

**Testimony Before The Senate Democratic Policy Committee In Support of Pregnant
Workers Fairness Act (Senate Bill 716)
Pennsylvania General Assembly**

**Submitted by Sophia Elliot, Legal Fellow, Women's Law Project
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My name is Sophia Elliot, and I am a legal fellow at the Women's Law Project. I'd like to thank this committee, Senator Cappelletti, and Senator Schwank for hosting this hearing. I am pleased to be here today to speak in support of Senate Bill 716, which would provide pregnant Pennsylvanians with reasonable workplace accommodations.

The Women's Law Project is a nonprofit, legal advocacy organization based in Pennsylvania that seeks to advance the legal status of women, girls, and LGBTQ+ people through litigation, public policy advocacy, community education, and direct representation. At the Women's Law Project, we are contacted by pregnant workers across Pennsylvania who have experienced negative, discriminatory outcomes because their employer refused to grant them a reasonable accommodation. I represent pregnant workers who are able and would like to continue to work while pregnant. This representation is challenging because pregnancy discrimination is still common and yet, at this time, no Pennsylvania law adequately protects such workers.

Most pregnant people are able to continue working without a job modification, though others may need temporary, reasonable accommodations. Pregnant workers in roles that require bending, heavy lifting or long periods of standing, or limited access to drinking water and/or restrooms, for example, may be unable to perform their jobs without temporary and often minor adjustments. When an employer denies a pregnant person reasonable accommodations—like a

break to use the restroom or access to drinking water—the pregnant employee is forced to choose between a paycheck and working in unsafe conditions.

This failure has especially dire consequences amid the COVID-19 pandemic. The CDC reports that pregnant people¹ are at greater risk for severe illness from COVID-19 than the general population, yet employers routinely deny them minor accommodations that would decrease risk of exposure. For example, we heard from pregnant workers whose employers refused them cubicle barriers and disinfectant wipes; and we heard from pregnant teachers and nurses with especially high potential viral exposure whose employers denied them the ability to work in spaces with better ventilation and social distancing. These minor adjustments would have enabled these workers to perform the essential parts of their job while mitigating potential COVID-19 exposure.

Without basic workplace protections, a pregnant employee who prioritizes their health by refusing to work in unsafe conditions may be forced to lose income and healthcare benefits at the moment they most need both. These are the reasons a majority of pregnant workers choose to continue working throughout pregnancy, despite physical risks of working in an unsafe workplace, which include miscarriage² and amid the pandemic, death. One 2009 report estimates three-quarters of women entering the workforce could be expected to become pregnant at some point while employed.³ In 2015, the percentage of women working fulltime during their

¹ The Center for Disease Control and Prevention, *Pregnant and Recently Pregnant People at Increased Risk for Severe Illness from COVID-19*, (Aug. 16, 2021) <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/pregnant-people.html>.

² Jessica Silver-Greenberg and Natalie Kitroeff, *Miscarrying at Work: The Physical Toll of Pregnancy Discrimination*, N.Y. TIMES (Oct. 21, 2021)

<https://www.nytimes.com/interactive/2018/10/21/business/pregnancy-discrimination-miscarriages.html>

³ Melissa Alpert and Alexandra Cawthorne, *Labor Pains: Improving Employment and Income Security for Pregnant Women and New Mothers*, Center for American Progress 2 (Aug. 2009),

pregnancies increased to over half of all pregnant workers (56%), and 82% of those pregnant workers continue to work within one month of their due date.⁴ At the same time, in any given year, the National Women’s Law Center estimates only 5% of women in the workforce will become pregnant—and many may not need any accommodations at all.⁵ Therefore, S.B. 716 ensures that employers protect the safety and advance the equality of a critical and large segment of the workforce, but by the same token this bill does not impose an undue hardship on any employer.

The majority of the pregnant people who have contacted the Women’s Law Project work in low-wage jobs, are having healthy pregnancies, and need only minor adjustments in the workplace as their pregnancies progress. We’ve heard from a pregnant bank teller who could have continued to work at the standing-only teller’s cubicle if she had been allowed to wear sneakers at work. Instead, she was forced out of her job. Now, consider the situation of a pregnant warehouse worker, whose employer forced her out of work for the remainder of her pregnancy after she and her doctor requested that she temporarily not lift heavy boxes. She could have performed her job with a minor and temporary accommodation, but she lost her income for many months instead.

https://cdn.americanprogress.org/wp-content/uploads/issues/2009/08/pdf/labor_pains.pdf?_ga=2.43353580.874594609.1632755607-2104933215.1618341096.

⁴ Bourree Lam, *Yes, There Really are More Pregnant Women at the Office* <https://www.theatlantic.com/business/archive/2015/04/yes-there-really-are-more-pregnant-women-at-the-office/389763/> (April 8, 2015) (citing Pew Research, <https://www.pewresearch.org/fact-tank/2015/03/31/working-while-pregnant-is-much-more-common-than-it-used-to-be/>).

⁵ Amy Tannenbaum, *Five Fast Facts About Pregnancy in the Workplace*, National Women’s Law Center, (Sept. 24, 2012) <https://nwlc.org/blog/five-fast-facts-about-pregnancy-workplace/#:~:text=Our%20analysis%20shows%20that%20only%20five%20percent%20of,throughout%20their%20pregnancies%20without%20any%20sort%20of%20accommodations>.

Data from a 2018 study found that women are the primary or sole breadwinner in 41% of all households.⁶ Even if these women are able to return to the workforce later, the resulting gap in their employment history also puts them at a risk for reduced income and seniority for the rest of their working lives, contributing to the gender pay gap. This loss of income also falls the hardest on Black and brown women, who are concentrated in low-wage work and more likely to be the primary source of economic support for their families.

This legislation is well-tested. Here in Pennsylvania, Philadelphia's pregnant workers are protected by the Fair Practices Ordinance, enacted in 2014.⁷ Pregnant workers for the city of Pittsburgh or those who work for employers with Pittsburgh city contracts are also protected under local law.⁸ Unfortunately, WLP must routinely advise pregnant clients who work *outside* of Philadelphia or are not covered by the narrow circumstances in Pittsburgh. These pregnant clients do not have the same right to minor pregnancy accommodations as their Philadelphia- and some Pittsburgh-based counterparts, even for simple access to a water bottle throughout the day. Other states, including our neighboring states of Delaware, Maryland, West Virginia, and New Jersey, have successfully implemented laws that ensure reasonable accommodations for pregnant workers.⁹

⁶ Sarah Jane Glynne, *Breadwinning Mothers Continue to be the U.S. Norm*, Center for American Progress (May 10, 2019) <https://www.americanprogress.org/issues/women/reports/2019/05/10/469739/bread-winning-mothers-continue-u-s-norm/> (citing Steve Ruggles et al., *Integrated Public Use Microdata Series, Current Population Survey Data for Social, Economic, and Health Research: Version 6.0 Dataset*, (Minneapolis: Minnesota Population Center, 2018), <https://cps.ipums.org/cps/>.

⁷ Philadelphia Code §§ 9-1103(1)(l), 9-1128.

⁸ Pittsburgh Code § 161.44.

⁹ Alaska, California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Louisiana, Maine, Maryland, Minnesota, Nebraska, North Dakota, New Jersey, Rhode Island, Texas, Vermont, and West Virginia have laws that require certain employers to provide some accommodations to pregnant workers. Alaska Stat. § 39.20.520(a); Cal. Gov. Code § 12945(a)(3); C.R.S. § 24-34-402.3; Conn. Gen. Stat. § 46(a)-60(a)(7); 19 Del. Code § 711(a); Haw. Admin. Rules § 12-46-107; Ill. Comp. Stat. Ann. § 775 5/2; La. R.S. 23:342(4); 5 M.R.S. § 4572-A (2019); Md. Code Ann. State Gov't § 20-609; Minn. Stat. § 181.9414; Tex. Local Gov't Code § 180.004(b); 21 V.S.A. § 495k (2017); L.B. 627, 2015 Leg., 104th Sess. (Ne. 2015); H.B.

State protection is needed because the patchwork of current laws that protect pregnant workers is inadequate. The Pregnancy Discrimination Act within Title VII requires that employers treat pregnant and non-pregnant employees equally with respect to accommodations, but in many cases, fails to provide pregnant workers with a right to an accommodation unless the pregnant worker can identify a non-pregnant and “similarly situated” comparator who was accommodated.¹⁰ The same is true under the Pennsylvania Human Relations Act. The Americans with Disabilities Act, as amended in 2008, provides some accommodations for pregnant workers, but pregnancy itself is not a disability and how the law applies to pregnant workers in need of only minor accommodations for a healthy pregnancy is often unclear.¹¹

It is past time for Pennsylvania to affirm we care about the health and safety of pregnant workers. The Women’s Law Project strongly supports S.B. 716, and we urge every member of this Committee to join us in our support. Thank you.

1463, 2015 Leg., 64th Sess. (ND 2015); S.B. 2995, 215th Leg., Reg. Sess. (NJ 2014); S. 0276, Jan. Sess. (RI 2015); H.B. 4284, 82nd Leg., 1st Sess. (WV 2014). Major municipalities outside of Philadelphia—including New York City and the District of Columbia—also protect all pregnant workers’ right to an accommodation. N.Y. Admin. Code 8-107(22) (2014); D.C. Code Ann. § 32-1231.01-1231.15 (2015).

¹⁰ 42 U.S.C. § 2000(e)(k) (2015).

¹¹ ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553.