

Subcommittee on Children & Families

Committee on Health, Education, Labor & Pensions

Chairman Bob Casey ~ Ranking Member Bill Cassidy

S. _____, the Pregnant Workers Fairness Act

*Sponsored by Senator Casey, Senator Cassidy, Senator Shaheen,
Senator Capito, Senator Smith and Senator Murkowski*

No pregnant worker should be forced to choose between a job and a healthy pregnancy. Yet all too often, when pregnant workers request a temporary workplace accommodation that would allow them to continue earning a paycheck, they are pushed out of their jobs or forced to continue working—despite the risks to their health—in order to maintain their family’s economic security.

Today, women make up nearly half of the labor force, and three-quarters of women entering the workforce will be pregnant and employed at some point in their careers. Two-thirds of American families rely on women as the primary or co-earner. The COVID-19 pandemic has created unprecedented challenges for women workers and employers, and it is time to act on a balanced, commonsense approach to keeping pregnant workers healthy and attached to the workforce.

Legislative Background

Congress passed the Pregnancy Discrimination Act in 1978 in recognition of widespread pregnancy discrimination that led to women being denied jobs or even fired for being pregnant. The law bans discrimination on the basis of pregnancy, childbirth or related medical conditions and helped pave the way for women to join the workforce in unprecedented numbers. Yet the law lacks any requirement that employers provide reasonable accommodations for pregnant workers who can continue working during pregnancy, leading to many women being forced out of their jobs or onto leave before their child is born. The 2015 Supreme Court decision in *Young v. UPS* recognized that pregnant workers may need temporary accommodations in the workplace, but set up a complicated test for pregnant workers to prove that they were victims of discrimination.

Currently thirty states (Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Nevada, Nebraska, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, Texas, Tennessee, Utah, Vermont, Virginia, Washington and West Virginia) and five cities (the District of Columbia, New York City, Philadelphia, and Providence and Central Falls, RI) have adopted pregnancy accommodation legislation. These state and local laws passed with overwhelming bipartisan (and in some cases, unanimous) support. In states without accommodation laws, pregnant workers continue to suffer due to the failings in federal law. The solution is to pass the bipartisan Pregnant Workers Fairness Act.

The Pregnant Workers Fairness Act

The bipartisan Pregnant Workers Fairness Act is closely modeled after the *Americans with Disabilities Act* (ADA) and will ensure pregnant workers who work for employers with 15 or more employees can receive reasonable accommodations that are often low-cost or no cost, such

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as additional bathroom breaks, light duty, or a stool to sit on if a worker stands all day, unless it would pose an undue hardship to the employer. At a time when women workers and employers are facing unprecedented challenges as a result of the COVID-19 pandemic, this legislation represents a balanced, responsible approach to keeping pregnant workers in the workplace when it is safe for them to keep working.

The Pregnant Workers Fairness Act passed the House of Representatives in September 2020 in a 329-73 vote, following minor changes to the bill that further aligned the text with the goal of providing clear legal guidance to employers and employees alike. These changes included clarifying that employers who engage in a good faith interactive process to try and identify a reasonable accommodation, in consultation with the affected employee, can be relieved of certain types of liability to the employee; and that employees cannot be forced to accept an accommodation that has not been offered as part of a mutual discussion. The 2021 Senate bill reflects these changes, and is identical to the House version.

Endorsements

The Pregnant Workers Fairness Act has the support of a broad coalition of over 220 civil rights and women's advocacy organizations, unions and business associations, including:

- A Better Balance
- American Civil Liberties Union (ACLU)
- American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
- American Association of University Women (AAUW)
- American College of Obstetricians and Gynecologists
- Association of Maternal & Child Health Programs
- California Women's Law Center
- Equal Rights Advocates
- Hadassah
- H.R. Policy Association
- International Franchise Association
- The Leadership Conference on Civil and Human Rights
- Legal Aid Society – Employment Law Center
- Legal Momentum
- Main Street Alliance
- March of Dimes
- National Association for the Advancement of Colored People (NAACP)
- National Retail Federation
- National Organization for Women
- National Partnership for Women & Families
- National WIC Association
- National Women's Law Center
- Physicians for Reproductive Health
- Religious Action Center of Reform Judaism
- Retail Industry Leaders Association
- Society for Human Resource Management (SHRM)
- UnidosUS
- U.S. Chamber of Commerce
- U.S. Women's Chamber of Commerce
- Zero to Three

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