



## FACT SHEET

# If You Really Care about Pregnancy Discrimination, You Should Care about Reproductive Justice!

## What is Reproductive Justice?

The Reproductive Justice (RJ) movement places reproductive health and rights within a social justice and human rights framework.<sup>1</sup> The movement supports the right of individuals to have the children they want, raise the children they have, and plan their families through safe, legal access to abortion and contraception. In order to make these rights a reality, the movement recognizes that RJ will only be achieved when all people have the economic, social, and political power to make healthy decisions about their bodies, sexuality, and reproduction.<sup>2</sup>

## Why is Pregnancy Discrimination a Reproductive Justice issue?

Every year in the United States, approximately 10 percent of women aged 15-44 will become pregnant.<sup>3</sup> Many of these women will face discrimination in school, the workplace, and even the criminal justice system. Reproductive justice is harmed when women cannot stay in school, lose their jobs, or even face harsh criminal sentences because of pregnancy discrimination. Pregnancy discrimination can even place women in the untenable position of being forced to choose between becoming (or remaining) pregnant and continuing to care for themselves and their families.

The vast majority of women will experience pregnancy at some point in their reproductive lives, but every pregnant woman faces her own unique circumstances and potential challenges, and must be able to make decisions based on her personal values, the advice of the medical professionals she trusts, and what's right for herself and her family. The Reproductive Justice advocacy movement feels that women should never have to choose between having a child and continuing her education or having a job, and the criminal justice system should not prosecute or sentence women differently because they are pregnant.

## *Discrimination Against Pregnant and Parenting Students*

Pregnant and parenting students face structural barriers and discrimination that prevent them from realizing their potential and can even force them to leave school. Title IX of the Education Amendments of 1972 prohibits sex discrimination in federally funded education programs and activities, including pregnancy discrimination. Yet many pregnant and parenting students at the secondary school level are banned from activities, pressured to attend inferior alternative programs, penalized for pregnancy- or childbirth-related absences that should be excused, and kicked out of school.<sup>4</sup> At the postsecondary level too, where one-quarter of students are parents (many of whom are low-income single mothers), this discrimination takes many forms—such as giving students failing grades when they miss classes for pregnancy; refusing to allow them make up assignments or exams they miss; encouraging pregnant students to drop out of their programs; and refusing to accommodate any physical restrictions or needs arising from pregnancy or related conditions that affect a student's ability to participate in the

program, even if such accommodations would be required by law for students with other temporary disabilities. Unfortunately, this illegal discrimination goes largely unchecked because most students – and many educators, administrators, and policymakers – are still unaware of Title IX’s protection against discrimination based on pregnancy and what that means.

Gloria<sup>5</sup>, a low-income single mother and nursing student experienced pregnancy complications that left her hospitalized and on bed rest towards the end of her penultimate semester. The professor refused to excuse the absences, gave her zeros for each class she missed, and told her she would fail the course if she did not withdraw. This withdrawal, on top of two previous class withdrawals – one arising from a prior miscarriage – meant that Gloria would be kicked out of the program altogether, and would have to wait two years before applying for readmission. To add insult to injury, her student loans would become due in the meantime. With NWLC’s assistance, however, Gloria learned that her school’s actions violated Title IX and reached a pre-complaint settlement whereby the school (1) readmitted her into the program in good standing; (2) changed the “withdrawal” on her transcript to an “incomplete” and gave Gloria a reasonable period of time within which to complete that course; and (3) provided Gloria with her last two semesters of the program free of charge for tuition and fees.

Young mothers want and need to complete their education and have a right to do so, but because of discrimination and other barriers they face, only about 50% of teen mothers get a high school diploma by the age of 22, compared to 89% of women who did not have a child during their teen years.<sup>6</sup> One-third of teenage mothers never get a G.E.D. or a diploma,<sup>7</sup> and less than 2% of young teenage mothers attain a college degree by the age of 30.<sup>8</sup> Reproductive justice requires that pregnant and parenting students be allowed to continue their educations free from discrimination, including harassment and stigmatization, and schools should go further and help pregnant and parenting students access supports they need to succeed.

### ***Pregnancy Discrimination in the Workplace***

In 1978 Congress passed the Pregnancy Discrimination Act, which prohibits discrimination on the basis of pregnancy and requires employers to treat pregnant women the same as they treat those similar in ability to work. In other words, it says that if an employer makes accommodations for employees who need them because of disease or injury, it has to do the same for employees who need them because of pregnancy. But over 35 years later, women still face discrimination on the job when they become pregnant. Many are demoted or fired as a result of their pregnancy, and others are forced out because employers are unwilling to modify their duties to address any medical needs arising out of pregnancy, even when they make modifications for employees with other sorts of medical needs. While many pregnant workers do not require accommodations, others cannot continue exactly as they had prior to pregnancy. Pregnant workers in jobs that require physical activity are especially vulnerable to being forced out of work because their duties may pose challenges during some stages of pregnancy. In many cases, slight job modifications would allow these women to continue working without risk to themselves or their pregnancies. These are typically simple modifications, such as avoiding heavy lifting, staying off high ladders, or being permitted to sit during a long shift—accommodations of the sort that are often routinely provided when non-pregnant workers need them because of disability. When employers refuse these accommodations, women are forced to choose between their jobs and their health.

For example, when Hilda Guzman was pregnant in 2009, she was assigned to work at the Dollar Tree cash register for eight to ten hour shifts. Standing for this length of time was very uncomfortable, so she asked her boss for a stool. He denied the request and told Guzman, “You can’t get special treatment since a man can’t get pregnant.”<sup>9</sup> As her pregnancy progressed, Guzman suffered bleeding and contractions as a result of the pressure from standing all day. Although she could have continued working if allowed to sit on a stool, Guzman’s doctor had to place her on bed rest to get her off her feet. While on bed rest, Guzman received no paid leave, and her family was forced to live without her essential income because her employer would not provide the simple accommodation of allowing her to sit on a stool.<sup>10</sup> Too often employers like Guzman’s fail to accommodate pregnant women, and these women are forced to take unpaid leave, or worse, lose their jobs.

This term, the Supreme Court will hear arguments in *Young v. United Parcel Service* to determine in what circumstances the Pregnancy Discrimination Act requires an employer to provide pregnant employees with the same accommodations given to non-pregnant employees “similar in their ability or inability to work.”<sup>11</sup> The plain language of the statute would seem to dictate these accommodations always be made for pregnant women who need them when they are made for others, but some courts have interpreted employer obligations narrowly and as a result, many employers continue to deny these simple modifications.

Recently, NWLC worked with Respect the Bump, a group of Walmart employees advocating to end discrimination against pregnant Walmart workers, along with the advocacy group A Better Balance. Together, the organizations managed to overhaul Walmart’s policy for pregnant workers to ensure reasonable accommodations for workers with temporary disabilities related to pregnancy—an important step forward in how Walmart treats pregnant workers. Progress like this is essential. When women lose their jobs as a result of pregnancy, they often lose health care coverage as well as income essential to themselves and their families. As a result, pregnancy discrimination in the workplace forces women to choose between their reproductive and family health and their jobs. Reproductive justice cannot be realized as long as women face pregnancy discrimination on the job.

### ***Pregnancy Discrimination in the Criminal Justice System***

Women across the nation have been prosecuted for their actions during pregnancy.<sup>12</sup> These prosecutions penalize women for being pregnant. “Pregnancy crimes” are status crimes because they only apply to a small subset of people: pregnant women.<sup>13</sup> Prosecutions of pregnant women tend to fall in three different categories: prosecutions of drug-dependent women; prosecutions for failing to follow a doctor’s orders or taking other actions deemed “harmful” during pregnancy; and prosecutions for self-harm.<sup>14</sup>

Drug dependent pregnant women have been charged with crimes ranging from child endangerment, delivery of a controlled substance, and homicide. Pregnant women have also been imprisoned or confined in order to keep them from using drugs or alcohol. In April 2014 Tennessee passed a law making it a crime to use drugs while pregnant. This law is the first of its kind, and it was passed despite opposition from major medical groups, including the American Medical Association, the American Academy of Pediatrics, and the American College for Obstetrics and Gynecology.<sup>15</sup> Under the law, a woman may be charged with assault, or even homicide, for using narcotics during pregnancy.<sup>16</sup> Within a week of going into effect, the law was used to charge Mallory Loyola with assault for amphetamine use during pregnancy. Amphetamine is not a narcotic and does not result in Neonatal Abstinence Syndrome.<sup>17</sup> Loyola could face up to a year in jail and a fine of \$2,500.<sup>18</sup>

Women who use illegal drugs are not the only pregnant women who have been targeted by criminal prosecutions. Utah’s criminal code, for example, allows a woman to be prosecuted for “causing” her miscarriage.<sup>20</sup> At least one court has stated that a woman could be held criminally liable for a stillbirth if she does anything that could harm her pregnancy, including the use of both legal and illegal substances, missing prenatal appointments, and not obtaining “adequate” healthcare.<sup>21</sup> Women have been detained for refusing a cesarean section and trying to have a home birth.<sup>23</sup>

In Indiana, Bei Bei Shuai was charged with murder and feticide after attempting to commit suicide. Shuai ingested rat poison after her boyfriend broke up with her.<sup>24</sup> Friends persuaded Shuai to go the hospital where she was treated. Shuai’s daughter, Angel, was born several days later through a cesarean surgery. Although Angel survived the birth, she died days later. Shuai was charged with murder and feticide and eventually pled guilty to criminal recklessness. She was sentenced to time served.<sup>25</sup>

Shuai’s story is not unusual. Other women have been convicted for drug use during pregnancy under child endangerment and fetal harm laws.<sup>26</sup> Others have had sentences enhanced because they were pregnant when committing a criminal offense.<sup>27</sup> Not only do these prosecutions violate the Equal Protection and Due Process clauses of the Fourteenth Amendment, they are bad policy. The prosecution of pregnancy discourages women from seeking prenatal care and undermines the doctor-patient relationship. Reproductive Justice demands that prosecutions of pregnancy crimes be stopped.

## How You can Support Reproductive Justice and Fight Pregnancy Discrimination

Know your rights! Be sure to check out NWLC's guides to [Title IX](#) protections for pregnant students<sup>28</sup> and the [Pregnancy Discrimination Act](#) for pregnant women in the workplace.<sup>29</sup>

Learn more about the [Pregnant Workers Fairness Act](#)<sup>30</sup>, proposed legislation that would provide in unmistakable terms that employers must provide reasonable accommodations to pregnant workers who have a medical need for them. Encourage you state legislature to pass similar protections for pregnant women.

[Help](#) Respect the Bump to ensure that Walmart, and similar employers, provide accommodations to all pregnant employees not just women with medical complications.

Urge prosecutors to exercise appropriate restraint and refrain from bringing criminal charges that violate due process and exceed the legislature's intent.

Reject criminal sentences, conditions of probation, or conditions of parole that infringe upon the reproductive decision-making of individuals. Denounce these punishments as human rights violations.

1. *What is RJ?*, SISTERSONG, [http://www.sistersong.net/index.php?option=com\\_content&view=article&id=141&Itemid=81](http://www.sistersong.net/index.php?option=com_content&view=article&id=141&Itemid=81) (last visited Sept. 4, 2014).
2. *What is Reproductive Justice?*, ASIAN COMMUNITIES FOR REPRODUCTIVE JUSTICE, <http://strongfamiliesmovement.org/what-is-reproductive-justice> (last visited Sept. 4, 2014).
3. SALLY C. CURTIN ET AL., PREGNANCY RATES FOR U.S. WOMEN CONTINUE TO DROP, NCHS Data Brief No. 136 (2013), available at: <http://www.cdc.gov/nchs/data/databriefs/db136.htm>.
4. NAT'L WOMEN'S LAW CTR., A PREGNANCY TEST FOR SCHOOLS 1 (2012), available at: [http://www.nwlc.org/sites/default/files/final\\_nwlc\\_pregnantparenting\\_report.pdf](http://www.nwlc.org/sites/default/files/final_nwlc_pregnantparenting_report.pdf).
5. Name has been changed to protect the identity of this individual.
6. *Id.* (citing Kate Perper, Kristen Peterson & Jennifer Manlove, *Diploma Attainment Among Teen Mothers* (Child Trends, Washington, D.C.), 2010, at 1, available at [http://childtrends.org/wp-content/uploads/2010/01/child\\_trends-2010\\_01\\_22\\_FS\\_diplomaattainment.pdf](http://childtrends.org/wp-content/uploads/2010/01/child_trends-2010_01_22_FS_diplomaattainment.pdf)).
7. A PREGNANCY TEST FOR SCHOOL at 1.
8. *Id.* (citing S.D. Hoffman, *By the Numbers: The Public Costs of Adolescent Childbearing* (The National Campaign to Prevent Teen Pregnancy, Washington, D.C.), 2006).
9. NAT'L WOMEN'S LAW CTR & A BETTER BALANCE, IT SHOULDN'T BE A HEAVY LIFT 13 (2013), available at: [http://www.nwlc.org/sites/default/files/pdfs/pregnant\\_workers.pdf](http://www.nwlc.org/sites/default/files/pdfs/pregnant_workers.pdf).
10. *Id.*
11. 42 U.S.C. § 2000e(k).
12. See, e.g., Lynn M. Paltrow & Jeanne Flavin, *Arrests of and Forced Interventions on Pregnant Women in the United States, 1973-2005: Implications for Women's Legal Status and Public Health*, 38 J. HEALTH POL. POL'Y & L. 299, 306 (2013), available at <http://jhppl.dukejournals.org/content/38/2/299.full.pdf>.
13. Kira Proehl, *Comment: Pregnancy Crimes: New Worries to Expect When You're Expecting*, 53 SANTA CLARA L. REV. 661, 663-64 (2013).
14. NAT'L WOMEN'S LAW CTR, IF YOU REALLY CARE ABOUT CRIMINAL JUSTICE, YOU SHOULD CARE ABOUT REPRODUCTIVE JUSTICE (2014), available at: <http://www.nwlc.org/resource/if-you-really-care-about-criminal-justice-you-should-care-about-reproductive-justice>.
15. All of these groups have issued statements opposing the prosecution of pregnant women who use drugs. Medical and Public Health Statement Addressing Prosecution and Punishment of Pregnant Women, NATIONAL ADVOCATES FOR PREGNANT WOMEN, [http://advocatesforpregnantwomen.org/medical\\_group\\_opinions\\_2011/Medical%20Group%20Positions%202011.pdf](http://advocatesforpregnantwomen.org/medical_group_opinions_2011/Medical%20Group%20Positions%202011.pdf) (last visited Sept. 4, 2014).
16. TENN. CODE ANN. § 39-13-107 (West 2014).
17. Farh Diaz-Tello, *First Arrest Demonstrates Failure of Tennessee's Fetal Assault Law*, NATIONAL ADVOCATES FOR PREGNANT WOMEN, [http://advocatesforpregnantwomen.org/blog/2014/07/first\\_arrest\\_demonstrates\\_fail.php](http://advocatesforpregnantwomen.org/blog/2014/07/first_arrest_demonstrates_fail.php) (July 11, 2014).
18. *Id.*
19. Under the statute, however, a woman is only guilty of criminal homicide of her fetus if her act is intentional or knowing, but not if it is merely criminally negligent or reckless. See UTAH CODE ANN. § 76-5-201 et seq. (West 2010).
20. See *State v. McKnight*, 576 S.E.2d 168, 174 (S.C. 2003).
21. *Id.*
22. See Richard L. Berkowitz, *Should Refusal to Undergo A Cesarean Section Be A Criminal Offense?*, 104 OBSTETRICS & GYNECOLOGY 1220 (2004) available at [http://kofinasperinatal.org/files/Woman\\_s\\_right\\_to\\_refusal.pdf](http://kofinasperinatal.org/files/Woman_s_right_to_refusal.pdf); see also *In re A.C.*, 573 A.2d 1235, 1263 (D.C. 1990) (finding that because the dying pregnant patient was not "a trained physician," a D.C. hospital could forcibly perform a cesarean section on her without her consent in an attempt to save the life of the fetus), *rev'g en banc*, *In re A.C.*, 533 A.2d 611 (D.C. 1987).
23. *Pemberton v. Tallahassee Mem'l Reg'l Med. Ctr.*, 66 F. Supp. 2d 1247 (N.D. Fla. 1999) (holding that compelling the woman to submit to a caesarean section did not violate her constitutional rights).
24. *Bei Bei Shuai, Woman Accused of Killing Unborn Baby By Eating Rat Poison, Says Life is 'Difficult'*, HUFFINGTON POST (April 25, 2013), [http://www.huffingtonpost.com/2013/04/25/bei-bei-shuai-woman-accus\\_n\\_3158961.html](http://www.huffingtonpost.com/2013/04/25/bei-bei-shuai-woman-accus_n_3158961.html).
25. *Bei Bei Shuai Pleads Guilty In Baby's Death*, HUFFINGTON POST (Aug. 2, 2013), [http://www.huffingtonpost.com/2013/08/02/bei-bei-shuai-guilty\\_n\\_3698383.html](http://www.huffingtonpost.com/2013/08/02/bei-bei-shuai-guilty_n_3698383.html).
26. NAT'L WOMEN'S LAW CTR., *supra* note 14.
27. *Id.*
28. NAT'L WOMEN'S LAW CTR, PREGNANT AND PARENTING STUDENTS' RIGHTS (2012), available at: [http://www.nwlc.org/sites/default/files/pdfs/pregnantandparentingstudentrightsonepager\\_6.14.12.pdf](http://www.nwlc.org/sites/default/files/pdfs/pregnantandparentingstudentrightsonepager_6.14.12.pdf).
29. NAT'L WOMEN'S LAW CTR, THE PREGNANCY DISCRIMINATION ACT AND THE AMENDED AMERICANS WITH DISABILITIES ACT: WORKING TOGETHER TO PROTECT PREGNANT WORKERS (2013), available at: [http://www.nwlc.org/sites/default/files/pdfs/pda\\_adaaa\\_preg\\_workers\\_fact\\_sheet.pdf](http://www.nwlc.org/sites/default/files/pdfs/pda_adaaa_preg_workers_fact_sheet.pdf).
30. NAT'L WOMEN'S LAW CTR, THE PREGNANT WORKERS FAIRNESS ACT: MAKING ROOM FOR PREGNANCY ON THE JOB (2013), available at: [http://www.nwlc.org/sites/default/files/pdfs/pregnantworkersfairnessfactsheet\\_w\\_bill\\_number.pdf](http://www.nwlc.org/sites/default/files/pdfs/pregnantworkersfairnessfactsheet_w_bill_number.pdf).