



WORKPLACE JUSTICE

## ACCOMMODATIONS FOR PREGNANT EMPLOYEES ACT (H. 136):

ENSURING PREGNANT WORKERS DON'T HAVE TO CHOOSE BETWEEN THEIR JOB AND A HEALTHY PREGNANCY

### Pregnant Workers Are Too Often Pushed Out of Work

Although many women can continue working safely throughout their pregnancies without any changes at work, 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, a pregnant worker may face a choice no one should have to make—between the health of her pregnancy and her job.

Too often when pregnant workers ask for modest accommodations recommended by their doctors, like a stool to sit on or the right to drink water during a shift, they are instead forced onto unpaid leave or even fired. One recent survey estimated that a quarter of a million pregnant workers are denied their requests for reasonable workplace accommodations nationally every year.<sup>1</sup>

Pregnant workers who are denied workplace accommodations for which they have a medical need may be at risk of pregnancy complications, such as preterm birth, miscarriage, congenital anomalies, and low birth weight. And low birth weight babies face increased health risks.<sup>2</sup>

Further, losing a job or being forced onto unpaid leave at the very moment financial needs are increasing can be calamitous for these women and their growing families. Women's wages are absolutely critical to the wellbeing of their families – in

2015, 42 percent of mothers were primary or co-breadwinners for their families.<sup>3</sup> Job loss during pregnancy can propel families into poverty.<sup>4</sup> And when a pregnant worker is forced to take leave during pregnancy, that leave time will no longer be available when she needs it most—to recover from childbirth and bond with a new baby.

### The Vermont Accommodations for Pregnant Employees Act (H. 136)

Approximately three-quarters of women who give birth in Vermont in any given year are working women.<sup>5</sup> H. 136 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, unless the accommodation would impose an undue hardship on the employer. These accommodations might include:
  - Providing a stool to a pregnant employee experiencing swelling of the legs as a result of standing for an entire shift;
  - Modifying a no-food-or-drink policy so that an employee can drink water to prevent painful and potentially dangerous uterine contractions;
  - 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
  - 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.

## H. 136 Is Good for Workers and Good for Business

Only 1.1 percent of employed people in Vermont give birth each year, and only a fraction of those workers would require accommodations.<sup>6</sup> Employer experience with disability accommodations and workplace flexibility policies show that the costs of accommodating pregnant workers are likely to be low- to no-cost. Moreover, since pregnancy is a temporary condition, these accommodations will also be short-term.

Providing accommodations can also be expected to reduce workforce turnover, increase employee satisfaction and productivity, improve diversity, and save workers' compensation and other insurance costs.<sup>7</sup>

These policies will also benefit the Vermont economy by protecting the buying power of women and their families, and harnessing the full potential, talent, and productivity of Vermont's workforce. When women are able to enter and remain in the workforce, the state economy grows.<sup>8</sup>

## A Commonsense Solution

Eighteen states, from Nebraska to North Dakota to California, New York, and New Jersey, have passed pregnancy accommodation laws, as has the District of Columbia. These laws have typically passed with resounding bipartisan support,<sup>9</sup> which is not surprising given the overwhelming public support for such measures. According to a 2014 poll, 95 percent of participants believe that it is appropriate for employers to make reasonable accommodations for women who become pregnant and are unable to work, and 93 percent believe that employers should provide a pregnant worker with lighter duties or a different schedule if her medical provider says it is necessary.<sup>10</sup>

Women shouldn't be forced to ignore their doctors' advice in order to keep their jobs and support their families. H. 136 provides a commonsense solution for pregnant workers in Vermont who are being asked to choose between their health and their livelihood.

1 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/pregnancy-discrimination/listening-to-mothers-experiences-of-expecting-and-new-mothers.pdf>.

2 NAT'L WOMEN'S LAW CTR. & A BETTER BALANCE, IT SHOULDN'T BE A HEAVY LIFT: FAIR TREATMENT FOR PREGNANT WORKERS 5 (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).

3 CENTER FOR AMERICAN PROGRESS, BREADWINNING MOTHERS ARE INCREASINGLY THE U.S. NORM (Dec. 2016), available at <https://www.americanprogress.org/issues/women/reports/2016/12/19/295203/breadwinning-mothers-are-increasingly-the-u-s-norm/>.

4 IT SHOULDN'T BE A HEAVY LIFT, *supra* note 2, at 10.

5 NWLC calculations from US Census Bureau, American Community Survey, 2015, 1-year estimates, using IPUMS.

6 *Id.*

7 See NAT'L WOMEN'S LAW CTR., 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).

8 Annie Lowrey, *How Working Women Help the Economy*, N.Y. TIMES (Apr. 15, 2014), [https://economix.blogs.nytimes.com/2014/04/15/how-working-women-help-the-economy/?\\_r=0](https://economix.blogs.nytimes.com/2014/04/15/how-working-women-help-the-economy/?_r=0).

9 NAT'L WOMEN'S LAW CTR., *Pregnancy Accommodations in the States* (Sept. 2016), <http://nwlc.org/resources/pregnancy-accommodations-states/>.

10 CTR. FOR AMERICAN PROGRESS, *Survey on Pregnancy Discrimination* (Nov. 24, 2014), <https://cdn.americanprogress.org/wp-content/uploads/2014/11/YoungPollingMemo.pdf>.

