



January 13, 2020

Vote Yes on H.R. 2694, the Pregnant Workers Fairness Act

Dear Member of House Education and Labor Committee:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, I write to urge you to **vote yes on the Amendment in the Nature of a Substitute to H.R. 2694, the Pregnant Workers Fairness Act, offered by Chairman Bobby Scott, without further changes.**

More than 40 years after the passage of the Pregnancy Discrimination Act of 1978, many pregnant workers in the United States are still vulnerable to adverse employment actions that force them to choose between risking their livelihoods or risking their health and the health of their pregnancies. The bipartisan Pregnant Workers Fairness Act would strengthen existing federal protections against pregnancy discrimination to help ensure that no pregnant worker is forced to choose between a healthy pregnancy and a job.

Ensuring the protection and advancement of the rights, economic security, and dignity of all working people in this country is a priority of The Leadership Conference and its members. In the U.S. today, there are more pregnant workers than ever before. Of mothers who gave birth to their first child between 2006 and 2008, 66 percent worked during their pregnancy.ⁱ Women are also working later into their pregnancies. More than 80 percent of pregnant workers continue to work into their last trimester.ⁱⁱ Many will never require an accommodation in order to perform their jobs, but too often, employers have fired or pushed pregnant workers who do require a reasonable accommodation onto unpaid leave, cutting off both a paycheck and health insurance just when both are needed the most.

When pregnant workers do not have access to reasonable accommodations, they can face serious health risks, including premature labor and miscarriage. Black women, for example, are particularly vulnerable to pregnancy discrimination and are at higher risk for pregnancy-related complications, many of which may require, sometimes modest, workplace accommodations. According to the National Partnership for Women & Families, between 2011 and 2015, Black women filed nearly 30 percent of all pregnancy discrimination charges with the Equal Employment Opportunity Commission, even though Black women made up only 14 percent of women in the workforce ages 16 to 54.ⁱⁱⁱ While loss of a paycheck or health insurance can have severe consequences for any pregnant person, for Black women it can be dire. Already, structural racism in health care puts Black women at

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risk for a range of negative health outcomes, including higher risk of maternal death.^{iv} Black women are up to four times more likely to die from pregnancy-related conditions than non-Hispanic white women, and the death rate for black infants is twice that of infants born to non-Hispanic white mothers.^v Depriving women of both their wages and access to health insurance during pregnancy does nothing to alleviate this crisis.

An investigation by the New York Times illustrates the real-world consequences of failing to adequately protect and support pregnant workers. Reporters for the Times interviewed numerous warehouse employees who had miscarried after they had requested accommodations that included lifting lighter boxes, working shorter shifts, or the ability to sit in a chair. The women reported being denied these accommodations even after presenting their employer with doctors' notes. The women depended on their paychecks to survive; but many miscarried while at work.^{vi}

In 2015, the Supreme Court in *Young v. United Parcel Service* held that the failure to make accommodations for pregnant workers with medical needs arising out of pregnancy may sometimes violate the Pregnancy Discrimination Act.^{vii} *Young* was an important decision, but the legal standard it set out still leaves pregnant workers without protection. A review of pregnancy accommodation cases conducted by A Better Balance following the *Young* decision found that over two-thirds of courts held employers were not obligated to accommodate pregnant workers under the Pregnancy Discrimination Act.^{viii} Lack of clarity about how to apply the *Young* standard also means that pregnant workers are still not getting the accommodations they need to continue working safely on the job.

The Pregnant Workers Fairness Act would ensure that pregnant workers who need reasonable accommodations receive them, so they can continue working without jeopardizing their health or the economic security of their families. The bill would:

- Clarify that employers must make reasonable accommodations for employees who have limitations related to pregnancy, childbirth, or a related medical condition, unless the accommodation would impose an undue hardship on the employer;
- Protect pregnant workers from being fired, forced to take paid or unpaid leave, or retaliated against if they request or use an accommodation; and
- Require an interactive process between employers and pregnant workers to determine appropriate reasonable accommodations, similar to the Americans with Disabilities Act which is already familiar to employers and employees.

By providing a clear rule for pregnancy accommodations, the Pregnant Workers Fairness Act supports pregnant workers and promotes economic security, workplace fairness, and healthy families. We look forward to the Pregnant Workers Fairness Act moving out of committee and urge you to vote yes on the Amendment in the Nature of a Substitute to H.R. 2694, the Pregnant Workers Fairness Act, without further changes. If you have any questions, please contact Gaylynn Burroughs, Senior Policy Counsel, at burroughs@civilrights.org or (202) 466-3311.

Sincerely,



Vanita Gupta
President & CEO

ⁱ George Gao and Gretchen Livingston, Pew Research Center, *Working While Pregnant is Much More Common than It Used to Be* (Mar. 31, 2015), <https://www.pewresearch.org/fact-tank/2015/03/31/working-while-pregnant-is-much-more-common-than-it-used-to-be/>.

ⁱⁱ *Id.*

ⁱⁱⁱ National Partnership for Women & Families, *By the Numbers: Women Continue to Face Pregnancy Discrimination in the Workplace* (Oct. 2016), <http://www.nationalpartnership.org/our-work/resources/economic-justice/pregnancy-discrimination/by-the-numbers-women-continue-to-face-pregnancy-discrimination-in-the-workplace.pdf>.

^{iv} See Jamila Taylor et al., *Eliminating Racial Disparities in Maternal and Infant Mortality: A Comprehensive Blueprint* (May 2, 2019), <https://www.americanprogress.org/issues/women/reports/2019/05/02/469186/eliminating-racial-disparities-maternal-infant-mortality/>.

^v *Id.*

^{vi} Jessica Silver-Greenberg and Natalie Kitroeff, *Miscarrying at Work: The Physical Toll of Pregnancy Discrimination*, *The New York Times* (Oct. 21, 2018), <https://www.nytimes.com/interactive/2018/10/21/business/pregnancy-discrimination-miscarriages.html>.

^{vii} 135 S.Ct. 1338 (2015).

^{viii} Dina Bakst, Elizabeth Gedmark, and Sarah Brafman, *A Better Balance, Long Overdue: It Is Time for the Federal Pregnant Workers Fairness Act* (May 2019), <https://www.abetterbalance.org/wp-content/uploads/2019/05/Long-Overdue.pdf>.