



**Testimony for the Senate Judicial Proceedings Committee
February 26, 2013**

**SB 784 – Employment Discrimination - Reasonable Accommodations for
Disabilities Due to Pregnancy**

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The ACLU of Maryland supports this effort to close the gap in current employment discrimination law. A pressing problem concerns pregnant workers who are forced onto unpaid leave or fired when their employers refuse to make even modest, temporary modifications to physical job requirements that exclude many pregnant workers. While this bill makes only minor changes to the existing law, it can make vast improvements in the lives of women and their families.

Legislative Clarity

Recent court decisions have added great confusion about protections for pregnant workers and legislative clarity is necessary. While employers are obligated to treat pregnant workers equally under the Pregnancy Discrimination Act of 1978 (“PDA”) in light of the Americans with Disabilities Act (“ADA”),¹ courts have inconsistent interpretations of the law where pregnant women seek equal access to light duty assignments. Some courts have found that forcing pregnant women to go on unpaid leave rather providing accommodations as they do similarly-restricted workers, is improper.²

Other courts, however, have held that pregnant workers are not entitled to these accommodations.³ According to these courts, it is enough that granting light-duty assignments only to people with “job-related” injuries is a legitimate, non-

¹ The ADA requires employers to provide reasonable accommodations to workers whose temporary physical restrictions are similar to those experienced by many pregnant women with “normal” pregnancies. Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq., as amended by the ADA Amendments Act of 2008 (ADAAA or Amendments Act), 29 C.F.R. § 1630.1. PDA requires employers to treat pregnant workers as well as they are required to treat similarly-(dis)abled workers under the ADA. Pregnancy Discrimination Act of 1978, Pub. L. No. 95-555, 92 Stat. 2076, codified at 42 U.S.C. § 2000e(k).

² See *Lochren v. County of Suffolk*, 344 Fed. Appx. 706 (2d Cir. 2009)(affirming that the Suffolk County Police Department’s policy of “light duty” assignments only be provided to officers injured while they were on duty had a discriminatory impact on pregnant officers who needed job modifications); See also *Prater v. Detroit Police Dep’t*, No. 08-CV-14339 (SFC) (DAS) (E.D. Mich. filed Oct. 13, 2008)(five officers of the Detroit Police Department (“DPD”) who were forced to go on unpaid leave when pregnant, even though the DPD gave “desk duty” assignments to male officers, prevailed in a 2010 settlement with DPD, whereby DPD agreed to assign pregnant officers to restricted duty jobs upon request, and to refrain from placing them on unpaid leave).

³ Joanna L. Grossman & Gillian L. Thomas, *Making Pregnancy Work: Overcoming the Pregnancy Discrimination Act’s Capacity-Based Model*, 21 Yale J. L. & Feminism 15, 31-41 (2009).

pregnancy based reason for denying such assignments to pregnant workers.⁴ Such courts have rejected the argument that the PDA requires employers to give similarly-abled pregnant workers the accommodations given to those injured “on the job,” arguing that to do so would amount to “preferential treatment,” rather than equal treatment, for pregnant workers.⁵

Last month, the United States Court of Appeals for the Fourth Circuit denied a pregnant worker’s claims of discrimination. *Young v. UPS*, 2013 WL 93132 (Jan. 9, 2013). The ACLU, along with over ten (10) organizations, submitted an *amicus* brief in support of the pregnant worker Plaintiff-Appellant. In the *Young* case, the employer, United Parcel Service, Inc. (“UPS”), had a policy of granting light duty and other alternative assignments (not requiring employees to lift heavy loads) to a host of categories of workers – those injured “in the job,” those with qualifying disabilities under the ADA, those who lost their commercial driving licenses, and so on. However, the employer refused to grant similar accommodations to a pregnant worker with a temporary lifting restriction. As a result of UPS’s denial, Ms. Young was forced to take unpaid leave and lost her medical coverage for the period during which she gave birth. The Fourth Circuit’s holding permits employers to treat pregnant employees worse than other employees by denying light duty assignments.

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Clarification of Employers’ Obligations and Business Benefits

Through the judicial misapplication and misinterpretation of the unclear laws surrounding employers obligations to pregnant workers, employers have devised ways to distinguish the accommodations they offer non-pregnant employees from their refusal to accommodate pregnant employees. SB 784 would provide clear guidelines for employers so they can anticipate their responsibilities and avoid costly litigation. After California passed similar legislation, litigation of pregnancy cases actually decreased, even as pregnancy discrimination cases around the country were increasing.⁶ The Hawaii Civil Rights Commission recently reported a similar reduction in pregnancy discrimination complaints and litigation after enactment.

According to a survey of employers, the benefits of providing reasonable accommodations to employees with disabilities include employee retention, increasing morale and productivity, and reducing training costs.⁷ The study concluded that the benefits far outweighed the costs of accommodation. These benefits would be even more pronounced for pregnant workers because needed accommodations are only temporary.

⁴ *Reeves v. Swift Transp. Co.*, 446 F.3d 637, 638 (6th Cir. 2006)(upholding a pregnancy-blind policy denying light-work to employees who could not perform heavy lifting and were not injured on the job).

⁵ See *Serednyj v. Beverly Healthcare LLC*, 656 F.3d 540, 548-9 (7th Cir. 2011)(finding employer’s policy to be “pregnancy-blind,” and therefore lawful, because it “treat[s] nonpregnant employees the same as pregnant employees-both are denied an accommodation of light duty work for non-work-related injuries”).

⁶ Equal Rights Advocates, *Expecting A Baby, Not A Lay-Off*, pg. 25, <http://www.equalrights.org/media/2012/ERA-PregAccomReport.pdf>.

⁷ Job Accommodation Network, *Workplace Accommodations: Low Cost, High Impact*, pg. 3, <http://www.jan.wvu.edu/media/LowCostHighImpact.doc>. The Job Accommodation Network is a service of the U.S. Department of Labor’s Office of Disability Employment Policy (ODEP).

A California agency study found that the cost to employers of similar legislation would be de minimis.⁸ The majority of employers are already accommodating pregnant workers and those companies would not be required to change their policies. Businesses also would not be required to approve unreasonable requests (e.g., anything that requires significant difficulty or expense).

Stable and Healthy Workforce

SB 784 will help ensure a stable and healthy workforce. Physically demanding work such as prolonged standing has been shown to cause an increased risk of preterm birth, low birthweight, and maternal hypertension.⁹ Low birthweight babies face increased health risks at birth such as bleeding in the brain and heart problems as well as longer-term risks such as cerebral palsy and learning difficulties.¹⁰ Additionally, preterm births cost society \$26 billion per year.¹¹

Dehydration can lead to miscarriages, but some employers have denied the simple request of letting a woman carry a water bottle at work.¹² There is no need to risk such serious health consequences when a simple modification at work is possible.

Workers with disabilities, including temporary impairments, must already be accommodated, so this law will ensure equal treatment. Pregnant workers should not have to constantly provide a basis for comparison with other ADA-eligible employees for determining whether or not they can receive reasonable accommodations in their employment. This bill will make it so that pregnant women will no longer have to jump through unnecessary and unfair hoops in order to be treated fairly. Such a bill promotes health for women and their babies, and provides economic security for families.

For these reasons we urge your support of SB 784.

⁸ California Fair Employment and Housing Commission, *Notice of Proposed Rulemaking*, (Mar. 2, 2012), pg. 13, http://www.dfeh.ca.gov/res/docs/FEHC%20Pregnancy%20Regs/NOTICE_OF_PROPOSED_RULEMAKING-Preg1.pdf.

⁹ Statehealthfacts.org, *Percent of Live Births that are Low-Birthweight, by State and Race/Ethnicity, 2003-2005*, <http://www.statehealthfacts.org/comparemapreport.jsp?rep=26&cat=15>.

¹⁰ Tessa Wardlaw, et al., *Low Birthweight: Country, Regional and Global Estimates*, (2004), pg. 12, 17, http://www.childinfo.org/files/low_birthweight_from_EY.pdf.

¹¹ National Conference of State Legislatures, *The Cost of Low Birthweight Babies*, (Feb. 2008), <http://www.ncsl.org/issues-research/health/low-birthweight-babies.aspx>.

¹² Lucy Willis, M.D., Letter to Council Member Vacca, (Dec. 4, 2012), http://www.abetterbalance.org/web/images/stories/Willis_letter_of_support.pdf.