ACLU Pregnancy Accommodation Litigation

Women make up nearly 60 percent of the workforce and most of them will be pregnant at least once during their careers. Congress enacted the Pregnancy Discrimination Act more than 40 years ago to assure that this normal life event does not cost a woman her paycheck.

But today, employees are routinely are denied the temporary job modifications, or "accommodations," they need to have a healthy pregnancy—like a stool to sit on, a schedule change, or a break from heavy lifting—even when coworkers who are not pregnant get such modifications. These women face a Hobson's choice of continuing to work at full capacity despite potential health risks, or to stop working.

The Pregnant Workers Fairness Act would put an end to this form of sex discrimination. The law makes it clear that employers must provide "reasonable accommodations" for pregnant employees regardless of how they treat others, just as they already must do, by law, for workers with disabilities.

The ACLU has stepped in to litigate on behalf of pregnant women forced off the job due to their employer's failure to accommodate their pregnancy. Here are some of their stories.

Lochren v. Suffolk County (E.D.N.Y. 2006)

ACLU and the New York Civil Liberties Union represented six women police officers in a lawsuit against the Suffolk County Police Department (SCPD) for refusing to temporarily reassign pregnant officers to desk work and other non-patrol jobs, even though it did so for officers injured on the job. But for those officers who opted to keep working patrol, SCPD also failed to provide bullet-proof vests or gun belts that would fit pregnant officers. As a result, pregnant officers' only safe option was to go on unpaid leave long before their due date. In 2006, a federal court found SCPD's policy discriminatory. As a result, it changed its policy to cover pregnant officers.

Cole v. SavaSeniorcare Admin. Services (E.E.O.C. 2014)

When Jaimie Cole, a certified nursing assistant, was in her third trimester, she developed a high risk of preeclampsia, a condition that can lead to preterm labor or even death. Her doctor advised her not to do any heavy lifting. Jaimie's job required her to regularly help patients in and out of bed and assist with bathing, so she asked for a temporary light duty assignment. Instead, her employer sent her home without pay for the rest of her pregnancy because, according to her supervisor, pregnant women weren't eligible for light duty. ACLU filed a charge of discrimination on Cole's behalf with the U.S. Equal Employment Opportunity Commission (EEOC) and negotiated a settlement under which the employer adopted a new policy ensuring that pregnant workers get light duty or other accommodations on the same terms as other employees needing temporary job changes.

Young v. United Parcel Service, Inc. (U.S. Supreme Court, 2015)

Peggy Young drove a truck delivering packages for UPS. When she became pregnant and her health provider imposed a lifting restriction, the company denied her a light duty assignment, claiming they were reserved for certain workers, such as those injured on the job. Instead, UPS put Young on unpaid leave, eventually terminating her medical coverage. In 2015, the U.S. Supreme Court, in a 6-3 decision, gave Young a victory by holding that the PDA requires employers to provide pregnant employees with the same accommodations that they give non-pregnant employees who are

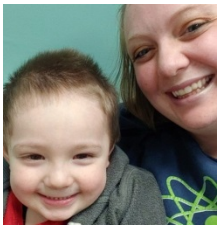
similar in their ability or inability to work. Significantly, the Court ruled that an employer may not cite the cost or convenience of providing such accommodations as reasons for denying them. ACLU co-authored a "friend of the court" brief joined by seven women's rights groups.

Myers v. Hope Healthcare Center (E.D. Mich. 2015)

Asia Myers, a certified nursing assistant, experienced complications early in her pregnancy and was told by her doctor that she could continue to work, but should not do any lifting on the job. Although Hope Healthcare Center had a history of providing light duty to workers with temporary lifting restrictions, including workers who had been injured on the job, Myers was told not to return to work until her restrictions were lifted. As a result, she was out of work for over a month with no income or health insurance coverage. Myers was able to return to work after her complications had passed, but she suffered significant financial hardship. Under the settlement negotiated by the ACLU and ACLU of Michigan, the company adopted a pregnancy accommodation policy.

Legg v. Ulster County (Second Circuit) (pending)

Corrections Officer Ann Marie Legg was denied temporary assignment to light duty during her pregnancy, even though Ulster County gave such assignments to guards injured on the job. In her third trimester, Ms. Legg had to intervene in an inmate fight, prompting her to go on leave rather than face future risks. After a trial, a federal judge refused to find that the County's policy imposed a discriminatory disparate impact on pregnant workers, even though he acknowledged that under the County's policy, a pregnant officer never will qualify for light duty. On appeal, the ACLU submitted a "friend of the court" brief, urging reversal.



Durham v. Rural/Metro Corporation (Eleventh Circuit) (pending)

Michelle Durham was an Emergency Medical Technician (EMT) in Alabama whose job often required her to lift patients on stretchers into an ambulance. When she became pregnant, her health care provider imposed a restriction on heavy lifting. Durham asked Rural/Metro for a temporary modified duty assignment during her pregnancy, but was rejected, despite the company's policy of giving such assignments to EMTs injured on the job. She was told her only option was to take unpaid leave for the duration of her pregnancy. A lower court judge approved the employer's actions and dismissed Durham's case. ACLU and ACLU of Alabama joined in appealing the case to the Eleventh Circuit, where it now is pending.

Panattoni v. Village of Frankfort (N.D. Ill. 2019)

Officer Jennifer Panattoni, a senior patrol officer who has served the Frankfort Police Department (FPD) for more than 14 years, was denied reassignment to non-patrol duties during two pregnancies. During her first pregnancy, the Village claimed that only officers with on-the-job injuries were entitled to "light duty"; during the second, it told Panattoni there wasn't enough non-patrol work for her to do full-time. Yet FPD also refused to provide her with uniforms and protective gear that would fit her changing body, including a properly-sized bullet proof vest. FPD ultimately forced Officer Panattoni onto unpaid leave for the duration of both pregnancies. Under the settlement in April 2019 negotiated by the ACLU and ACLU of Illinois, the Village adopted changes to its policies, procedures, and training to provide reasonable accommodations for employees who are pregnant or recovering from childbirth.