

Pregnant Workers Fairness Act (H.R. 1065)

A bipartisan proposal to guarantee basic workplace protections for pregnant workers

Background

As women increasingly become the primary breadwinners in American households, a growing number of pregnant workers are working later into their pregnancies to maintain their family's financial security. According to the most recent data, [88 percent of first-time](#) mothers worked during their last trimester.

Unfortunately, over 40 years after the passage of the *Pregnancy Discrimination Act of 1978*, workers still face pregnancy discrimination, which can include losing a job, being denied reasonable accommodation, or not being hired in the first place. A recent survey found that [62 percent of workers](#) have witnessed pregnancy discrimination on the job. Democratic and Republican voters [overwhelmingly support](#) reasonable accommodations for pregnant workers.

In many instances, [physicians recommend](#) that pregnant workers avoid or limit certain risks in the workplace, including exposure to certain toxic substances, heavy lifting, overnight work, extended hours, or prolonged periods of sitting or standing. Unfortunately, many workers are forced to endure these risks because they lack access to reasonable accommodations. This is most often the case for Black and Latina workers, who are overrepresented in low-wage, physically demanding jobs.

Numerous news reports, [including a stunning 2018 investigation](#) published by the *New York Times*, have documented the tragic consequences resulting from the absence of clear, strong, and commonsense protections for pregnant workers.

With the COVID-19 health pandemic ravaging the country, the need for these protections is vital. Women comprise [64 percent of frontline workers](#) and pregnant [people are at an increased risk](#) for severe illness from COVID-19. Evidence suggests that pregnant people who contract the virus are more likely than nonpregnant women to be [hospitalized](#).

The State of Current Law

While the *Pregnancy Discrimination Act (PDA)* and the *Americans with Disabilities Act (ADA)* provide some protections for pregnant workers, there is currently no federal law that explicitly and affirmatively guarantees all pregnant workers the right to a reasonable accommodation so they can continue working without jeopardizing their pregnancy.

In 2015, the Supreme Court's landmark decision in *Young v. UPS* allowed pregnant workers to bring reasonable accommodation discrimination claims under the *PDA*. But pregnant workers are still being denied accommodations because the *Young* decision set an unreasonably high standard for proving discrimination.

Under *Young*, workers must demonstrate that their employers accommodated non-pregnant workers with similar limitations. In most instances, it is extremely difficult to find comparable instances that would satisfy this standard. As a result, in two-thirds of cases after *Young*, courts ruled *against* pregnant workers who were seeking accommodations under the *PDA*.

While many states have adopted laws requiring reasonable accommodation, a patchwork of state and local laws leave many pregnant workers with no protections at all. As of December of 2020, only [30 states, the District of Columbia, and four cities](#) required employers to provide accommodations to pregnant workers.

About the *Pregnant Workers Fairness Act*

No one should be forced to choose between financial security and a healthy pregnancy. *The Pregnant Workers Fairness Act* is a bipartisan proposal that establishes a pregnant worker's clear-cut right to reasonable accommodations, provided they do not impose an undue burden on their employer.

In a [recent survey](#) of voters across the country, 89 percent of voters support the *Pregnant Workers Fairness Act*, including 69 percent who strongly favor it. It enjoys bipartisan support, including 81 percent of Republicans, 86 percent of Independents, and 96 percent of Democrats.

The *Pregnant Workers Fairness Act* would establish that:

- Private sector employers with more than 15 employees as well as public sector employers must make reasonable accommodations for pregnant workers (employees and job applicants with known limitations related to pregnancy, childbirth, or related medical conditions).
 - Similar to the *Americans with Disabilities Act*, employers are not required to make an accommodation if it imposes an undue hardship on an employer's business.
- Pregnant workers cannot be denied employment opportunities, retaliated against for requesting a reasonable accommodation, or forced take paid or unpaid leave if another reasonable accommodation is available.
- Workers denied a reasonable accommodation under the *Pregnant Workers Fairness Act* will have the same rights and remedies as those established under Title VII of the *Civil Rights Act of 1964*. These include lost pay, compensatory damages, and reasonable attorneys' fees.
 - Public sector employees have similar relief available under the *Congressional Accountability Act*, Title V of the United States Code, and the *Government Employee Rights Act of 1991*.

The *Pregnant Workers Fairness Act* passed in the House of Representatives in the 116th Congress (329Y-73N).