

Legislators Say Virus Makes New Pregnancy Bias Law A Must

By **Alexis Shanes**

Law360 (February 16, 2021, 6:21 PM EST) -- A bipartisan group of House lawmakers on Tuesday unveiled legislation to strengthen protections for pregnant workers, with proponents arguing that the increased risks from COVID-19 make it more important than ever to add workplace pregnancy protections that go beyond the current patchwork of state laws.

The Pregnant Workers Fairness Act, which has circulated in Congress for the past decade, would require employers with more than 15 employees to provide reasonable accommodations to pregnant workers. It would use a framework similar to the Americans with Disabilities Act, which requires employers to make accommodations for workers unless the arrangements pose undue hardships.

The bipartisan effort is led by Rep. Jerry Nadler, D-N.Y., the House Judiciary Committee chairman who first introduced the bill nine years ago. The bill's co-sponsors include Reps. John Katko, R-N.Y., Lucy McBath, D-Ga., Jaime Herrera-Beutler, R-Wash., and Bobby Scott, D-Va., who chairs the House Education and Labor Committee.

"The need for the PWFA has only grown, especially as pregnant workers have faced new risks and additional discrimination during the COVID-19 pandemic," Nadler said in a statement Tuesday. "Pregnant workers deserve to know that they will be protected."

Possible accommodations might include limiting how much pregnant workers are required to lift and increasing access to bathroom breaks and seating, according to the bill. The lack of protections is especially acute for pregnant workers in low-paying jobs that require physical labor, a group that is disproportionately Black and Latina, according to a House Committee on Education and Labor fact sheet outlining the bill.

The measure would prevent employers from denying jobs to pregnant people, retaliating against them for requesting accommodations or forcing them to take leave, paid or unpaid. It would also give pregnant workers who are denied accommodations legal remedies similar to those in Title VII.

"These basic protections are critical to protecting pregnant workers from the tragic consequences of unsafe working conditions, and they are particularly important today, as early evidence suggests that pregnancy leads to an elevated risk of severe illness from COVID-19," Scott said.

The proposal enjoys broad bipartisan support, according to its co-sponsors, who said it is backed by about 200 worker advocacy and employer groups, including the U.S. Chamber of Commerce. It is also favored by about 90% of voters, according to the labor committee.

A previous version of the bill flew through the U.S. House of Representatives in September with a 329-73 vote. Should the bill pass, the U.S. Equal Employment Opportunity Commission would be charged with enforcing it against private employers, according to the labor committee.

The bill's co-sponsors say it's needed in part because the [Americans with Disabilities Act](#) and the [Pregnancy Discrimination Act](#) don't go far enough to protect pregnant workers.

The U.S. Supreme Court in a 2015 decision called [Young v. UPS](#) allowed workers to bring pregnancy accommodation claims under the PDA.

But advocates for the bill say Young set the bar too high because it requires claimants to prove their employers accommodated nonpregnant workers with similar conditions.

As a result, about two-thirds of PDA accommodation cases since Young have seen rulings against pregnant workers, according to the labor committee.

The act would streamline anti-discrimination efforts already underway at the state level. Nearly 30 states, Washington, D.C., and four cities have instituted reasonable accommodation requirements for pregnant workers.

States are increasingly moving to narrow gaps in their civil rights laws by ensuring protections for pregnant women. Arizona became the latest on Feb. 4, when Gov. Doug Ducey enacted a measure updating the state's civil rights act to include a workplace pregnancy bias ban that aligns the state's law with the PDA.

"Current federal law lacks adequate protections to ensure pregnant workers are able to remain healthy in the workplace," Katko said in a statement. "No mother or mother-to-be in this country should have to choose between being a parent and keeping their job."

McBath said in a statement that her support for the legislation was borne out of personal experience. After struggling to get pregnant, she was forced to stop working, she said.

"After suffering some complications with my pregnancy, my doctor insisted I stay home from work to protect the health of me and my baby," she said. "It is so vitally important that mothers receive quality health care during their pregnancy without the risk of discrimination."

--Editing by Haylee Pearl.