited-her-bathroom-and-water-breaks/>.

² See *It Shouldn't Be a Heavy Lift*, *supra* note, *supra* note 1 at 5.

³ LYNDIA LAUGHLIN, U.S. CENSUS BUREAU, MATERNITY LEAVE AND EMPLOYMENT PATTERNS OF FIRST-TIME MOTHERS: 1961-2008 4,6 (Oct. 2011), available at <https://www.census.gov/prod/2011pubs/p70-128.pdf>.

⁴ See CENTER FOR AMERICAN PROGRESS, THE NEW BREADWINNERS: 2010 UPDATE (Apr. 2012), available at <https://www.americanprogress.org/issues/labor/report/2012/04/16/11377/the-new-breadwinners-2010-update/>.

⁵ NWLC Calculations based on U.S. Census Bureau, AmericanCommunity Survey 2013, available at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_13_1YR_DP03&prodType=table.

⁶ See NATIONAL PARTNERSHIP FOR WOMEN & FAMILIES, LISTENING TO MOTHERS: THE EXPERIENCE OF EXPECTING AND NEW MOTHERS IN THE WORKPLACE 3 (Jan. 2014), available at <http://www.nationalpartnership.org/research-library/workplace-fairness>

⁷ See *It Shouldn't Be a Heavy Lift*, *supra* note 1, at 12.

⁸ NATIONAL WOMEN'S LAW CENTER, THE BUSINESS CASE FOR ACCOMMODATING PREGNANT WORKERS 1 (Dec. 2012), available at http://www.nwlc.org/sites/default/files/pdfs/pregnant_workers_business_case_12.04.12.pdf.

⁹ 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 (Mar. 2013), available at http://www.nwlc.org/sites/default/files/pdfs/state_by_state_analysis.pdf.

¹⁰ See THE BUSINESS CASE FOR ACCOMMODATING PREGNANT WORKERS, *supra* note 8.

¹¹ See EQUAL RIGHTS ADVOCATES, EXPECTING A BABY, NOT A LAY-OFF: WHY FEDERAL LAW SHOULD REQUIRE THE REASONABLE ACCOMMODATION OF PREGNANT WORKERS (2012), available at <http://www.equalrights.org/wp-content/uploads/2013/02/Expecting-A-Baby-Not-A-Lay-Off-Why-Federal-Law-Should-Require-the-Reasonable-Accommodation-of-Pregnant-Workers.pdf>.

¹² *Id.* at 3.

¹³ *Id.* at 15.

¹⁴ *Id.*

¹⁵ Conversation with Sharon Terman, April 22, 2015, Legal Aid Society - Employment Law Center San Francisco.

¹⁶ A Better Balance, News Letter Fall 2013, available at <http://www.abetterbalance.org/web/images/stories/Documents/general/2013Newsletter.pdf>.

¹⁷ California Department of Fair Employment and Housing, Frequently Asked Questions: Pregnancy, available at <http://www.dfeh.ca.gov/res/docs/DFEH%20FAQs%20PDL.pdf>.

¹⁸ Job Accommodation Network, Technical Assistance Manual: Accommodation Ideas for Pregnancy, available at <http://askjan.org/soar/other/preg.html>.

¹⁹ E.E.O.C., *Enforcement Guidance: Pregnancy Discrimination and Related Issues* (July 2014), available at http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm.

²⁰ New York City Commission on Human Rights: Pregnancy and Employment Rights Poster, available at <http://www.nyc.gov/html/cchr/html/publications/pregnancy-employment-poster.shtml>.

²¹ <http://www.collectiveactiondc.org/programs/wmata-anti-sexual-harassment-campaign/>.