U.S. REPRESENTATIVE JERROLD NADLER

Opening Statement for Member Panel

"Long Over Due: Exploring the Pregnant Workers Fairness Act"

Education and Labor Committee

Civil Rights and Human Services Subcommittee

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10:15 AM

Thank you, Chair Bonamici and Ranking Member Comer, for holding this hearing today and inviting me to testify about my bill, the Pregnant Workers Fairness Act.

This hearing is, as its title indicates, long overdue. Pregnancy discrimination is not a new issue; for as long as women have been in the workforce, they have been passed over for promotion or hiring, fired, had their work cut back, or forced out on leave when they became pregnant or started a family. In the last six months, we have seen multiple media reports about workers forced off the job while pregnant because they needed a simple fix to keep working. Pregnancy is not a disability, but sometimes due to complications or even in healthy pregnancies, workers need a reasonable accommodation from their employer such as a stool, an

extra bathroom break, limiting contact with certain chemicals, or reducing the amount of lifting they do.

These accommodations are short in duration and typically cost very little to provide. However, for millions of pregnant workers they are critical. A simple accommodation can mean the difference between staying on the job or being forced out on leave, the difference between keeping their health insurance and paycheck or putting their pregnancy at risk.

In 1978, Congress passed the Pregnancy Discrimination Act, or PDA, in an effort to stop employers from treating their pregnant employees this way. The law prohibited discrimination on the basis of pregnancy, childbirth, or related conditions. Over the last 40 years, courts have interpreted the law to mean that if you treat your non-pregnant employees well, you have to treat your pregnant employees well. Of course, the inverse is also true: if you treat your non-pregnant employees terribly, you have every right to treat your pregnant employees terribly.

In 2015, the Supreme Court attempted to address how the PDA interacted with the need for pregnancy accommodations in the workplace. But the Court's

decision only exacerbated the problem in the end. In *Young v. UPS*, the Court found that in order to receive an accommodation, a pregnant worker has to prove that her employer accommodated non-pregnant employees who were similar in their ability or inability to work.

That test places a huge burden on pregnant workers: it requires them to have detailed knowledge of the medical and employment history of every other employee. Women must prove that their need for an accommodation is just as valid as their male counterpart who, for example, had a hernia. For most workers in this country, especially low-wage workers, there is simply no way to get that information and prove their case. That is why a recent report from A Better Balance found that courts sided with employers in two-thirds of pregnancy accommodation cases post-*Young.* The burden the *Young* decision places on the pregnant worker to prove their case is, for most pregnant women, insurmountable.

Since *Young,* other Members of Congress have introduced legislation to address pregnancy accommodation, including a bill introduced last week by my Republican colleagues Mr. Walberg and Ms. Wagner. This new legislation appears to be based on the *Young* test and requires that if employers provide an

accommodation for some of their non-pregnant employees they must do so for pregnant employees in similar working conditions. I am happy to see this additional interest in ensuring that pregnant workers have the accommodations they need to stay on the job. But the problem with *Young,* and, therefore, the problem with Mr. Walberg and Ms. Wagner's proposal, is that they require pregnant workers to prove they have been discriminated against in order to access accommodations.

But it doesn't have to be that complicated. That is why I introduced the bipartisan Pregnant Workers Fairness Act. The bill is simple, and creates an affirmative right to an accommodation rather than relying on a model of discrimination. Using the framework and language of the ADA, it requires employers to provide reasonable accommodations to pregnant workers as long as the accommodation does not impose an undue hardship on the employer. These accommodations would be available for pregnancy, childbirth, or related conditions, including lactation.

Courts know exactly how to interpret that language – there are decades of ADA case law to guide them. Employers, similarly, have worked within ADA's

requirements for decades and know exactly what their responsibilities will be. But most importantly, women will have the certainty they can safely stay on the job as long as they choose during their pregnancy and keep their paycheck and their health insurance throughout.

We know that this framework for pregnancy accommodation works because we have seen it in action. To date, 26 states around the country have passed pregnancy accommodation laws similar to the Pregnant Workers Fairness Act – states like New York, Nebraska, Washington State, and most recently South Carolina and Kentucky have all passed legislation to provide reasonable accommodation in a bipartisan manner. Here in the House, the bill has over 100 bipartisan cosponsors and is supported by a broad range of health, labor, business, and women's rights organizations.

Thank you again, Chair Bonamici and Ranking Member Comer and I look forward to continuing to work with you and this Committee to move this critical piece of legislation forward. I yield back the balance of my time.