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Accommodating Pregnant Workers Is Good for Business

Accommodating the medical needs of pregnant workers is not only good for working women and families, it is good for business. Accommodations make economic and business sense, as they can increase productivity, reduce absenteeism, and improve employee satisfaction and retention, among other benefits.

That is why business groups like the US Chamber of Commerce and the Society for Human Resource Management along with large companies such as L'Oréal, Levi Strauss, Adobe, Cigna, PayPal, Microsoft, and others are calling on Congress to pass a federal Pregnant Workers Fairness Act (PWFA) to benefit employers and employees alike.¹ When a pregnant worker requests an accommodation, like an extra bathroom break per shift or a stool to sit on, the law should be clear about what an employer is obligated to do. The PWFA will provide that clarity.

As of 2020, thirty states and the District of Columbia have enacted measures to explicitly grant pregnant employees the right to reasonable accommodations at work when they need them.² This includes states from California, New York, and Massachusetts, to South Carolina, Nebraska, Utah, West Virginia, and Tennessee. Millions of pregnant workers have been helped by these critical laws, but larger multi-state employers are currently working to comply with an ever-expanding patchwork of state laws -- this bill will foster greater streamlining of policies across the country.

The PWFA will provide businesses needed clarity on pregnancy accommodations, by using the already familiar Americans with Disabilities Act processes to provide a clear framework for businesses to respond to needs for accommodation. Businesses of all sizes will benefit from clear and consistent legal rules that help cut down on compliance costs. In her testimony to the Education and Labor Committee in support of the PWFA, a representative of the Greater Louisville Chamber of Commerce recognized the PWFA as pro-business and pro-workforce.³ She pointed out that the clear standard it provides would help the many smaller and mid-size businesses that today navigate complex legal requirements regarding pregnancy, childbirth, and related medical conditions without HR departments or in-house counsel. Upstate Business Journal of South Carolina has also recognized the value of such clarity in its support for PWFA.⁴

Accommodating Pregnant Workers Makes Economic and Business Sense

The stats bear out the positive business benefits of accommodations. Only about 1.5% of workers give birth each year, and only a fraction of those workers would require accommodations, most of them minor and temporary.⁵ 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:

- Minimal to no cost for providing accommodations
- Increased productivity
- Reduced absenteeism
- Increased employee commitment and satisfaction
- Increased diversity
- Increased recruitment and retention of employees
- Increased safety

Most pregnancy accommodations are likely to be low- or no-cost. Many of the accommodations typically requested by pregnant workers are minor: sitting rather than standing, avoiding heavy lifting, and taking breaks to go to the bathroom. These are also the kinds of accommodations employers are legally obligated to provide to employees with disabilities.

A survey by the Job Accommodation Network (JAN), a technical assistance provider to the Department of Labor, 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.⁶ Of those employers that reported a cost for accommodations, the majority reported a median cost of \$500 or less.⁷ 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. Employers report significant benefits from providing accommodations.

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

- **IMPROVED RECRUITMENT AND RETENTION OF EMPLOYEES:** In the JAN survey, almost 90% of employers reported that providing an accommodation for disabilities allowed them to retain valued employees,⁸ and 59% said that it “eliminated costs associated with training a new employee.”⁹ When employers provide temporary accommodations that allow 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 when they return to work after having a baby.
- **INCREASED EMPLOYEE COMMITMENT:** Sixty-one percent of employers reported in the JAN survey 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 Advisers 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 workers’ needs for workplace accommodations during pregnancy.
- **INCREASED PRODUCTIVITY:** Accommodating employees with disabilities increases productivity not only for the employee who needs an accommodation, but also for the business overall. Seventy percent of employers reported to JAN that accommodating employees “increased the employee’s productivity,”¹² and 55% reported that providing accommodations “increased overall company productivity.”¹³ These studies suggest that when pregnant workers’ needs for accommodations are met, employers can anticipate improved productivity.
- **REDUCED ABSENTEEISM:** JAN’s survey found that 55% of employers reported better attendance from an employee after providing an accommodation for a disability, and other studies suggest that this is partially because accommodations improve employee health by decreasing work-related stress.¹⁴ The study also shows that businesses experience less absenteeism overall when they offer flexible work arrangements.¹⁵ 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 absences, resulting in a bottom-line benefit for employers.

- **IMPROVEMENTS IN WORKPLACE SAFETY:** When employers provide accommodations, they create a safer workplace. Forty-six percent of employers reported increases in workplace safety as a result of providing accommodations to employees with disabilities,¹⁶ and 36% reported reduced workers' compensation and other insurance costs.¹⁷ Providing flexible workplaces can also reduce employee stress and improve overall health,¹⁸ which leads to reduced risk of workplace injury and fewer workers' compensation claims.¹⁹ Providing accommodations to those pregnant workers who need them to work safely during pregnancy will undoubtedly reduce stress on these workers, and thus lower their risk of injury.
- **INCREASED DIVERSITY:** Forty percent of employers surveyed noted that a benefit of providing accommodations to employees with disabilities was that they "increase diversity of the company."²⁰ 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."²¹ 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.²² Likewise, providing temporary accommodations to pregnant workers, particularly those working in jobs and occupations where women have not historically worked, and physically demanding jobs, is likely to make women who might become pregnant much more willing to choose these fields.

The Pregnant Workers Fairness Act Is a Common Sense and Common Ground Solution

Employers, policymakers, business associations and civil society groups across the political and industry spectrum have pledged their support for the Pregnant Workers Fairness Act.²³

- The United States Chamber of Commerce, the largest business organization in the world, has called for the passage of the Pregnant Workers Fairness Act. The organization, which advocates for pro-business policies, called the bill a "balanced approach" to allowing pregnant

workers to remain in the workplace, a policy "critical to the economic security of America's women and families."²⁴

- Twenty-four high-profile corporations, including Fortune 500 companies Adobe, Cigna Corp., Expedia Group, Facebook, Levi Strauss & Co., Microsoft Corporation, and PayPal, among others, signed onto a letter "urg[ing] the passage of the Pregnant Workers Fairness Act as an important advancement toward ensuring the health, safety and productivity of our modern workforce."²⁵
- The Society for Human Resource Management, which has 300,000 human resources and business executive members, called for the passage of the PWFA in order to "foste[r] mutually beneficial work environments that serve both businesses and employees."²⁶ In their letter, SHRM highlighted how the PWFA would provide much-needed clarity on employers' legal obligations toward pregnant workers, and preserves key employer rights while "enabl[ing] pregnant women to have the maximum opportunity to remain engaged employees in the workplace."²⁷
- The bill has attracted bipartisan cosponsorship from 241 members of Congress, including 18 Republicans.²⁸ Original co-sponsor Congressman John Katko (R-NY) has explained that the law "puts in place a uniform, fair and familiar framework for employers and will enable women to keep working safely and provide for their families throughout pregnancy."²⁹
- Over 200 groups, including faith organizations, maternal health organizations, women's organizations, and other advocate organizations have signed on to a letter publicly pledging their support for the PWFA.³⁰ As the letter explains, "American families and the American economy depend upon women's income: we cannot afford to force pregnant women out of work."³¹

The bottom-line benefit to businesses is just one of the many reasons to ensure that reasonable accommodations are available to pregnant workers. Corporations, advocacy groups, and members of Congress from both parties are united in support for the PWFA. The time is now to pass this common-sense and common-ground bill.

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- 5 National Women's Law Center calculations of 2018 American Community Survey using Minn. Population Ctr., Univ. of Minn., *IPUMS Online Data Analysis System*, IPUMS USA, <https://usa.ipums.org/usa/sda/> (last visited July 13, 2020, 10:09 AM).
- 6 JOB ACCOMADATIONS NETWORK, *WORKPLACE ACCOMADATIONS: LOW COST HIGH IMPACT* 1, 3 (2019), <https://askjan.org/publications/Topic-Downloads.cfm?pubid=962628> [hereinafter "JAN Report"].
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- 8 *Id.* at 4.
- 9 *Id.*
- 10 JAN Report, *supra* note 6, at 4.
- 11 The Council of Econ. Advisors, *Work-Life Balance and the Economics of Workplace Flexibility* 19 (2014), https://obamawhitehouse.archives.gov/sites/default/files/docs/updated_workplace_flex_report_final_0.pdf [hereinafter "Council Report"].
- 12 JAN Report, *supra* note 6, at 4.
- 13 *Id.*
- 14 JAN Report, *supra* note 6, at 4; see generally David Lee, *Maine Emp.'s Mut. Ins. Co., Managing Employee Stress and Safety* (2000), <http://humannatureatwork.com/wp-content/uploads/2014/06/ManagingStress.pdf>.
- 15 JAN Report, *supra* note 6, at 4.
- 16 *Id.*
- 17 *Id.*
- 18 Lee, *supra* note 14, at 1, 3.
- 19 *Id.* at 1, 5.
- 20 JAN Report, *supra* note 6, at 4.
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- 28 *H.R. 2694 – Pregnant Workers' Fairness Act*, Congress.gov (<https://www.congress.gov/bill/116th-congress/house-bill/2694/cosponsors?searchResultViewType=expanded>).
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