STATE PLAY BOOK

FOR GENDER EQUITY

ENSURE HEALTHY PREGNANCIES AND JOB SECURITY: TREAT PREGNANT WORKERS FAIRLY

The Problem

Forty years after the passage of the federal Pregnancy Discrimination Act (PDA), pregnant women still face challenges on the job. While many people will work through their pregnancies without any need for accommodations, some people will need temporary changes at work to continue working safely during pregnancy. These accommodations can be as minor as permission to carry a bottle of water during a shift, or a stool so a cashier can sit instead of standing. However, when pregnant workers have asked for these temporary adjustments, employers too often have denied their requests. Instead of receiving simple accommodations that would allow them to continue working safely, many pregnant workers have been forced onto unpaid leave or out of a job entirely—just at the moment they and their families can least afford it. Women in low-wage jobs are particularly likely to seek and be denied pregnancy accommodations, given the physically demanding nature of many low-wage jobs and a culture of inflexibility in many low-wage workplaces. Women are especially likely to be the primary breadwinner in low-income families,[1] and income loss during pregnancy can impose particularly severe consequences on these families. Women of color and LGBTQ individuals also face additional barriers in accessing pregnancy accommodations as a result of intersecting discrimination. The PDA and subsequent Supreme Court cases interpreting the law have provided important protections for pregnant workers,[2] but too many employers and employees are still confused about when exactly the PDA requires pregnancy accommodations.

The Solution

State laws should prohibit pregnancy discrimination and explicitly provide that employers must make reasonable accommodations to employees who have limitations stemming from pregnancy, childbirth, or related medical conditions. Such laws would ensure that employees with medical needs arising out of pregnancy are treated as well in the workplace as those with medical needs arising out of non-pregnancy-related disabilities.

For help crafting legislation, talking points, fact sheets, and for state-specific policy research and data, please contact us at playbook@nwlc.org.

Basic Elements of the Solution

- Prohibit employers from discriminating on the basis of pregnancy, childbirth, or related medical conditions.
- Require employers to treat those affected by pregnancy, childbirth, or related medical conditions as well as they treat those similar in ability or inability to work.
- Require employers to provide reasonable accommodations to employees who have limitations arising from pregnancy, childbirth, or related medical conditions, unless the accommodation would impose an undue hardship on the employer.
- Prohibit employers from discriminating against an employee because she needs a reasonable accommodation because of pregnancy, childbirth, or related medical conditions.
- Prohibit employers from requiring a pregnant employee to accept work changes based on pregnancy when the employee does not have any medical need for the modification and does not want the modification.
- Prohibit employers from forcing a pregnant employee to take leave when another reasonable accommodation would allow her to continue to work. While the employee would remain free to choose to use any leave that she has available, the employee would not be forced onto leave against her will.

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Talking Points on the Solution

- No one should have to choose between a job and a healthy pregnancy. Providing reasonable accommodations to pregnant workers with medical needs is vital to supporting families and our economy.

- While most women can work through their pregnancies without any changes in their jobs, some pregnant workers have a medical need for reasonable accommodations in order to work safely and support their families.
- The right to pregnancy accommodations is too important to take the chance the law will be misinterpreted. Pregnancy accommodation laws would make it unmistakable that pregnant workers are entitled to reasonable accommodations when they need them.
- It benefits our economy when women are able to keep working and continue supporting their families. Department of Labor studies show that workplace policies providing reasonable accommodations improve recruitment and retention, increase employee satisfaction and productivity, reduce absenteeism, and improve workplace safety.[3]
- Ultimately, we are talking about people who simply want to work and provide for their families. Why would anyone want to discourage that?
- Twenty-three states and the District of Columbia have laws that require at least some employers to provide accommodations to pregnant workers: Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Louisiana, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Jersey, New York, North Dakota, Rhode Island, South Carolina, Texas, Utah, Vermont, Washington, and West Virginia. At least five cities—Central Falls, Rhode Island; New York, New York; Philadelphia, Pennsylvania; Pittsburgh, Pennsylvania; and Providence, Rhode Island— have also passed pregnancy accommodations bills. Many of these provisions have passed within the past five years, with bipartisan and frequently unanimous support.

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1   *See* Sarah Jane Glynn, Ctr. for American Progress, Breadwinning Mothers are Increasing 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/.
2   Press Release, Nat'l Women's Law Ctr., Supreme Court Gives Important Victory to Pregnant Workers (Mar. 25, 2015), *available at* https://nwlc.org/press-releases/supreme-court-gives-important-victory-pregnant-workers/.
3   *See* Beth Loy, Job Accommodation Network, Accommodation and Compliance Series Workplace Accommodations: Low Cost, High Impact (Sept. 1, 2017), *available at* https://askjan.org/media/lowcosthighimpact.html.