



WORKPLACE JUSTICE

THE BUSINESS CASE FOR ACCOMMODATING PREGNANT WORKERS

Some pregnant workers in physically-demanding jobs—such as truck driving, police work, health care, retail sales, or restaurant serving—need minor, temporary adjustments to their job duties to continue safely working during pregnancy. When pregnant workers have asked for these temporary adjustments, however, all too often employers have denied their requests. Instead of receiving simple accommodations that would allow them to continue safely working, many pregnant workers have been forced out on leave or out of a job entirely.

When a worker with a disability needs an accommodation, the Americans with Disabilities Act (ADA) makes unmistakably clear that an employer must make reasonable accommodations to allow her to do her job, if it can do so without undue hardship. Employers have decades of experience implementing this requirement under the ADA. Likewise, in the modern workplace, more and more businesses are choosing to provide workplace flexibility to all employees, to help employees ensure they can meet their obligations both inside and outside the workplace.

The ADA's accommodation requirement is generally understood not to reach workers with uncomplicated pregnancies, as courts have held that normal pregnancy is not a disability under the ADA.¹ Nonetheless, employers' experiences implementing the ADA and in providing flexible work arrangements demonstrate why accommodating those pregnant workers who need temporary adjustments at work is good for business, in addition to being good for pregnant workers and their families.

Many of the accommodations typically sought by pregnant workers are the kind that many employers already frequently provide for workers with disabilities and workers on flexible work arrangements. For example, altering start and end times,

providing break time, honoring lifting restrictions, and redistributing particular physical tasks among members of a workplace team, are all common accommodations requested by pregnant workers that have been successfully provided in these other contexts.

The data on disability accommodations and workplace flexibility show not only that the immediate costs of these accommodations are typically minimal, but that in fact providing accommodations and flexibility have bottom line benefits to employers, including reduced workforce turnover, increased employee satisfaction and productivity, and savings in workers' compensation and other insurance costs. Making room for pregnancy on the job promises the same benefits

Most pregnancy accommodations are likely to be low- or no-cost.

Employers' experience accommodating people with disabilities shows that most accommodations for pregnant workers are likely to be low or no cost. Many of the accommodations requested by pregnant workers, such as sitting rather than standing, avoiding heavy lifting, and taking breaks to go to the bathroom, are all accommodations employers frequently provide to employees with disabilities.

A survey by the Job Accommodation Network, a technical assistance provider to the Department of Labor's Office of Disability Employment Policy, found that the majority of employers that provided accommodations to employees with disabilities reported that the accommodations did not impose any new costs on the employer.² Of those employers that reported a cost for accommodations, the majority reported a one-time cost of \$500 or less.³

Because accommodations provided to pregnant workers are temporary, the costs associated with these accommodations, if any, are likely to be substantially less than the already low costs associated with providing accommodations to workers with permanent disabilities.



Many forms of workplace flexibility, including altering start and end times, providing break time, permitting telecommuting, or redistributing work across a team, are also accommodations that have been sought by pregnant workers. These forms of workplace flexibility are also typically low- or no-cost. In those instances in which there are start-up costs associated with providing flexibility, such as purchasing home office equipment, the benefits to the employer can more than offset the initial investment.⁴ For example, when a snowstorm shut down federal government offices in Washington, DC, the government saved \$30 million per day because of teleworking capabilities, “for a total savings of \$150 million over the five snow closures in December 2009 and February 2010.”⁵

Employers report significant benefits result from providing accommodations.

Employers report the following benefits associated with providing accommodations and flexibility to employees:

Improved recruitment and retention of employees

Providing accommodations and workplace flexibility improves employee retention and heightens employers’ability to attract new employees. In the JAN survey, 90% of employers reported that providing an accommodation for disabilities allowed them to retain valued employees,⁶ and 60% said that it “eliminated costs associated with training a new employee.”⁷

Workplace flexibility has been shown to increase employee retention in industries with typically high turnover, such as sales and customer service.⁸ Additionally, employees are attracted to workplaces that offer flexible schedules, making it easier to recruit and retain the best candidates.⁹ Especially for high-turnover industries, a reduction in the time and costs associated with hiring and training new employees can significantly affect an employer’s bottom line. Similarly, when employers provide temporary accommodations that allow those pregnant workers who need them to continue working, they make it possible for these workers to transition smoothly to being a working parent and create incentives for them to stay with their employers after having a baby.

Increased employee commitment

Providing accommodations and workplace flexibility leads to heightened employee commitment and satisfaction. Fifty-nine percent of employers reported that providing accommodations to workers with disabilities “increase[s] overall company morale.”¹⁰ Similarly, a 2014 report on work-life balance and workplace flexibility policies by the President’s Council of Economic Advisors noted that “[w]orkers with more flexible arrangements report higher levels of job satisfaction” and “more loyalty and commitment to their employers.”¹¹ The same results can be expected for pregnant workers, who are more likely to be committed to employers who meet their needs for workplace accommodations during pregnancy.

Increased productivity

Employers report that accommodating employees with disabilities increases productivity not only for the employee who needs an accommodation, but also for the business overall. For example, 71% of employers reported to JAN that accommodating employees “increased the employee’s productivity,”¹² while 56% report that providing accommodations “increased overall company productivity.”¹³ Studies on workplace flexibility show a similar trend: in a large study of over 700 firms in the United States, the United Kingdom, France and Germany, researchers found a “significant positive relationship between work-life balance practices and total factor productivity.”¹⁴ For example, at GlaxoSmithKline, job-sharing arrangements for customer service representatives resulted in increased productivity and expanded schedule coverage.¹⁵ These studies suggest that when pregnant workers’ needs for accommodations are met, employers can anticipate improved productivity.

Reduced absenteeism

Businesses that provide accommodations or flexibility report that doing so reduces absenteeism, partly because accommodations and flexible work schedules improve employee health by decreasing work-related stress. JAN’s survey found that 54% of employers reported better attendance from an employee after providing an accommodation for a disability.¹⁶ Workplace flexibility studies also show that businesses experience less absenteeism when they offer flexible work arrangements.¹⁷ All too often, pregnant workers are being forced to miss work simply because their employers are denying minor temporary adjustments they need to do their jobs safely. Providing these accommodations to pregnant workers is likely to reduce absence, resulting in a bottom-line benefit for employers.

Improvements in workplace safety

When employers provide accommodations, they create a safer workplace. Forty-four percent of employers reported increases in workplace safety as a result of providing accommodations to employees with disabilities,¹⁸ and 38% percent reported reduced workers’ compensation and other insurance costs.¹⁹ Providing flexible workplaces can also reduce employee stress and improve overall health.²⁰ Researchers at Michigan State University and Portland State University studied the impact of flexible workplace scheduling on 12 Midwestern grocery stores, and found that employees experienced “improved sleep quality, increased energy, and reduced psychological stress.”²¹

Furthermore, reducing employee stress in the workplace can lead to reduced risk of workplace injury and fewer workers’ compensation claims.²² For example, a plastics manufacturer in Minnesota cut workers’ compensation claims by 56% after introducing new initiatives to manage employee stress.²³ Providing accommodations to those pregnant workers who



need them to work safely during pregnancy will undoubtedly reduce stress on these workers, and these studies suggest reduced stress will lower their risk of injury.

Increased diversity

Many employers value workplace diversity, not only for its intrinsic benefits but also because diversity is highly valued in the marketplace. Forty-one percent of employers surveyed noted that a benefit of providing accommodations to employees with disabilities was that they “increase diversity of the company.”²⁴ Similarly, workplace flexibility has been shown to increase the presence of women in the workplace: a survey conducted by Deloitte showed that flexibility was the factor “most likely to improve the retention of women.” After Deloitte implemented flexible work options, turnover rates between men and women equalized and the number of women in leadership positions rose from 14 to 168 over ten years.²⁵ Likewise, providing temporary accommodations to pregnant workers, particularly those in physically demanding jobs and jobs traditionally held by men, is likely to make women who might become pregnant more willing to choose these fields.

Pregnancy Accommodations Just Make Sense.

Based on the substantial research demonstrating the positive business impact associated with providing workplace flexibility and accommodating workers with disabilities, employers that accommodate pregnant workers can anticipate:

- Increased employee commitment and satisfaction
- Increased recruitment and retention of employees
- Increased productivity
- Increased diversity
- Increased safety
- Reduced absenteeism

Research also demonstrates that the direct costs associated with providing these accommodations can typically be expected to be minimal and temporary. The bottom line benefit to businesses is just one of the many reasons to ensure that reasonable accommodations are available to pregnant workers.

- 1 Impairments resulting from pregnancy--e.g., gestational diabetes--may be considered disabilities if they substantially limit a major life activity. 29 C.F.R. § 1630.2(j) (1)(ix) (2012). See also EEOC, Questions and Answers on the Final Rule Implementing the ADA Amendments Act of 2008, available at http://www.eeoc.gov/laws/regulations/ada_qa_final_rule.cfm.
- 2 JOB ACCOMMODATION NETWORK (“JAN”), WORKPLACE ACCOMMODATIONS: LOW COST, HIGH IMPACT 4 (Sept. 2014), available at <http://askjan.org/media/downloads/LowCostHighImpact.pdf>.
- 3 *Id.*
- 4 COUNCIL OF ECONOMIC ADVISERS, EXECUTIVE OFFICE OF THE PRESIDENT, WORK-LIFE BALANCE AND THE ECONOMICS OF WORKPLACE FLEXIBILITY 15-16 (June 2014), available at https://www.whitehouse.gov/sites/default/files/docs/updated_workplace_flex_report_final_0.pdf [hereinafter “EXECUTIVE OFFICE REPORT”].
- 5 *Id.* at 27.
- 6 JAN, *supra* note 2, at 5.
- 7 JAN, *supra* note 2, at 5.
- 8 LIZ WATSON & JENNIFER SWANBERG, FLEXIBLE WORKPLACE SOLUTIONS FOR LOW-WAGE HOURLY WORKERS 24 (May 2011), available at <http://workplaceflexibility2010.org/images/uploads/whatsnew/Flexible%20Workplace%20Solutions%20for%20Low-Wage%20Hourly%20Workers.pdf>.
- 9 For example, in a recent study, 35% of employers surveyed indicated that the retention of employees one of the main reasons they implemented workplace flexibility initiatives. See KENNETH MATOS & ELLEN GALINSKY, FAMILIES & WORK INST., 2014 NATIONAL STUDY OF EMPLOYERS 43-44 (2014), available at <http://familiesandwork.org/downloads/2014NationalStudyOfEmployers.pdf>.
- 10 JAN, *supra* note 2, at 5.
- 11 EXECUTIVE OFFICE REPORT, *supra* note 4, at 19.
- 12 JAN, *supra* note 2, at 5.
- 13 JAN, *supra* note 2, at 5.
- 14 EXECUTIVE OFFICE REPORT, *supra* note 4, at 3.
- 15 CORPORATE VOICES FOR WORKING FAMILIES, BUSINESS IMPACT OF FLEXIBILITY: AN IMPERATIVE FOR EXPANSION 19 (Feb. 2011), available at http://www.cvworkingfamilies.org/system/files/BizImpactFlex_March11_draftB.pdf [hereinafter “CORPORATE VOICES”].
- 16 JAN, *supra* note 2, at 5.
- 17 EXECUTIVE OFFICE REPORT, *supra* note 4, at 19.
- 18 JAN, *supra* note 2, at 5.
- 19 JAN, *supra* note 2, at 5.
- 20 EXECUTIVE OFFICE REPORT, *supra* note 4, at 21.
- 21 EXECUTIVE OFFICE REPORT, *supra* note 4, at 21.
- 22 DAVID LEE, MANAGING EMPLOYEE STRESS AND SAFETY: A GUIDE TO MINIMIZING STRESS-RELATED COST WHILE MAXIMIZING EMPLOYEE PRODUCTIVITY 1 (2000), available at <http://www.memic.com/Portals/0/docs/Safety/ManagingStress.pdf>.
- 23 *Id.* at 5
- 24 JAN, *supra* note 2, at 5.
- 25 CORPORATE VOICES, *supra* note 15, at 10.

