

**Testimony of Andrea Johnson
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**In Support of SB 518—Discrimination in Employment – Pregnancy and Childbirth
Before the Senate Judicial Proceedings Committee
February 28, 2019**

Thank you for the opportunity to submit this testimony on behalf of the National Women's Law Center in support of Senate Bill 518. 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. We urge you to support SB 518, a simple fix to Maryland's current pregnancy accommodation law to ensure that pregnant workers in Maryland are not forced to choose between their health and their jobs.

I. Maryland's pregnancy accommodation law needs to be clarified and strengthened to ensure that pregnant workers are protected.

In 2013, Maryland passed, with bipartisan support, the Reasonable Accommodations for Disabilities Due to Pregnancy Act, Md. Code. State Gov't. § 20-609, which has helped many pregnant workers in Maryland get reasonable accommodations that allow them to continue working during their pregnancies. However, experience demonstrates the law must be clarified and strengthened in several key ways, to ensure women can work safely and support their families through their pregnancies and after giving birth.

A. Maryland's law needs to be clarified to ensure that pregnant workers are not just entitled to reasonable accommodations once a pregnancy complication arises but are entitled to reasonable accommodations they may need to keep their pregnancies healthy and avoid complications arising to begin with.

Maryland's pregnancy accommodation law is currently ambiguous as to whether all pregnant workers with a need for a workplace accommodation are entitled to reasonable accommodations or only those workers who have limitations arising out of pregnancy *complications*. But a need for a temporary accommodation can arise from a normally-progressing, healthy pregnancy; for example, the need to sit instead of stand during a long shift, to avoid exposure to toxic chemicals, or to avoid lifting heavy objects to ensure your pregnancy remains a healthy pregnancy. These pregnant workers are also too often forced off the job when they ask for simple, reasonable accommodations. And the failure to accommodate a healthy pregnancy can itself precipitate complications, putting the worker and her pregnancy at risk. No pregnant worker should be forced to choose between the health of her pregnancy and her job.

Maryland's current law speaks of providing reasonable accommodations for "disabilities caused or contributed to by pregnancy or child birth."¹ Some courts have held under federal law that physical limitations and medical needs arising out of normal pregnancy, like those described

¹ Md. Code Ann., State Gov't § 20-609 (West 2013).

above, do not constitute “disabilities.”² In 2017, the United States District Court for the District of Maryland specifically held that Maryland’s pregnancy accommodation law “prohibit[s] discrimination on the basis of disability, but not pregnancy alone.”³ The court went on to hold that even though the plaintiff, a veterinary assistant, “required help on a ‘case-by-case basis’ during the final three months of her pregnancy with certain of her responsibilities, including ‘performing x-rays, bending over, lifting large objects, and handling large animals,’” “these limitations alone fail[ed] to demonstrate that she suffered a “disability” with respect to her Maryland Fair Employment Practices Act . . . claim” and thus she was not protected under §20-609.⁴ Instead, the court held that she needed to show an “additional ‘pregnancy-related impairment’” (emphasis added) in order to get protection, and cited to cases where courts denied pregnant plaintiffs’ claims to reasonable accommodations under the Americans with Disabilities Act (ADA) because the plaintiffs failed to show that their pregnancies suffered from significant complications.⁵

As a result, in order to ensure that all pregnant workers in Maryland who have a need for a reasonable accommodation receive one, it is critical that Maryland law make undeniably clear that all pregnant workers with limitations due to pregnancy, childbirth, or related conditions are entitled to a reasonable accommodations, unless it would pose an undue hardship on the employer—not just those with pregnancy-related “disabilities.” Most of the states that have passed pregnancy accommodation laws in the last several years have required employers to provide reasonable accommodations for *conditions or limitations* related to pregnancy or childbirth.⁶ Likewise, the Pregnant Workers Fairness Act which has been proposed in the U.S. Congress requires reasonable accommodations for employees’ “limitations” related to pregnancy, childbirth, or related medical conditions.⁷ There is no reason Maryland shouldn’t do the same.

B. Protections are needed against pregnant workers being forced out onto leave.

Many pregnant workers who seek a modest accommodation—like a stool to sit on or the right to drink water during a shift—so that they can continue to do their job are instead forced onto leave by their employers. When a pregnant worker is unnecessarily forced to use her limited leave time because an employer refuses to provide a reasonable accommodation that would

² See, e.g., *Wonasue v. Univ. of Maryland Alumni Ass’n.*, 984 F.Supp.2d 480 (D. Md. 2013) (holding that plaintiff’s allegation that she was pregnant was not enough without evidence of significant complications for plaintiff to have a “disability” under the ADA or Maryland Employment Discrimination Law which shares the ADA definition); *Turner v. Eastconn Regional Educ. Service Center*, No. 3:12-CV-00788 (VLB), 2013 WL 6230092, at *6-7 (D. Conn. Dec. 2, 2013) (holding that plaintiff was not disabled when she did not have any pregnancy complications and was not limited in the major life activity of working because her pregnancy only prevented her from doing her particular job); *Sam-Sekur v. Whitmore Group, Ltd.*, No. 11-cv-4938 (JFB)(GRB), 2012 WL 2244325, at *7-9 (E.D.N.Y. June 15, 2012) (dismissing plaintiff’s complaint because she did not allege any physiological impairment resulting from her pregnancy that fell within the “extremely rare” category of pregnancy-related conditions that qualify as disabilities); *Selkow v. 7-Eleven, Inc.*, 8:11-CV-456-T-33EAJ, 2012 WL 2054872 (M.D. Fla. June 7, 2012) (granting summary judgment because plaintiff failed to produce enough evidence that her pregnancy-related back pains which “may have affected to some degree her ability to lift” substantially limited a major life activity).

³ *Saah v. Thumel*, 2017 WL 491221, at *1 (Feb. 7, 2017 D. Md.).

⁴ *Id.* at *6-*7.

⁵ *Id.* at *6.

⁶ See NAT’L. WOMEN’S LAW CTR., *Pregnancy Accommodations in the States* (June 2018), available at <https://nwlc-ciw49tixgw5lbab.stackpathdns.com/wp-content/uploads/2017/08/Pregnancy-Accommodations-in-the-States-June-2018.pdf>.

⁷ Pregnant Workers Fairness Act, S. 1101, H.R. 2417 (115th Congress).

allow her to continue working, this valuable benefit will no longer be available when she needs it most—to recover from childbirth and bond with a new baby. And if the leave is unpaid, she loses income at the moment her family’s financial needs are about to increase, which can be devastating.

This is what happened to Peggy Young when she worked as an early morning air driver at UPS in Landover, Maryland. Although she could have easily been provided light duty to accommodate her restriction on lifting more than 20 pounds—an amount that she rarely had to lift as part of her job—UPS pushed her off the job onto unpaid leave for the last six and a half months of her pregnancy, causing her family significant financial distress.⁸ Likewise, Tiffany Beroid, a customer service manager at Walmart in Laurel, Maryland, who occasionally had to push carts and lift boxes as part of her job, was forced onto unpaid leave after she informed Walmart of her need to take on lighter duties due to her pregnancy. Her husband had to work double shifts as a security guard so they could pay their rent and Tiffany could no longer pay her tuition for nursing school at the local community college.⁹ These are not isolated examples. At the National Women’s Law Center, we regularly receive calls from women across the country who want and need to continue working during their pregnancies, but who are forced out onto leave when a simple accommodation could have allowed them to continue working safely.

Unpaid or paid leave can be a reasonable accommodation, but given that too many employers push women onto leave even when simple accommodations could have allowed them to stay on the job, it is important for Maryland’s pregnancy accommodation law to include language making it explicit that an employer cannot require an employee to take leave, whether paid or unpaid, if another reasonable accommodation for the employee’s pregnancy-related limitation can be provided. Otherwise, pregnant workers in Maryland still risk being forced to choose between a healthy pregnancy and providing for their families.

II. SB 518 will clarify and strengthen Maryland’s pregnancy accommodation law to ensure that working women in Maryland can raise healthy families.

SB 518 is a simple amendment to Maryland’s pregnancy accommodation law which already requires employers with 15 or more employees to provide reasonable accommodations to pregnant workers, unless it would pose an undue hardship on the employer. SB 518 does not significantly change the requirements with which employers should already be complying; it simply clarifies the rights and obligations of workers and employers to ensure pregnant workers aren’t still forced to choose between the health of their pregnancy and their job.

This bill amends Title 20, Section 609 of the Maryland State Government Code, to:

- Remove throughout the law reference to “disabilities” caused or contributed to by pregnancy or childbirth and replace with “limitations” caused or contributed to by pregnancy or childbirth. This will make clear that all pregnant workers with a need for an accommodation are entitled to a reasonable accommodation, unless it would pose an undue hardship on the employer—not just workers who need accommodations as a result of pregnancy complications.

⁸ NAT’L. WOMEN’S LAW CTR., IT SHOULDN’T BE A HEAVY LIFT: FAIR TREATMENT FOR PREGNANT WORKERS 15 (2013), <https://nwlc.org/resources/it-shouldnt-be-heavy-lift-fair-treatment-pregnant-workers/>.

⁹ Brigid Schulte, Wal-Mart Faces New Pregnancy Discrimination Charges, *The Washington Post* (Dec. 17, 2014), https://www.washingtonpost.com/blogs/local/wp/2014/12/17/wal-mart-faces-new-pregnancy-discrimination-charges/?utm_term=.371b1d8e8a97.

- Prohibit employers from forcing a pregnant employee to take leave if another reasonable accommodation would allow her to continue to work;
- 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;
- Deny employment opportunities to a pregnant worker because she needs this sort of reasonable accommodation;
- Require the Commission on Civil Rights to undertake public education efforts to inform employers, employees, employment agencies, and applicants for employment about their rights and responsibilities under the Act.

III. Conclusion

The National Women's Law Center strongly supports SB 518. Pregnant workers in Maryland should not be forced to choose between ignoring their doctor's advice and being forced onto leave or losing their jobs at a time when both their health and the economic security of their families are absolutely crucial. SB 518 provides a commonsense solution for this important issue.