



Pennsylvania Pregnant Workers Fairness Act (HB 990/SB 716)

Pennsylvania lags behind most of the country by failing to ensure basic, reasonable workplace protections for pregnant employees.

This bill addresses the refusal of temporary reasonable accommodations, a common and insidious form of pregnancy discrimination that occurs when an employer refuses to grant an employee's request for a temporary, minor accommodation related to her pregnancy, childbirth, or a related medical condition. The most common temporary accommodations doctors recommend for some pregnant workers include assistance lifting heavy objects, a chair to sit in periodically, restroom breaks, and access to drinking water in the workplace.

This legislation has been introduced for at least ten years, yet Pennsylvania legislative leadership has consistently refused to even schedule a vote.

Amid the pandemic, Pennsylvania's lack of reasonable accommodation protections has meant that most pregnant Pennsylvanians, especially frontline workers like teachers and nurses, have been deprived of remedies to avoid unnecessary workplace exposure to COVID-19.

Opponents of this common-sense legislation often assert they fear a rise in complaints and lawsuits but this legislation, which clarifies the rights of employees and obligations of employers, is correlated with *fewer* filed complaints. In fact, pregnancy discrimination complaints are rising in Pennsylvania while dropping in states that have passed this legislation.¹

Women report pregnancy discrimination across races and ethnicities, but Black women are disproportionately affected. According to the National Partnership for Women and Families, nearly three in 10 charges of pregnancy discrimination (28.6 percent) were filed by Black women from 2011-2015, yet Black women comprise only 14 percent of women ages 16 to 54 in the workforce.²

Women in lower-wage industries, including food services, health care, social assistance, and retail, also reported disproportionate rates of discrimination.

Refusal to Provide an Accommodation Harms Women and Babies

Not every pregnant woman will need accommodation in the workplace.

An employer's refusal to grant a reasonable accommodation forces pregnant workers to choose between maintaining a healthy pregnancy and earning a paycheck, just when they need the paycheck most. Many women continue to work under conditions that are hazardous to their health because they cannot afford to quit—nor should they have to.

¹ <https://www.inquirer.com/news/pregnancy-discrimination-pregnant-workers-fairness-act-pennsylvania-women-workplace-20191118.html>

² <https://www.nationalpartnership.org/our-work/health/reports/black-womens-maternal-health.html>

Many Pennsylvania workers do not have access to leave time while pregnant. A lack of reasonable accommodations can force those with access to limited access to use up their leave while pregnant, leaving no time with the new baby after childbirth. Others are forced to leave their jobs entirely to protect the pregnancy. Some employers will not allow a woman to work once her medical provider has indicated that she needs an accommodation in the workplace.

Current Law Fails to Adequately Protect Pregnant Workers

Some pregnant workers have some legal protections if their employer refuses to grant their request for an accommodation, but far too many women fall through the gaps in the laws.

The federal Pregnancy Discrimination Act (PDA) of Title VII and the Pennsylvania Human Relations Act (PHRA) prohibit employers from discriminating against workers based on pregnancy, childbirth, or a related medical condition. However:

- The PDA only applies to employers with 15 or more employees;
- The PHRA only applies to employers with 4 or more employees; and
- Under both laws, women have to provide a specific type of evidence of discrimination — that is, a similarly situated, non-pregnant employee with virtually the same job and limitations who received better treatment from the employer— that is very difficult to find at all, but especially within the short window of pregnancy.

The federal Americans with Disabilities Act (ADA) may also provide protection. However, pregnancy itself is not a disability, and it is unclear how the ADA applies to pregnant women who only need minor accommodations in the workplace, like access to water.

At least 31 states and DC and 4 cities have adopted reasonable accommodation laws.³ The majority of Pennsylvania's neighbors, including New Jersey, New York, Maryland, Delaware, and West Virginia, have passed laws to protect pregnant workers who need reasonable accommodations in the workplace.

Currently, some workers in Philadelphia and Pittsburgh have more rights than workers living elsewhere in Pennsylvania, because the Fair Practice Ordinances of Philadelphia and Pittsburgh require employers to provide reasonable accommodations to pregnant employees in those cities.

The policy proposed to clarify workplace accommodations for pregnant workers includes business protections to ensure employers only have to comply as long the requested accommodation does not impose an undue hardship.

For more information or to discuss with an attorney, contact Women's Law Project at info@womenslawproject.org.

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³ <https://www.nationalpartnership.org/our-work/resources/economic-justice/pregnancy-discrimination/reasonable-accommodations-for-pregnant-workers-state-laws.pdf>