



WREN's Position on Pregnancy Accommodations

Overview

Pregnant women in South Carolina are increasingly working throughout their pregnancies, many without any problems, but current policies do not adequately support those pregnant employees who may need minor accommodations, like sitting on a stool rather than standing. Federal policies on the issue are limited and are falling short of addressing the needs of pregnant employees. As a result, pregnant employees are too often faced with the risk of losing their jobs or compromising their own health and the health of their baby. Allowing women to work later in their pregnancies with minor accommodations will provide pregnant employees, especially low-wage employees, and their families huge benefits as well as benefit the employers. Some states have taken action to address the needs of pregnant employees by enacting laws that allow for reasonable accommodations when the employee requests them. South Carolina needs to adopt a law that provides clear directives that enable reasonable accommodations for pregnant employees.

Defining the Problem

More women are continuing to work while they are pregnant and through later stages of pregnancy. In fact, 64% of women in South Carolina who gave birth in the last 12 months were women who were employed,¹ and some of these women work in jobs that can be physically strenuous. Not every pregnant woman in the workforce will need accommodations but those that do find their health and the health of their child put at risk if their employer refuses to provide the accommodation needed. Those women who are denied accommodations may be at risk of complications such as low birth weight, preterm birth, preeclampsia, pregnancy-induced hypertension, miscarriage, and in some cases congenital anomalies. In addition, accommodations allow a woman to continue breastfeeding when she returns to work. Breastfeeding protects babies from infections and illnesses and leads to better health outcomes.²

¹U.S. Census Bureau. (2016). 2010-2014 American Community Survey 5-Year Estimates, Geographies: South Carolina, Table B13012: WOMEN 16 TO 50 YEARS WHO HAD A BIRTH IN THE PAST 12 MONTHS BY MARITAL STATUS AND LABOR FORCE STATUS Universe: Women 16 to 50 years, Retrieved November 07, 2016. Calculation based on the total of unmarried and married women who have had births in the past 12 months who are in the labor force divided by the total number of women who have had a birth in the past 12 months

² World Health Organization. (2016). Breastfeeding. Retrieved December 15, 2016, from http://www.who.int/maternal_child_adolescent/topics/child/nutrition/breastfeeding/en/

Current federal laws addressing pregnancy discrimination, leave, and disability³⁴⁵ in the workplace are too limited, and the South Carolina Human Affairs law does not directly address pregnancy accommodations. Women in low-wage jobs are most vulnerable when clear accommodation protections are not in place because their schedules lack the flexibility and control that is afforded to most professional and white-collar employees.

Lack of reasonable workplace accommodations has the potential to force pregnant employees to take early unpaid leave or discontinue breastfeeding their infants. The Family Medical Leave Act (FMLA) grants 12 weeks of unpaid leave to employees for pregnancy-related illness and recovery from childbirth. Forcing employees to take leave early not only cuts into the time they need to recover from childbirth and bond with their newborn; it also takes away vital income as they are preparing to expand their family.

Opponents may insist that this law would burden employers or create more litigation, but states like California, which have had accommodation laws in place for decades, have seen that the law benefits employers through employee retention and a reduction in pregnancy discrimination filings.⁶ This is especially salient because federal pregnancy discrimination filings have been increasing throughout the last few decades. Currently, 1 in 5 complaints made by women to the Equal Employment Opportunity Commission (EEOC) are pregnancy-related.⁷

Policy Recommendations

Currently 18 states⁸ have adopted some form of a pregnancy accommodation statute. Policies from these states vary from allowing transfers to lighter job duties, allowing sick leave, and requiring that employers provide reasonable accommodations. States also differ on the company size to which the law applies.

South Carolina needs legislation to strengthen and secure protections for pregnant employees and the majority of South Carolinians agree. In a recent survey, 81 percent of South Carolinians favor legislation requiring that employers make reasonable accommodations for pregnant employees unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer.⁹

Outlining a simple, easy to apply legal standard will provide both employees and employers with clarity. The legislation should allow pregnant women to continue working and providing for their families by ensuring that employers grant reasonable accommodations for pregnancy, childbirth, and any other related conditions such as expressing breast milk, unless it imposes undue burden on the employer. The law should utilize existing definitions for reasonable accommodation and undue burden like those in the ADA to better facilitate implementation

³ Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e-2

⁴ Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601–2654 (2006)

⁵ Americans with Disabilities Act of 1990, 42 U.S. Code § 12101

⁶ Farrell, N., Dolkas, J., & Munro, M. (2012). *Expecting a Baby, Not a Lay-Off* (Rep.). Retrieved November 7, 2016, from Equal Rights Advocates website: http://www.ncdsv.org/images/ERA_ExpectingABabyNotALay-off_2012.pdf

⁷ Pregnancy Discrimination Charges FY 2010 - FY 2015. (n.d.). Retrieved November 28, 2016, from https://www.eeoc.gov/eeoc/statistics/enforcement/pregnancy_new.cfm

⁸ Pregnancy Accommodations in the States - NWLC. (n.d.). Retrieved November 07, 2016, from <https://nwlc.org/resources/pregnancy-accommodations-states/>

⁹ Winthrop University. (Feb 2017). Winthrop Poll February 2017-General Population in SOUTH CAROLINA, Table 44.

and have consistency across the statute. Finally, the legislation should make it unlawful for an employer to force a pregnant employee to accept unwanted accommodations or take leave when reasonable accommodations can be provided.

Some examples of the reasonable accommodations employers could make to pregnant employees include: sitting on a stool rather than stand during a shift, allowing as many bathroom or water breaks as needed, avoiding heavy lifting, working a light duty assignment, and taking breaks to pump breast milk after the baby is born.

WREN recommends that the South Carolina General Assembly pass the South Carolina Pregnancy Accommodations Act which would grant pregnant employees the right to reasonable accommodations as long as they do not place an undue burden on the employer and protect employees from having to accept unwanted accommodations or take leave when another reasonable accommodation can be provided. This right should be granted to both public and private employees. South Carolina families and businesses will benefit from legislation that allows pregnant women to continue working and providing the vital support their families need.