

May 11, 2021

**RE: Vote YES for the Pregnant Workers Fairness Act
(H.R. 1065)**

Dear Representative:

On behalf of the American Civil Liberties Union, and our more than 1.8 million members, supporters, and activists, we write to express our support for H.R. 1065, the Pregnant Workers Fairness Act (PWFA). This critical legislation would combat an all-too-common and virulent form of pregnancy discrimination while also providing employers much-needed clarity on their obligations under the law. We urge all members of the House of Representatives to vote in favor of this measured, bipartisan, and long-overdue legislation. This vote will be scored.



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In passing the Pregnancy Discrimination Act (PDA), Congress recognized that working women contributed to their families' economic stability and shouldn't have to choose between a career and continuing a pregnancy. Although the PDA has played a critical role over the past 40 years in securing women's place in the workforce, too many women continue to be marginalized at work because of their decision to become pregnant and have children. And for many years, courts routinely ruled against workers who brought pregnancy accommodation cases where they alleged discrimination when an employer provided a job modification to an employee temporarily unable to work but failed to do the same for a pregnant worker. This kind of discriminatory treatment especially affected women in physically demanding or male-dominated jobs, low-wage workers, and women of color. Too often, their requests for temporary accommodations to address a medical need were denied and instead they were terminated or placed on unpaid leave, causing devastating economic harm.

At a time when women constitute nearly 60 percent of the workforce and contribute significantly to their families' economic well-being, passage of PWFA is a dire necessity. When a pregnant worker is forced to quit, coerced into taking unpaid leave, or fired because her employer refuses to provide a temporary job modification, the economic impact can be severe; if she is the sole or primary breadwinner for her children, as

nearly half of working women are, her entire family will be without an income when they most need it. She further may be denied unemployment benefits because she is considered to have left her job voluntarily. She may have few if any additional resources on which to rely. PWFA ensures that women would not face such devastating consequences. Instead, it treats pregnancy for what it is – a normal condition of employment.

The stories of clients the ACLU has represented – both as direct counsel and as lead *amicus*– illustrate the harm:

Lochren v. Suffolk County: In one of the earliest cases, Sandra Lochren and five other police officers sued the Suffolk County Police Department (SCPD) in New York for refusing to temporarily reassign pregnant officers to deskwork 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 bulletproof vests or gun belts that would fit pregnant officers. Their only safe option was to go on unpaid leave long before their due dates.

Cole v. SavaSeniorCare: When Jaimie Cole, a certified nursing assistant in North Carolina, 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. Cole’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.

Myers v. Hope Healthcare Center: Asia Myers, a certified nursing assistant in Michigan, 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 her employer had a history of providing light duty to workers with temporary lifting restrictions, Myers was told not to return to work until her restrictions were lifted. She was out of work for over a month with no income or health insurance coverage.

Hicks v. City of Tuscaloosa: Stephanie Hicks, a narcotics investigator with the Tuscaloosa Police Department in Alabama, wanted to breastfeed her new baby, but her bulletproof vest was restrictive, painful, and prone to causing infection in her breasts. She asked for a desk job but her employer refused, even though it routinely granted desk jobs to officers unable to fulfill all of their patrol duties. Instead, it offered her an ill-fitting vest that put her at risk.

Legg v. Ulster County: Corrections Officer Ann Marie Legg was denied light duty during her pregnancy, even though Ulster County, New York, gave such

assignments to guards injured on the job. In her third trimester, Legg had to intervene in a fight, prompting her to go on leave rather than face future risks.

Luke v. CPlace SNF, LLC: Eryon Luke, a nursing assistant in Louisiana, was denied accommodation of her lifting restriction during her pregnancy, even though her employer routinely allowed assistants to seek help with lifting and had mechanical lifts available for such a purpose.

Allen v. AT&T Mobility: Cynthia Allen worked for AT&T Mobility retail stores in two locations, New York City and Las Vegas, and lost her job because she accumulated too many “points” under the company’s punitive attendance policy due to pregnancy-related symptoms such as nausea. The policy makes accommodation for late arrivals, early departures, and absences due to thirteen enumerated reasons, some medical and some not, but none due to pregnancy and pregnancy-related symptoms. Our other clients, Katia Hills in Indiana and Kristine Webb in South Dakota, experienced similar discrimination at AT&T Mobility.

Durham v. Rural/Metro Corp.: Michelle Durham was an 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 others. She was told her only option was to take unpaid leave.

The simple solution to the no-win situation that these and many other women face is the Pregnant Workers Fairness Act. This legislation, modeled after the ADA and using a framework familiar to most employers, takes a thoughtful and measured approach to balancing the needs of working people and employers by requiring businesses with fifteen or more employees to provide workers with temporary, reasonable accommodations for known limitations related to pregnancy, childbirth, or related medical conditions if doing so would not be an undue hardship on the business. It also prohibits employers from forcing a pregnant employee to take a leave of absence if a reasonable accommodation can be provided; prevents employers from denying job opportunities to an applicant or employee because of the individual’s need for a reasonable accommodation; prevents an employer from forcing an applicant or employee to accept a specific accommodation; and prohibits retaliation against individuals who seek to use PWFA to protect their rights.

PWFA also promotes women’s health. Accommodations make a difference in physically demanding jobs (requiring long hours standing, lifting heavy objects, etc.) where the risk of preterm delivery and low birth weight are significant. The failure to provide accommodations can be linked to miscarriages and premature babies who are at higher risk of death and disability. This legislation is an important contribution in the fight to improve Black maternal health outcomes. We know that Black mothers have some of the highest labor force participation rates and also

have maternal mortality rates three to four times higher than that of white women. Providing workplace accommodations to Black pregnant workers will certainly improve their health and economic security.

There is also a strong business case for PWFA. Providing pregnant employees with reasonable accommodations increases worker productivity, retention, and morale, and reduces health care costs associated with pregnancy complications. Additionally, PWFA will help provide greater clarity about an employer's legal obligations to pregnant workers.

Finally, 30 states across the political and ideological spectrum have recognized the benefits of providing reasonable accommodations to pregnant workers. Congress should ensure that all pregnant workers, not just some, have the protections they need.

It is time for Congress to act and pass the Pregnant Workers Fairness Act and we urge Members of the House of Representatives to vote yes when this bill comes to the floor. If you have any questions, please don't hesitate to contact Vania Leveille at vleveille@aclu.org.

Sincerely,



Ronald Newman
National Political Director



Vania Leveille
Senior Legislative Counsel