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Since 1974, Fighting for Women's Equality

Expecting A Baby, Not A Lay-Off

*Why Federal Law Should Require
the Reasonable Accommodation
of Pregnant Workers*

Written by Noreen Farrell, Jamie Dolkas and Mia Munro



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Equal Rights Advocates is a nonprofit legal organization dedicated to protecting and expanding economic and educational access for women and girls. Since 1974, ERA has offered free advice and counseling through a toll-free hotline and engaged in education, policy, and litigation efforts to ensure fairness for its clients and their families.

For more information about ERA, please visit www.equalrights.org.

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Executive Summary

For nearly four decades, Equal Rights Advocates (ERA) has provided legal services to thousands of women, girls, and their families each year. Through impact litigation and other forms of advocacy, ERA enforces laws prohibiting discrimination and harassment, ensuring wage and hour protections, and requiring family and medical leave for working families across the country. When these advocacy efforts reveal gaps in the law, ERA takes action to achieve the legislative and policy reform necessary to ensure fairness in schools and in the workplace.

Through its Advice and Counseling Hotline, ERA has been able to keep its finger on the pulse of the most pressing civil rights issues of the day. ERA is able to track trends and compare treatment of individuals and groups across states, industries, and income levels. In the past three years, ERA has heard more from pregnant workers than ever before. These women complain about unfair treatment, employer stereotypes that mothers are not committed workers, and discriminatory terminations or refusals to hire pregnant women and mothers with young children. When it comes to pregnancy issues, callers who need some kind of workplace accommodation for pregnancy-related limitations are among the most frequent. ERA has noticed startling disparities between the outcomes of calls from California and those from other states. While ERA has been able to resolve most pregnancy accommodation issues quickly and informally for California callers, it has not fared so well for callers in other states.

The reason? The law.

Since 1999, California has required employers to provide pregnant workers with reasonable accommodation for limitations caused by pregnancy, childbirth, and related conditions. Unfortunately, federal law does not require the reasonable accommodation of pregnant workers in all circumstances, and most states do not have pregnancy accommodation requirements. As a result,

many pregnant employees are too fearful to ask for the workplace accommodations they need to ensure a healthy pregnancy and childbirth. Pregnant workers who seek accommodations are all too often forced to take extended periods of unpaid leave or even fired shortly after requesting an accommodation. As a result, they lose their income and important benefits such as sick pay and health insurance, which threatens the financial security and health of their families. During a critical time when pregnant workers are particularly concerned with their financial stability and their physical health, they face stressful and no-win situations that may threaten both.

Faced by these inequities across states, ERA decided that change in federal law was necessary to ensure the reasonable accommodation of women with pregnancy limitations. ERA is working with other advocates for women and their families nationwide to bring about this change. On May 8, 2012, the federal Pregnant Workers Fairness Act (“PWFA”) was introduced by U.S. Representative Jerrold Nadler (NY). The bill would expressly require employers to provide pregnant workers with reasonable accommodations so they can continue working, unless doing so would cause an undue hardship. Current co-sponsors include U.S. Representatives Carolyn Maloney (NY), Jackie Speier (CA), Susan Davis (CA), Marcia Fudge (OH), and George Miller (CA).

“ At a time when American families are struggling to make ends meet, it’s imperative that we do everything we can to keep people in their jobs, and this is especially true for pregnant women on the verge of having another mouth to feed. Protecting the health and well-being of pregnant women should be central to our society’s support for strong and stable families. The Pregnant Workers Fairness Act is an essential means of clarifying our laws to ensure that pregnant women and their families are not allowed to slip through the cracks. ”

U.S. Representative Jerrold Nadler

This Report first examines how current federal law has not consistently ensured the minor accommodation of employees who are able to work during their pregnancies. It then tracks the development of state laws that require accommodations for pregnant workers, with a particular focus on the sweeping success of California’s pregnancy accommodation law, as support for change at the federal level.

The California data considered by Equal Rights Advocates in this Report – ERA’s Hotline and experience with clients, cases involving the state’s pregnancy accommodation law, and statistical data about complaints filed with California’s administrative agency – provide important insights into how California employees and businesses have fared since California’s pregnancy accommodation law went into effect in 2000.

Among the Findings set forth in the Report, the data suggests that pregnant workers are seeking accommodations that are minor and easily met by employers after good faith negotiations. In fact, many employers are already providing pregnancy accommodations that promote the health and safety of the entire workforce and improve

the efficiency of business. Additionally, low-wage workers, who cannot afford to lose their job or take extended periods of forced unpaid leave, benefit most from California’s law. Finally, California’s pregnancy accommodation law has not triggered a backlash from employers in the form of increased rates of discrimination against pregnant workers. In contrast to federal law discrimination charges, which have risen by 54 percent since 1997, the number of pregnancy discrimination charges filed with California’s state agency has decreased since 1997.

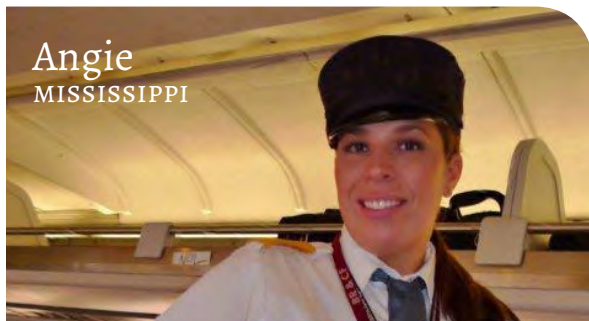
These lessons show that the time has come for similar legislation at the federal level so that all pregnant workers can continue to support themselves and their families.

ERA urges your support of the Pregnant Workers Fairness Act because minor job modifications for pregnant women are a public health necessity. Pregnancy-related adjustments at work also promote family economic security. To learn more, see www.equalrights.org.

Noreen Farrell
Executive Director, Equal Rights Advocates

Introduction

Two stories. Two radically different endings. Angie and Maria were thrilled when they became pregnant. Both were confident that they could continue to perform their jobs during their pregnancies. Like many pregnant women, Angie and Maria eventually sought minor accommodations for pregnancy-related restrictions. Unfortunately, federal law does not require the reasonable accommodation of pregnant workers in all circumstances, and not all states have pregnancy accommodation requirements. Because the laws in their respective states differ, Angie and Maria experienced vastly different outcomes at work.



Angie, a train conductor in Mississippi, was forced to take leave from work early in her pregnancy because her employer refused to accommodate her pregnancy-related lifting restriction. Although only a small fraction of Angie's duties included lifting, and although Angie's employer had a policy of providing light duty assignments to employees injured on the job, it denied her this accommodation. The employer forced Angie to take three extra months of unpaid leave instead of allowing her to work with the occasional assistance of willing co-workers. The stress and financial strain was immense for Angie, who was already anxious about becoming the sole support for her new family. Equal Rights Advocates was limited by federal and Mississippi law in its ability to assist Angie.



Maria handles security duties for a California employer. When Maria discovered that she was pregnant, she requested a stool to sit on and more frequent duty rotation so she could move more throughout the day. Her employer refused to accommodate her pregnancy limitations and placed her on involuntary early leave. ERA intervened on Maria's behalf and informed the employer about the requirements of California's pregnancy accommodation law. After a productive brainstorming session exploring possible solutions, the matter was quickly resolved without undue stress to Maria and without litigation. Rather than sit home without pay, Maria continued to be a productive employee for months. She preserved her Family and Medical Leave Act (FMLA) leave for when she needed it most.

Maria did not have to choose between asking for the accommodation she needed and keeping a job necessary for her family's survival. Maria's happy ending should be available to all pregnant workers who are able and willing to work throughout their pregnancies.

Fairness is on the way. On May 8, 2012, the Pregnant Workers Fairness Act ("PWFA") was introduced by U.S. Representative Jerrold Nadler (NY). The PWFA, co-sponsored by Carolyn Maloney (NY), Jackie Speier (CA), Susan Davis (CA), Marcia Fudge (OH), and George Miller (CA), and supported by Equal Rights Advocates and other groups across the country, will clarify and supplement existing federal law to ensure that pregnant workers receive reasonable accommodations so they can continue working.¹

What The Pregnant Workers Fairness Act Would Do:

- Require an employer to make a reasonable accommodation for pregnancy, childbirth, and related medical conditions, unless doing so creates an undue hardship on the employer.
- Ensure protections for pregnant workers who are forced into accommodations they do not want, or who face being pushed out on leave or terminated when they ask their employers for even the most minor workplace accommodations.

The Pregnant Workers Fairness Act is a federal law whose time is due. Like Angie, many pregnant employees are able to work productively late into their pregnancies with short-term and modest workplace adjustments. Some pregnant workers need to sit down more frequently, or may need more frequent water, food, or restroom breaks. They may need a co-worker to assist them with infrequent lifting tasks. Allowing women to work later in their pregnancies with minor accommodations provides enormous benefits not only for pregnant workers and the families they support, but also for employ-

ers. Employers retain excellent employees longer, and avoid disruptions in production and costs associated with job shuffling or training replacement.² Short-term and minor accommodations come at little cost to the employer.³

Unfortunately, the reasonable accommodation of pregnant workers is the exception, not the rule, in states across the country. While several states have enacted laws requiring some form of minor accommodation of pregnant workers, most have not.⁴ Current federal laws addressing discrimination, leave, and disability in the workplace are either too limited or are being hampered by courts' misinterpretation of the laws.

As a result, many pregnant employees are too fearful to ask for the workplace accommodations they need to ensure a healthy pregnancy and childbirth.

Unless pregnant workers take care of their health during pregnancy (including minimizing excessive stress), they risk a host of pregnancy and/or childbirth problems.⁵ Able-bodied pregnant workers who seek accommodation all too often face terminations or forced unpaid leaves that mean loss of job protection and benefits such as sick pay and health insurance that threaten the financial security and health of their families. Health insurance during pregnancy is especially crucial. Comprehensive prenatal care is necessary to avoid pregnancy complications like low birth weight and infant mortality.⁶ Precisely when pregnant workers must shore up their fiscal reserves and take special care of their health, they face stressful choices that threaten both.

Pregnant workers and their families deserve better. This Report first examines why current federal law has not consistently ensured the minor accommodation of employees who are able to work through their pregnancies. It then tracks the development of state laws to accommodate pregnant workers, with a particular focus on the sweeping success of California's pregnancy accommodation law.

Finally, the Report advocates for change at the federal level so that pregnant employees across the country can enjoy the minor accommodations that have promoted positive change in California for over a decade. Equal Rights Advocates joins other

advocates nationwide in supporting the Pregnant Workers Fairness Act, which will finally bring fairness into the workplace for all pregnant employees who are both willing and able to work late into their pregnancies.

“ Working families need and want to keep working. ERA strongly supports the Pregnant Workers Fairness Act because similar protections under California law make the case for federal change. Pregnant women are working with accommodations. Businesses are benefitting from happy and productive long-term employees. It is a win-win. ”

Noreen Farrell, Executive Director, *Equal Rights Advocates*



Pregnant Workers are Being Forced Out: Current Federal Law is Falling Short

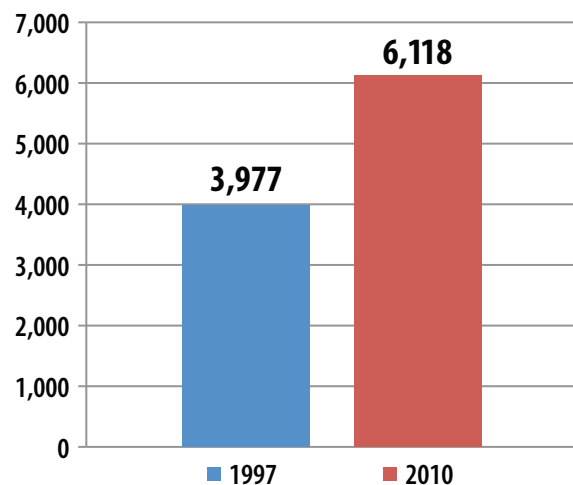
The landscape of the American workforce has undergone a dramatic change since Congress enacted Title VII of the Civil Rights Act of 1964. Women now make up nearly half of the workforce⁷ and are represented in nearly every profession and income bracket.⁸ Nearly 75% of all working women will become mothers during the course of their working lives.⁹ Women with paid employment are essential to the financial well-being of their families. Most married couples rely on a dual-parent income.¹⁰ In 2010, 40% of working mothers were the primary breadwinner for their families.¹¹ More women are working while pregnant and later into their pregnancies.¹² In the past forty years, there has been a 45% increase in the number of women who are working up to one month before birth.¹³

For all this progress, federal law has not kept pace with issues faced by pregnant workers. The number of federal pregnancy discrimination charges filed with federal and state agencies has skyrocketed since 1997.¹⁴ Over the past ten years, the vast majority of these charges included allegations of discharge based on pregnancy.¹⁵

On February 15, 2012, attorneys, academics, and other experts from across the country participated in a historic meeting of the U.S. Equal Economic Opportunity Commission (EEOC) to address the troubling rise in cases of discrimination on the basis of pregnancy and caregiving.¹⁶ Equal Rights Advocates submitted written testimony for the hearing.¹⁷ Most of the participants were uniform in their call for data collection, greater EEOC guidance on the types of conduct that are unlawful under current federal law, and better enforcement by the federal agency to curb unlawful discrimination.¹⁸

While the Pregnancy Discrimination Act, the Family Medical Leave Act, and the Americans with Disabilities Act have provided great support to women and other workers, many participants in the EEOC meeting acknowledged the short-

Number of Pregnancy Discrimination Administrative Charges Filed Under Federal Law



SOURCE: EEOC "PREGNANCY DISCRIMINATION CHARGES. EEOC & FEPPAS COMBINED: FY 1997 - FY 2011", CALIFORNIA DFEH CASES FILED BY BASIS - SEX - PREGNANCY COUNT OF EMPLOYMENT CASES FILED. FISCAL YEARS: 2000-2001-2009-2012." 1/14/2011

comings of these federal laws (as drafted and/or applied by courts) to ensure that pregnant employees receive modest accommodations to allow them to continue to work during their pregnancies.¹⁹

The Pregnancy Discrimination Act of 1978

- Prohibits discrimination based on “pregnancy, childbirth, or related medical conditions.”
 - Only requires pregnancy accommodations if the accommodations are already provided to employees “similar in their ability or inability to work.”
- 42 U.S.C. § 2000e-2.

The Pregnancy Discrimination Act

The Pregnancy Discrimination Act (“PDA”) prohibits employers and other covered entities from discriminating against applicants and employees on the basis of “pregnancy, childbirth, or related medical conditions” with respect to all aspects of employment.²⁰ The PDA prohibits employers from singling out pregnant employees and subjecting them to any form of adverse treatment when the pregnant employee is capable of working on the same terms as all other fully capable workers.²¹

However, to the extent that a pregnant worker needs an adjustment in the workplace to continue working, the PDA has limitations. While the Supreme Court has made clear that states may require greater protections for pregnant workers,²² the PDA itself only requires employers to make accommodations for pregnant women to the extent they accommodate other employees “similar in their ability or inability to work.”²³

In the absence of the appropriate comparator showing discriminatory treatment on the basis of pregnancy, pregnant workers have not been able to rely consistently on the PDA to challenge an employer’s refusal to allow them sitting breaks or other modest workplace adjustments.²⁴ As a practical matter, these cases are often difficult to prove, even when discrimination exists.²⁵ An employer’s willingness to accommodate the physical injury of

a non-pregnant employee with light duty is often a matter of ad hoc practice, not official written policy. In a large company, these ad hoc practices may not be known to a pregnant worker or supervisory personnel. Even when plaintiffs have alleged the relatively rare PDA case based on a disparate impact theory, courts have been reluctant to grant relief.²⁶

The failure of the PDA to require the reasonable accommodation of all pregnant workers has contributed to a startling trend. Pregnant workers are often treated worse than other workers who are limited in their ability to perform certain aspects of a job. At least some courts have held that an employer may deny pregnant employees light duty assignments provided to employees injured on the job.²⁷ In Tennessee, Amanda Reeves, a pregnant truck driver, sought light duty after her doctor advised her not to lift more than 20 pounds. She was terminated, even though her employer offered light duty to employees injured on the job. Similarly, in Landover, Maryland, a delivery truck driver was forced out on unpaid leave because she had a lifting restriction and was denied light duty, despite her employer’s policy of accommodating similar impairments of other employees.²⁸ In both cases, the PDA did not provide these women with relief.²⁹

Similarly, accommodations that would be readily provided to a worker covered by the Americans with Disabilities Act are commonly denied to pregnant workers. For example, a retail worker in Salina, Kansas was fired because she needed to carry a water bottle to stay hydrated and prevent bladder infections.³⁰ An activity director at a nursing home in Valparaiso, Indiana was terminated because she required help with some physically strenuous aspects of her job to prevent another miscarriage.³¹ More and more pregnant workers are being pushed out of the workplace.

These cases are consistent with the experience of callers to ERA’s Advice and Counseling Hotline.



Joanna, a mechanic from South Daytona, Florida called ERA's Advice and Counseling Hotline after her employer forced her to take leave early in her pregnancy. When Joanna became pregnant, her co-workers began to assist her with heavy lifting without incident or complaint. However, when the employer discovered she was pregnant, it required Joanna to obtain a doctor's note. When the note referred to a 20 pound lift restriction, the employer forced her on leave, even though Joanna had been working with the accommodation in place by co-worker agreement. She was not allowed to work full-time despite the fact that the employer readily provided light duty to other employees.

The Family & Medical Leave Act

The Family and Medical Leave Act ("FMLA") also falls far short of solving the problem faced by pregnant workers. The FMLA allows employees who work for employers with fifty or more employees to take up to twelve weeks of job-protected leave to care for their own serious health condition or that of a close family member.³² It also requires employers to continue to provide company-sponsored health insurance coverage and other benefits that are crucial to the healthy pregnancies of their employees.³³

While the FMLA allows medically necessary leave for pregnancy conditions,³⁴ the law is not meeting the needs of many pregnant workers. The FMLA does not extend its protection to workers employed by smaller businesses.³⁵ A 2007 report from the U.S. Department of Labor found that in 2005 only 54 percent of the workforce in the United States, 76.1 million employees, were eligible for FMLA-protected leave.³⁶ Of the 65.6 million ineligible workers, 47.3 million worked at establishments too small to be covered and 18.3 million lacked the job tenure or the required number of hours-in-job to be eligible.³⁷ An even greater obstacle to taking FMLA leave is that many workers cannot afford unpaid leave for three months.³⁸

While the FMLA may offer brief protection to eligible pregnant workers who can afford unpaid leave, it only provides twelve weeks of leave. The FMLA does not provide job protection for employees who must take more than 12 weeks of leave because their employers forced them out early in their pregnancies.

Joanna, the mechanic from Florida, is in danger of losing her job. Placed on forced intermittent leave rather than accommodated, Joanna will likely exhaust her FMLA leave before her due date. Joanna, who is a single mother, will suffer financial hardship should she lose her job as a result of her employer's failure to accommodate her pregnancy.

The FMLA:

- Provides unpaid, job-protected leave for incapacitation due to pregnancy
- Does not provide for other workplace accommodations
- Only covers employees that work for large employers

The FMLA does not cover enough pregnant workers, provide pay necessary for continued support of their families, or provide job protection for leaves over twelve weeks.³⁹ More fundamentally, the FMLA is designed to provide time off for workers who are incapacitated because of a serious health condition.⁴⁰ It does not fulfill the needs of pregnant workers who are willing and able to continue to work continuously with modest accommodations.

The Americans With Disabilities Act

The protection provided to pregnant workers seeking workplace accommodations by the Americans with Disabilities Act (ADA), as amended by the 2008 ADA Amendments Act⁴¹ (ADAAA), remains unsettled. The ADA prohibits employers and other covered entities from discriminating against

The ADAAA provides:

- Employers must provide a reasonable accommodation to a qualified employee with a “disability”
- Pregnancy by itself does not qualify as a “disability”

qualified individuals with disabilities in employment.⁴² A qualified employee or applicant with a disability is an individual who has a “disability,” and, with or without reasonable accommodation, can perform the essential functions of the job.⁴³ An employer is required to make a reasonable accommodation to the known disability of a qualified applicant or employee if it would not impose an “undue hardship” on the operation of the employer’s business.⁴⁴

The 2008 ADAAA now obligates employers to accommodate a broader range of temporary disabilities posing modest limitations on activities such as standing, lifting, or bending.⁴⁵ The EEOC’s new regu-

lations implementing the ADAAA, for example, provides that: “[i]f an individual has a back impairment that results in a 20-pound lifting restriction that lasts for several months, he is substantially limited in the major life activity of lifting, and therefore covered under the first prong of the definition of disability.”⁴⁶

While the ADAAA provides broader coverage, it presents obstacles for pregnant workers. Because the ADA/ADAAA was designed to cover a spectrum of disabilities, the framework to establish whether or not an employee has a qualifying “disability,” and is thus entitled to reasonable accommodation involves complicated analysis.⁴⁷ While the ADAAA broadens the definition of disability and reduces the amount of scrutiny involved,⁴⁸ the hurdles for establishing coverage are not eliminated under it. These procedural hurdles would not be necessary under the Pregnant Workers Fairness Act because pregnancy qualifies an employee for coverage.

Additionally, under the ADAAA and confirmed in the EEOC’s newly issued guidance, pregnancy is still not a per se disability. Indeed, the Interpretative Guidance states: “Other conditions, such as pregnancy, that are not the result of a physiological disorder are also not impairments.”⁴⁹

Courts have yet to interpret the extension of the ADAAA to pregnant workers, but it is likely that courts will construe only a narrow and limited set of pregnant-related impairments as rising to the level of disability under the ADAAA (such as pregnancy-related hypertension, etc.). Not all pregnant workers will meet the ADAAA’s definition of “disabled” given the minor nature of adjustments they seek.

Consider Carmen, a pharmacy worker from New Jersey who called ERA’s Advice and Counseling line. Carmen is a single immigrant pharmacy worker who was regularly denied bathroom breaks that she needed because she was pregnant. Carmen suffered from severe stomach pains as a result. When pregnancy conditions forced Carmen to go on sick leave and then to the hospital, she was disciplined for taking sick leave.

It is uncertain that Carmen’s pregnancy issues would meet the ADAAA’s definition of “disability.” Thus, whether the ADAAA would have required that the employer reasonably accommodate her need for more bathroom breaks is unclear.⁵⁰ Yet, these

are precisely the minor adjustments that many pregnant women seek. The ADA’s procedural hurdles and sometimes definitional misnomer can be avoided altogether by a legislative fix that addresses the unique status of pregnant workers.

“ The ADAAA presents uncertainty and unnecessary hurdles for pregnant workers seeking accommodations. The Pregnant Workers Fairness Act is designed to address limitations related to normal and completely healthy pregnancies. It provides explicit, immediate, and clear guidance for employers and employees on the issue of providing reasonable work accommodations to pregnant employees. ”

Michelle Caiola, *Legal Momentum*



States Lead the Way: Promoting Fairness For Pregnant Workers

Beginning in the 1990s, many states started to recognize that traditional discrimination law does not provide adequate protections for its pregnant workers. Seven states (Connecticut, Hawaii, Louisiana, California, Alaska, Texas, and Illinois) have filled the gaps in pregnancy discrimination law. These states already prohibited pregnancy discrimination.⁵¹ However, in recognition of the failure of traditional discrimination law to address the modest needs of many pregnant workers, these states also now explicitly require certain employers to provide reasonable accommodation to pregnant employees.⁵²

As set forth in detail in Appendix A of this Report, the state pregnancy accommodation laws vary somewhat in the types of accommodation required, and by who is covered by the laws. Connecticut, Louisiana, Hawaii, and California require both public and private employers⁵³ to provide pregnant employees

with reasonable transfers or accommodations in addition to reasonable unpaid leave.⁵⁴ New York is currently considering a law (discussed more below) that would require public and private employers⁵⁵ to provide reasonable transfers and accommodations for pregnant workers, but does not have an explicit entitlement to unpaid leave.⁵⁶ In contrast, Texas, Alaska, and Illinois laws only provide for reasonable pregnancy accommodation or transfers to certain public employees.⁵⁷

Some states have also interpreted state discrimination statutes with language similar to the federal Pregnancy Discrimination Act to provide broader protections. Among those states are Minnesota⁵⁸ and Michigan,⁵⁹ whose discrimination laws have been interpreted to prohibit employers from refusing to accommodate pregnant workers if they accommodate workers who are injured on the job.

STATE	DATE ENACTED	WHAT THE LAW REQUIRES
Connecticut	1979	Transfers, Leave
Hawaii	1990	Accommodation, Leave
Alaska	1992	Transfers*
Louisiana	1997	Transfers, Leave
California	1999	Accommodation, Transfers, Leave
Texas	2001	Accommodation, Transfers**
Illinois	2007	Transfers***
New York	Pending	Accommodation, Transfers

* The Alaska transfer law only applies to public employees.

** The Texas accommodation and transfer law only applies to municipal and county employees.

*** The Illinois transfer law only applies to peace officers and firefighters.

Although very few courts have published decisions interpreting state pregnancy accommodation laws, the few that have are telling. These cases provide insight into the modest workplace adjustments for pregnancy that women seek under state law. (See Appendix A, Connecticut and Louisiana)

Examples of Reasonable Pregnancy Accommodation Under Hawaii Law:

- Allowing a pregnant employee to sit instead of stand
- Excusing the employee from lifting tasks
- Providing assistance to the employee for lifting tasks
- Reassigning the employee to a light duty position
- Allowing more frequent breaks or rest periods
- Allowing the employee to take sick leave
- Allowing the employee to take time off from work for doctor's appointments⁶⁰

The cases also reveal that employers' refusals to provide accommodations are typically driven by ill will towards the employee or her condition, rather than the reasonableness of the request. (See Appendix A, Connecticut and Louisiana)

New York is the most recent state to consider a pregnancy accommodation employment law. With the support of advocacy groups like A Better Balance, New York legislators have introduced a bill this year that would require employers to provide reasonable accommodations and transfers for pregnant women (or those affected by childbirth or related medical conditions) who make requests with the advice of their health care providers, unless doing so would create an undue hardship on the employer.⁶¹ The new law is supported by many New York organizations, including many prominent women's groups, and has growing momentum in the New York Legislature.⁶² Since New York is the third most populous state, if this bill is enacted, hundreds of thousands of pregnant women will benefit.



“ This kind of law is a public health necessity. Without its protections, pregnant women are reluctant to ask for the accommodations they need for their own health and for the health of their unborn children. ”

Dina Bakst, *Co-Founder and Co-President of A Better Balance.*⁶³

California Pregnancy Accommodation Law: A Model Of Success

California has a comprehensive law protecting pregnant workers. California employers with five or more employees are prohibited from discriminating on the basis of pregnancy, childbirth and related medical conditions.⁶⁴ The law allows women to take up to four months of job-protected pregnancy disability leave,⁶⁵ and requires employers to temporarily transfer pregnant employees to less strenuous or hazardous positions.⁶⁶ In 2000, the law was amended to explicitly require employers to make “reasonable accommodations” for pregnancy.⁶⁷

California’s reasonable accommodation law was enacted as a simple fix to address the needs of many pregnant workers. As explained in the report of the California Assembly Committee on the Judiciary expressing its approval of the amendment, “the proposed amendment... is intended to permit employers to allow pregnant employees to remain in their current positions for longer periods of time... while also assuring that less costly and disruptive steps (such as simply permitting more frequent restroom breaks or rest periods) are taken for pregnant employees who do not want or need to be transferred...”⁶⁸

California workers are enjoying the benefits of a pregnancy accommodation law that enables prompt resolution of their pregnancy needs. Maria, the California security employee previously mentioned, was able to work late into her pregnancy after she received minor adjustments to her work environment. ERA was able to resolve quickly her accommodation issues because California’s pregnancy accommodation law provides clear directions that enable reasonable solutions. It usually takes ERA just a few phone calls with the employer to brainstorm solutions that both accommodate the pregnant employee and address the employer’s business concerns. California’s law allows employees like Maria to avoid months of stress and dangerous workplace conditions while ensuring continued employment and associated benefits late into their pregnancies.

Other legal services groups in California are seeing similar results. One client at the Legal Aid Society – Employment Law Center (LAS–ELC) was a warehouse worker whose doctor advised her to refrain from filling propane tanks during her pregnancy. Her boss refused this request, remarking, “You can pump your own gas, so why can’t you fill a propane tank?” Legal Aid Society helped her keep her job by negotiating a resolution based on California’s pregnancy accommodation law.

To test whether California’s pregnancy accommodation law is prompting quick and informal solutions for pregnant employees and their employers more broadly, ERA analyzed every unpublished and published court case (whether in state or federal court) available through electronic databases and every decision issued by the Fair Employment and Housing Commission, the administrative agency that enforces California’s pregnancy accommodation law. ERA limited its analysis to cases in which a workplace accommodation was discussed or at issue, whether it was requested by the employee or presumed necessary by the employer. This analysis excluded cases where the accommodation sought related to lactation, non-medical conditions, child-care, or an extended pregnancy disability leave. See Appendix B for Methodology and Appendix C for list of relevant California decisions included in this Report.

ERA's analysis suggests that California's pregnancy accommodation law has provided important protections for pregnant workers without causing a flood of litigation or burdening employers. It thus provides a successful model for change at the federal level. ERA's findings can be summarized as follows:

- ❑ The number of published and unpublished court and administrative decisions involving California's pregnancy accommodation law is very low.
- ❑ The accommodations sought are generally modest, reasonable, and easily met by employers.
- ❑ Accommodation laws are particularly important for protecting low-wage hourly workers.
- ❑ Pregnancy accommodations often involve practices helpful to all employees and can benefit the employer's bottom line.
- ❑ In contrast with the federal law trend, the total number of pregnancy discrimination charges filed under California law has decreased since California's pregnancy accommodation law was enacted.

Finding One: The Number Of Published and Unpublished Court And Administrative Decisions Involving California's Pregnancy Accommodation Law Is Very Low

While early opponents of the California pregnancy accommodation law raised concerns that it would unduly burden employers or spur litigation,⁶⁹ the number and type of cases litigated under the law, as well as stories from ERA's Hotline, tell a different story.

In the 12 years since California's pregnancy accommodation law has been in effect, few cases have resulted in decisions, published or unpublished, in courts or in the state's administrative agency. In total, only 23 decisions addressing pregnancy accommodations exist - three published cases, 14 unpublished cases, and six Fair Employment and Housing Commission (FEHC) administrative decisions. (For purposes of this Report, the terms "decisions" and "cases" are used interchangeably to refer to published and unpublished court cases and FEHC administrative decisions.)

In addition to the fact that there is little case law involving pregnancy accommodation claims, there are even fewer "stand-alone" accommodation cases, i.e. cases in which plaintiffs filed complaints

solely because of an employer's failure to provide an accommodation. In nearly all of the cases reviewed, plaintiffs brought claims to address serious adverse employment actions, such as wrongful termination based on pregnancy discrimination, and accompanied those claims with a failure to accommodate claims. The claims for failure to provide a reasonable accommodation were incidental to the more serious claims. Specifically:

- Out of 23 cases reviewed, only two cases (or 9%) involved stand-alone accommodation claims (i.e. the plaintiff filed only a reasonable accommodation claim).
- In the remaining 21 cases (or 91%), the plaintiffs' accommodation claims were accompanied by claims for more serious adverse employment actions – such as wrongful termination motivated by pregnancy discrimination, etc.

Why are there so few California pregnancy accommodation cases? Several factors may be at play.

First, as the cases analyzed confirm, not every pregnant worker needs a workplace accommodation. Although ERA found 23 decisions involving accommodation issues, there were only 15 decisions (or 65% of the decisions analyzed) in which the employee actually requested an accommodation.⁷⁰ Several decisions involved situations where the employer mistakenly assumed that the employee needed an accommodation and took an adverse action against her as a result.⁷¹ In these cases, the employer learned about the employee's pregnancy and restricted her ability to work based on inaccurate assumptions about her pregnancy-related limitations.⁷² In California, employers must provide pregnancy accommodations only when requested by an employee, and only when based on medical advice (i.e. requested at the advice of the employee's physician).⁷³

Second, while no study has determined the extent to which Californians know about the state's pregnancy accommodation law, ERA's Hotline experience confirms that some workers and employers are unaware of the law's protections. However, California requires employers to post information about pregnancy leave rights and protections against pregnancy discrimination in conspicuous locations at the workplace.⁷⁴

Third, there may be pregnant workers who are denied accommodations but who decide not to complain, either because they fear losing their job, because they could not take on the stress of complaining, or because they need a leave soon after the accommodation is denied.

Thus, the cases analyzed here do not provide a complete picture about whether California workers need an accommodation, know about their rights, or are exercising their right to reasonable accommodations for pregnancy without incident. However, as discussed below, the cases that exist,

as well as ERA's Hotline experience, demonstrate that employees who do assert their rights generally request modest accommodations. These modifications are often met by employers informally and without litigation. The dearth of litigated cases regarding pregnancy accommodations also suggests that many employers are readily making accommodations because the accommodations are consistent with other legal obligations and best business practices.



Finding Two: The Accommodations Sought Are Generally Modest, Reasonable, And Easily Met By Employers

The decisions ERA reviewed reveal that commonly requested accommodations usually involve reasonable modifications easily provided by employers.

In more than half of the cases where the employee made a proper accommodation request, the employer provided an accommodation (53 percent of the decisions).⁷⁵ The fact that employers provided the accommodation when it was requested in the majority of the litigated cases suggests that many employers can accommodate pregnancy-related restrictions without undue hardship or already provide accommodations pursuant to California law.

In one case, the employer accommodated the plaintiff's need to work from home for a few weeks after her doctor ordered her to stay off her feet temporarily.⁷⁶ The court noted that the employer had provided similar schedule modifications to two other employees as well.⁷⁷

Here are other examples from the cases that show how employers have accommodated pregnant workers. While some involved claims of discrimination arising after the accommodation was provided, they are all illustrative of employers' accommodation efforts:

- In *DFEH v. BIW Connector Systems, Inc.*, a senior assembler in a cable manufacturing company requested restricted exposure to chemicals due to her pregnancy.⁷⁸ The employer tried limiting the employee's work to tasks that would not expose her to any chemicals, then tried limiting her work to tasks that would not expose her to particular chemicals of concern, then provided various safety equipment (including gloves, masks, etc.) to protect her from chemical exposure.⁷⁹ Litigation arose based on a lay-off that the plaintiff alleged was discriminatory, after the ac-

commodation was provided.⁸⁰ The case illustrates the range of business-friendly options available to employers.

- In *DFEH v. Penny Wise*, the head manager of a pizza parlor provided her employer with a doctor's note that said she could not work more than eight hours per day and needed a ten-minute break every two to three hours. The employee also could not lift more than 25 pounds.⁸¹ Her employer accommodated these needs without any problem.⁸² The employer asked a crew employee to help the pregnant head manager roll out pizza skin (which required her to lift more than 25 pounds) while the head manager supervised and guided this task.⁸³ Other coworkers helped her with any additional lifting duties that arose during her shift.⁸⁴ Besides these tasks, she was able to perform all of her other job duties without a problem.⁸⁵ An added benefit to the employer was the realization that the job could get done within eight hours, thus eliminating the need for employee overtime.⁸⁶ The plaintiff filed a charge of discrimination based on her subsequent termination.⁸⁷

What Types of Accommodations Do Pregnant Employees Usually Request?

The decisions addressing California's pregnancy accommodation law demonstrate that employees usually request modest and feasible accommodations.⁸⁸ Relief from heavy lifting was the most common accommodation sought, with limitations ranging from lifting no more than 10 to no more than 60 pounds.⁸⁹ A few cases involved requests for "light duty," meaning a temporary reassignment to different tasks, such as temporarily assigning an employee who normally

works on a boat as a deckhand to a desk job in the employer's office.⁹⁰ Other common physical restrictions are climbing restrictions (such as no climbing ladders),⁹¹ no bending over for extended periods,⁹² no sitting for long hours,⁹³ or no prolonged standing.⁹⁴

In several cases, the employee requested periodic rest breaks, such as a ten-minute break every two to three hours or relief from standing for more than eight hours.⁹⁵ Another common medical restriction was no overtime, limiting work to eight hours per day and 40 hours per work week.⁹⁶

Requests to limit the pregnant employee's exposure to hazardous chemicals or radiation are also fairly common. Three decisions involved medical assistants who requested to be exempt from performing x-rays while pregnant.⁹⁷ In one case, the employee requested appropriate protective equipment and modified job duties to limit her exposure to hazardous chemicals while pregnant.⁹⁸

Several employees requested a temporary schedule change to accommodate pregnancy-related illness, such as assignment to an earlier shift,⁹⁹ allowance to work from home for a few weeks to accommodate doctor's orders for temporary bed rest,¹⁰⁰ or other schedule changes to accommodate difficulty with morning sickness.¹⁰¹ In a few cases, the employees requested a short leave due to pregnancy-related illness.¹⁰² One employee requested two weeks of leave for severe morning sickness and then returned to work with some minor pregnancy-related lifting restrictions.¹⁰³

How Do the Enforcement Agencies Interpret The Reasonableness Requirement?

What's Reasonable: Whether an employer is obligated to provide the requested accommodation requires a fact-specific analysis and will depend in part on the employer's size and the nature of the worker's job duties. The following are a few examples of the types of accommodation requests that the court or the FEHC found to be reasonable:

- Employee requested to have co-workers assist her with lifting objects over 20 pounds.¹⁰⁴
- Employee asked to be relieved of some heavy lifting duties and to be assigned to other tasks instead.¹⁰⁵
- Employee requested a temporary restructuring of her job duties to accommodate a lifting restriction during pregnancy where the employer had accommodated other employees with lifting restrictions through light duty assignments.¹⁰⁶
- Employee requested one¹⁰⁷ or a few days¹⁰⁸ of sick leave for pregnancy-related illness.

Most Commonly Sought Accommodations:

- No Heavy Lifting
- No Overtime
- Periodic Rest Breaks/No Standing More Than 8 Hours
- Limited Exposure To X-Rays or Hazardous Chemicals
- Temporary Schedule Change
- Other accommodations sought less frequently included requests to sit occasionally during a shift, temporary light duty, working from home when bed rest prescribed, and leave time to address pregnancy-related illness

What's Unreasonable: Although the FEHA creates an affirmative duty for employers to accommodate pregnancy, it does not require employers to provide accommodations that are not “reasonable.” The reasonableness of the employer’s efforts to accommodate is determined on a “case by case basis.”¹⁰⁹ Further, “[a]ny reasonable accommodation is sufficient to meet an employer’s obligations. The employer need not adopt the most reasonable accommodation nor must the employer accept the remedy preferred by the employee.”¹¹⁰

Orozco v. Russell F. Coser, D.D.S. Inc.,¹¹¹ provides an instructive example of when an employer is not required to provide a requested accommodation under California law. In that case, the plaintiff was a dental assistant who became pregnant and requested to be exempt from taking x-rays while pregnant.¹¹² She worked in a small office with only one other dental assistant and her employer did not have another position in which to place her. Taking x-rays was critical to the dental office’s operation and constituted a significant portion of the employee’s job duties and undisputed evidence showed that she was responsible for taking 75 percent of the x-rays before she became pregnant.¹¹³ Given that performing x-rays was an essential function of the plaintiff’s job and the fact that the employer did not have other options for restructuring her job due to its small size, the court found that the employer was not required to provide an accommodation.¹¹⁴

Although the determination of whether an employer is obligated to provide an accommodation is fact-specific, the California decisions analyzed in this Report provide some helpful guidance. Courts and administrative agencies found that accommodation requests were not reasonable when they were not specific in type (i.e. identifying the employee’s specific limitations) and/or when they were not medically supported (i.e. based on a doctor’s recommendation). In three of the 23 decisions reviewed (or 13 percent), the court or administrative agency held that the employee failed to make a request sufficient to trigger the employer’s legal obligations to provide an accommodation, either because the

employee’s request was vague (for example, the employee asked generally for a “pregnancy accommodation” without identifying a specific limitation), and/or because the employee failed to provide a doctor’s note or otherwise show that the request was based on a doctor’s recommendation.

In the cases analyzed for this Report, the court or the FEHC found that the employer was not obligated to accommodate the following requests:

- Employee’s request for an accommodation was not based on medical advice.¹¹⁵
- Employee asserted a vague request for an accommodation but did not identify any specific restrictions or limitations.¹¹⁶
- Employee sought an accommodation to avoid performing an essential job function and there were no available temporary transfer positions.¹¹⁹
- Employee asked her employer to allow her to end her shift early and have other employees cover her shifts on an ongoing “as needed” basis whenever morning sickness became an issue during her shift. Requiring other employees be on standby to cover her shifts whenever needed was deemed not reasonable.¹¹⁸

How Do California Employers Meet Accommodation Needs?

The California cases indicate that pregnancy accommodation needs are often met when the employer and employee have a conversation about what the employee actually does (as opposed to her initial job description), and brainstorm together about how to address her temporary limitations. For example, in *DFEH v. BIW Connector Sys., Inc.*, a senior assembler at a cable manufacturing plant requested various accommodations at different stages in her pregnancy. First she requested restricted exposure to tasks that required her to work

with certain chemicals, and then she asked for protective equipment, including a breathing mask.¹¹⁹ Her employer was very responsive and engaged in discussions with the employee to find available options to accommodate her restrictions.¹²⁰

In contrast, in *Lopez v. Bimbo Bakeries*, a route sales representative/truck driver submitted a doctor's note that imposed a 20-pound lifting restriction and a climbing restriction.¹²¹ When her human resources (HR) manager received the doctor's note, she reviewed the employee's written job description and advised the plaintiff

that the employer could not accommodate her restrictions.¹²² However, if the HR manager had spoken with the worker and her supervisor about her daily duties and accommodation options, she would have learned that plaintiff could have easily performed her job duties with the lifting and climbing restrictions.¹²³ At most, the employee was required to occasionally lift 15-16 pounds.¹²⁴ Additionally, an employer safety policy actually mandated that she always have a partner with her to assist with lifting.¹²⁵ The supervisor also had light duty available at the time that could have been made available to the plaintiff.¹²⁶

“ By invoking California’s reasonable accommodation law, pregnant workers are often able to preserve their jobs while avoiding the need for litigation at a vulnerable and stressful time in their lives. Meanwhile, employers benefit as well by retaining productive, loyal employees and reducing turnover costs. ”

Sharon Terman, *Senior Staff Attorney, Legal Aid Society-Employment Law Center*



Pregnancy Accommodations For Employee's Actual Job Duties: Nikole's Story

Good faith negotiations are crucial to finding an accommodation that meets the needs of the employee and addresses employer concerns. A cursory review of the employee's job description by a human resource manager removed from the worksite sometimes falls short. ERA's client Nikole,¹²⁷ was employed as a retail representative. When she became pregnant, she notified her supervisor and mentioned that she was concerned about lifting heavy objects. Her direct supervisor modified her work assignments and allowed her to work in an accommodated position for a few weeks. She performed tasks that did not require heavy lifting (such as setting up price tags, arranging lighting and retail displays, etc.) which were part of a retail representative's regular job duties. She was able to work on these tasks consistently for several weeks without running out of things to do. Nikole then submitted a doctor's note to her employer restating the same restriction (asking that she not lift over 20 pounds) and requesting a formal accommodation of this pregnancy-related restriction. The off-site human resource manager placed her on involuntary unpaid leave despite the fact that she was ready and able to work and even though she had been working with these same accommodation informally. The company refused to discuss accommodation options further with Nikole.



“ California has led the nation in requiring reasonable accommodations to allow pregnant women to keep working as long as they are willing and able. It is high time for the federal government to follow suit by passing the Pregnant Workers Fairness Act. In addition to the regular stresses that come with carrying a child, working women should not also have to fear losing their paychecks. ”

U.S. Representative Jackie Speier

Evaluating An Accommodation Request

The California cases provide guidance to employers on whether an accommodation can be reasonably provided. Employers should examine the following questions:

- 1) What accommodation is requested?
- 2) What duties can the employee still perform within those restrictions? For example, if the employee cannot lift more than 20 pounds, which duties does the employee normally perform or which duties may be available for the employee to perform that do not require lifting more than 20 pounds? Is it feasible to have the employee focus on the duties that do not require an accommodation and relieve her from certain restricted tasks?
- 3) What are the employee's job duties/tasks that require an accommodation, and how often are these tasks usually performed (look at frequent tasks, occasional tasks, rare tasks and assess how often performed)?
- 4) What changes would enable the employee to perform the task or to accommodate the employee's restrictions, such as getting help from coworkers, or shifting certain duties?
- 5) Are there any barriers to providing an accommodation such as store policy, collective bargaining agreement, etc.? How can they be addressed?

Finding Three: Accommodation Laws are Particularly Important for Low-Wage Hourly Workers

ERA's review of California cases involving pregnancy accommodation claims confirms that the law is particularly important for the low-wage hourly sector of the workforce, which ERA defines as workers who earn close to the federal minimum wage.¹²⁸ The majority of the pregnancy accommodation cases reviewed were brought on behalf of low-wage hourly workers. In 17 out of 23 total cases (74 percent of all pregnancy accommodation decisions in this Report), the plaintiff/complainant was an hourly worker earning close to minimum wage. These workers were nursing assistants, Starbucks cashiers, restaurant servers, thrift store cashiers, or in other similar positions.

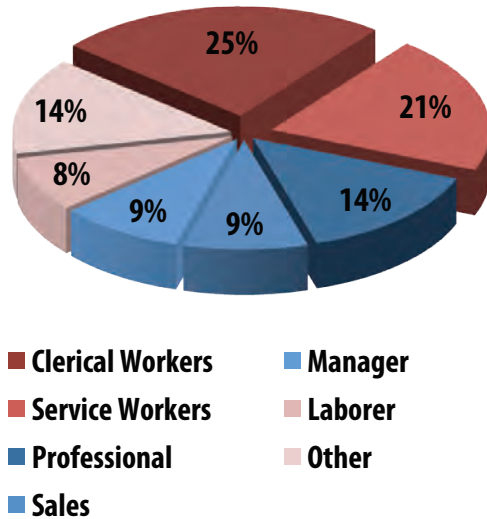
Only one case involved a plaintiff who was in the professional sector,¹²⁹ and four decisions involved plaintiffs who were mid-range sales and service sector employees.¹³⁰ Most were low-wage hourly workers.¹³¹

Statistics from the California Department of Fair Employment and Housing (DFEH) show a similar

pattern. From 2000 to 2010, 44 percent of women who filed FEHA pregnancy discrimination charges worked in either clerical or service positions.¹³² More women filing pregnancy discrimination claims worked in either clerical or service positions than any other type of position.¹³³ More women worked in the service or retail trade industry than in any other industry.¹³⁴

Low-wage hourly workers stand to benefit the most from pregnancy accommodation laws because they lack the kind of flexibility and control afforded to most professional, managerial, and white-collar employees. Professional workers often have the ability to work from home, can leave work for medical appointments for themselves or their family members, or can make a phone call to check on a sick child. This kind of flexibility typically makes it easier for professional, managerial, and white-collar workers to handle pregnancy-related restrictions without requesting accommodation.

**FEHA Pregnancy Discrimination Claims
Filed with DFEH from 2001 to 2009
by Occupation**



SOURCE: "CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING CASES FILED ON BASES – SEX – PREGNANCY. CASES FILED: COUNT OF COMPLAINANT'S OCCUPATION. FISCAL YEARS: 2000–2001–2009–2012" 1/14/2011

Conversely, low-wage hourly workers often have highly supervised jobs where they must clock in and out, adhere to rigid schedules, take lunch and breaks at designated times, can be fired for arriving even a few minutes late, and have limited ability to take leave to handle family emergencies. One study found that flexible scheduling is available for nearly two-thirds of workers with incomes of more than \$71,000 per year but to less than one-third of working parents with incomes less than \$28,000 per year.¹³⁵ Another found that one-third of working-class employees cannot decide when to take breaks, nearly 60 percent cannot choose when to arrive at or leave from work, and 53 percent cannot take time off to care for sick children.¹³⁶ In addition, 68 percent of working-class families have two weeks or less of vacation and sick leave combined.¹³⁷ This inflexibility, combined with low-wage workers' lack of bargaining power and the fact that they are often in entry-level jobs where they can easily be replaced, makes it difficult for them to secure even minor pregnancy accommodations.

Continued work late into pregnancy is also crucial for the economic security of many employees, especially low-wage workers. When employers terminate pregnant workers or force them on unpaid leave, pregnant workers lose the income and health insurance necessary for their families and their own healthy pregnancies. The courts and the FEHC have commented on this issue in several decisions. For example, in one case,¹³⁸ the FEHC noted that if the employer had accommodated the employee, she would have continued working for an additional three to four months. Instead, she was unnecessarily placed on an unpaid leave and lost \$4,500 in wages. In another case,¹³⁹ the court noted that if the complainant would have been able to work for an additional eight weeks, and would have earned almost \$2000 in wages. Equally important, she would not have lost her health benefits if her employer had placed her on light duty.

ERA's client, Nikole, was involuntarily placed on unpaid leave for the duration of her pregnancy when she was only two months pregnant. As she prepared to become a single parent, Nikole faced an economic crisis. She would have greatly benefitted from seven additional months of wages when she was preparing to support a child.

For low-wage workers, securing an accommodation that allows them to continue working and supporting their families during pregnancy often depends on their employers' good-will and cooperation. Thus, pregnancy accommodation laws are especially important in helping low-wage hourly workers negotiate with their employers.



Pregnant women who are forced to stop working are going broke. In *DFEH v. Care Net Fullerton, L.P.*, the plaintiff was a low-wage worker who lost \$4500 when forced on leave, enough to cover rent and groceries for several months.

Finding Four: Pregnancy Accommodations Often Involve Practices Helpful to All Employees and Can Benefit the Bottom Line

The California cases reveal that pregnancy accommodations are often consistent with practices that benefit all workers. Two examples are:

- Periodic rest breaks consistent with wage and hour obligations.¹⁴⁰
- Safety measures and appropriate protective equipment to limit exposure to radiation and potentially hazardous chemicals.

In *DFEH v. Callidac, Inc.*,¹⁴¹ the employer rescinded an employment offer when it learned the employee was pregnant because it assumed that the employee could not safely perform x-rays while pregnant. The FEHC identified standard safety precautions that should be used to limit all employees' exposure to radiation, including having the employee leave the room when x-rays are taken, having employees stand in a viewing room separated by leaded walls and a leaded door while x-rays are being taken, providing a mobile x-ray shield, and other standard safety measures. The FEHC also noted that the employer could shift x-ray duties to other non-pregnant employees if there were any remaining safety concerns.

In *DFEH v. BIW Connector Sys., Inc.*,¹⁴² a senior assembler in a cable manufacturing company submitted a doctor's note restricting her exposure to hazardous chemicals during her pregnancy. One of the accommodations offered provided by her employer was to outfit the employee with the appropriate protective equipment, such as gloves, masks, and a half-face fitted respirator mask to protect her when she worked with certain chemicals. This is protective equipment that would have benefitted all of its employees.

By making sure to provide regular breaks for pregnant workers and to limit their exposure to hazardous chemicals, California employers are taking steps that benefit all of their employees. Additionally, as studies also show, providing an accommodation allows an employee to stay on the job which saves the employer the unnecessary expense of hiring and training new employees and other costs associated with employee turnover.¹⁴³ Accommodation also promotes morale by cultivating worker loyalty.¹⁴⁴ California's pregnancy accommodation law has not only allowed pregnant employees to support their families throughout their pregnancies, but has also been good for the safety and morale of the employees and for the bottom line of California's business.



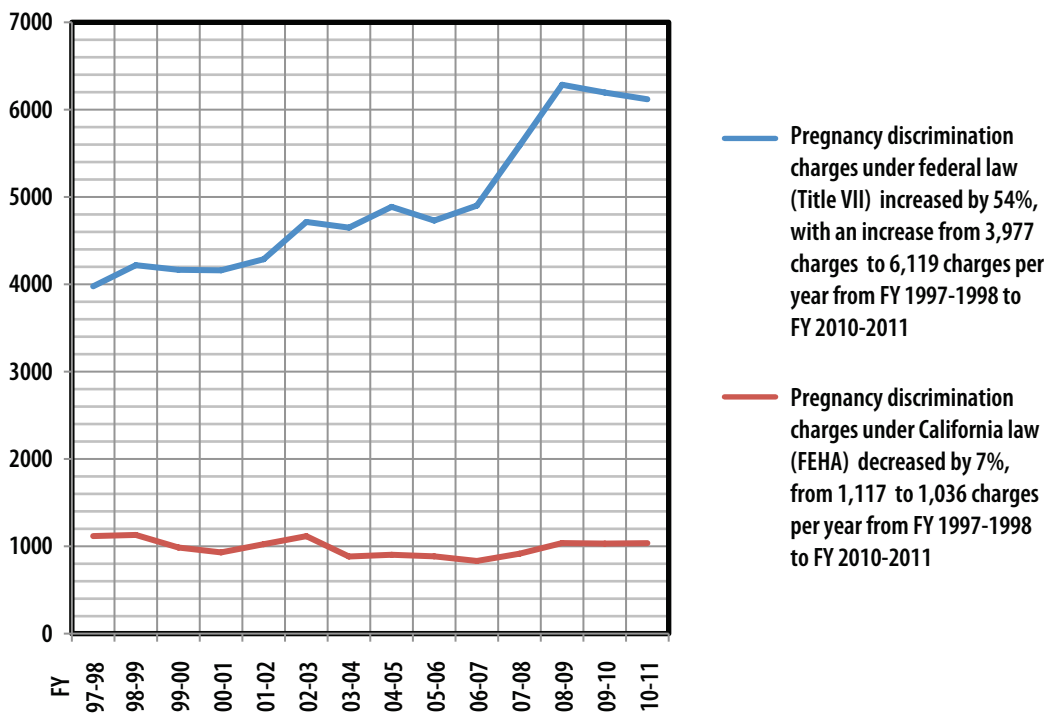
Finding Five: Although Pregnancy Discrimination Claims Under Federal Law Are On The Rise, The Number Pregnancy Discrimination Charges Filed Under California Law Has *Decreased* Since The Passage Of California’s Pregnancy Accommodation Law

While the number of federal pregnancy discrimination claims filed with the EEOC and state agencies has dramatically increased since 1997, California has seen the opposite trend since enactment of California’s pregnancy accommodation law in 2000. From 1997 to 2010, the number of Title VII pregnancy discrimination claims filed with the EEOC and other administrative agencies increased by 54 percent from 3,977 charges in 1997 to 6,119 charges in 2010. In contrast, the number of FEHA pregnancy discrimination claims filed with California’s Department of Fair Employment and Housing decreased

by 7 percent from 1997 to 2010, from 1,117 charges to 1,036 charges per year.

While these statistics do not reveal why fewer pregnancy discrimination claims have been filed with the DFEH under California law since 1997, they do provide some comfort to those concerned that a pregnancy accommodation law might prompt employers to discriminate against employees (by refusing to hire them or by terminating them when pregnant) in order to avoid having to make accommodations.

Comparing Pregnancy Discrimination Administrative Charges under Federal and California Law (1997 to 2010)



SOURCE: EEOC “PREGNANCY DISCRIMINATION CHARGES. EEOC & FEPAs COMBINED: FY 1997 – FY 2011”, CALIFORNIA DFEH CASES FILED BY BASIS – SEX – PREGNANCY COUNT OF EMPLOYMENT CASES FILED. FISCAL YEARS: 2000–2001–2009–2012.” 1/14/2011

The experience of ERA's Hotline reveals that California's pregnancy accommodation law has provided an invaluable tool to start a dialogue between employer and employee about pregnancy related issues. The accommodation law has enabled ERA to address employer concerns and/or stereotyping about pregnant employees before discriminatory action actually occurs.

The California data considered by Equal Rights Advocates in this Report – ERA's Hotline experience, case facts and outcomes, and statistical data about complaints filed with the state administrative agency – provide a compelling case for why a federal bill expressly providing for the reasonable accom-

modation of pregnancy limitations of employees will promote positive change in workplaces across the country. The California pregnancy accommodation law is clear, and it balances the needs of both workers and employers. The law has not exacerbated pregnancy discrimination by employers, has promoted the quick resolution of accommodation concerns of pregnant workers across California, and is necessary to the economic survival of especially low-wage pregnant workers. The law has also inspired change in the workplace that benefits all employees. High morale, low turnover and consistent productivity are additional benefits of allowing able-bodied pregnant employees to continue working as long as they can.

“ Thanks to gaps in federal law, women have been denied the simplest accommodations and forced out of their jobs because they are pregnant. The PWFAs closes those gaps and gives expecting mothers some basic, long overdue protections in the workplace. Women are breadwinners, sometimes the sole breadwinners, for countless families. This bill is not just the morally right thing to do; it's also good economics. ”

U.S. Representative George Miller (CA)

Federal Law Catches Up: The Pregnant Workers Fairness Act

The PWFA:

- Requires an employer to make reasonable accommodations for pregnancy, childbirth, and related medical conditions, unless this creates an undue hardship on the employer.
- Prohibits an employer from denying pregnant workers employment opportunities, or from forcing them to take an accommodation that they do not want or need.
- Prohibits an employer from forcing a pregnant worker to take leave when another reasonable accommodation could help keep her on the job.
- Requires the U.S. Equal Employment Opportunity Commission (“EEOC”) to make rules implementing the law within two years of enactment. In this role, the EEOC would provide a list of exemplary reasonable accommodations that should be provided unless they impose undue hardship on the employer.

The success of California’s pregnancy accommodation law lends support for the need for federal legislation providing similar protections. Fortunately, change is underway. On May 8, 2012, federal legislation was introduced to ensure fair workplaces for pregnant workers. The Pregnant Workers Fairness Act is a stand-alone bill modeled after the Americans with Disabilities Act. Using an existing and familiar reasonable accommodations framework, this legislation ensures that where a minor job modification would allow a woman to continue working, an employer must provide it unless doing so would pose an undue hardship on the employer. The legislation also prevents employers from forcing pregnant women out of the workplace (either by placing them on leave or firing them altogether), when a reasonable accommodation would have enabled them to continue working productively.



Introduced by U.S. Representative Jerrold Nadler (NY), the bill's co-sponsors to date include Carolyn Maloney (NY), Jackie Speier (CA), Susan Davis (CA), Marcia Fudge (OH), and George Miller (CA). Advocates for working families across the country are hailing the bill. Hundreds of organizations across the country have already endorsed the PWFA, including Equal Rights Advocates, A Better Balance: The Work and Family Center, Legal Aid Society-Employment Law Center, the California Women's Law Center, the National Women's Law Center, Legal Momentum, National Partnership for Women & Families, American Civil Liberties Union, American Congress of Obstetricians and Gynecologists, and the AFL-CIO.

The PWFA Benefits Women and Families:

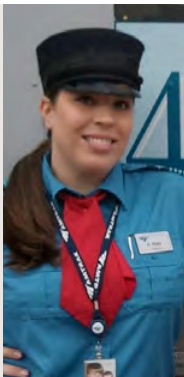
- The PWFA allows pregnant workers to stay on the job safely, and promotes healthy pregnancies and the economic security of these women and their families.
- The PWFA ensures that pregnant workers are not forced to choose between following a doctor's orders or a supervisor's directive. Nor will a pregnant worker be

faced with deciding to continue working under unhealthy conditions or losing her paycheck.

The PWFA Benefits Employers:

- Modeled on the framework of the Americans with Disabilities Act, the PWFA would provide clearer guidelines for employers facing a pregnant worker's request for job accommodation. This clarity will help avoid costly and time-consuming litigation, while reducing employee turnover and related hiring and training costs.

Equal Rights Advocates applauds the introduction of the Pregnant Workers Fairness Act and urges support for its passage. The bill will provide much needed clarity about how employers can best keep capable pregnant employees working productively with minor adjustments. Expectant families across the country, including employees like Angie, Joanna, and Nikole, can celebrate this Mother's Day with the hope that federal law will protect the health and fiscal security of pregnant workers.



All I wanted was to do a great job at work and be able to support my family at the same time. The Pregnant Workers Fairness Act would have helped me when I needed it the most.

Angie from Mississippi

To learn more about the Pregnant Workers Fairness Act and how to show your support, visit www.equalrights.org.

Appendix A

State Laws Providing for Pregnancy Accommodation in Employment

Connecticut

Connecticut was the first state to require employers to provide reasonable accommodation to pregnant employees.¹⁴⁵ Passed in 1979, Connecticut's pregnancy accommodation law requires employers to (1) make "reasonable effort to transfer a pregnant employee to any suitable temporary position" if the employee reasonably believes that continued employment in her position might cause injury to the employee or fetus, (2) provide notice of the right to transfer, and (3) provide reasonable unpaid leave for pregnancy-related disabilities.¹⁴⁶

In the only published Connecticut court case that discusses the reasonable accommodation require-

ment, a pregnant nursing assistant was denied a transfer to a ward with less strenuous work.¹⁴⁷ Because she was experiencing painful cramps and was fearful for the health of her pregnancy, she left work after her supervisor told her to "deal with it" or get fired, and she was subsequently fired.¹⁴⁸ The plaintiff in that case won on claims of traditional pregnancy discrimination and failure to provide a reasonable transfer.¹⁴⁹ In a different Connecticut administrative decision, the hearing officer determined that the employer's denial of flex time to the pregnant worker, in addition to its negative comments about her pregnancy, was evidence that it discriminated against her because of her pregnancy when it fired her.¹⁵⁰

“ Forcing the plaintiff to choose between her own health and well-being and that of her unborn child, and her continued employment, especially in light of the substantial evidence of other available and suitable work stations, was patently unreasonable. ”

Davis v. Manchester Health Ctr., 867 A.2d 876, 884 (Conn. Ct. App. 2005)

Hawaii

Hawaii followed Connecticut's lead over a decade later. In 1990, Hawaii's Civil Rights Commission promulgated rules under its law prohibiting sex discrimination. These rules require employers to (1) make "every reasonable accommodation" to the medical needs of workers with a disability due to "pregnancy, childbirth, or related medical conditions," and (2) provide reasonable unpaid leave to workers with pregnancy-related disabilities.¹⁵¹

The Hawaii Supreme Court has confirmed the binding effect of these rules on all employers.¹⁵² Hawaii's law is broader than Connecticut's law because it grants the accommodation right to any worker affected by pregnancy-related conditions, not just to those who are pregnant.¹⁵³

“ It is well-recognized that the purpose of these rules is to protect equal job opportunities for women as compared to others by removing a female disability job risk not faced by men and non-pregnant females. ”

Teague, Ltd. v. Hawaii Civil Rights Comm’n., 971 P.2d 1104, 1113 (Haw. 1999).

Louisiana and California

Louisiana and California enacted pregnancy accommodation laws in 1997 and 1999.¹⁵⁴ Both laws require employers to (1) provide reasonable temporary transfers to pregnant employees to a “less strenuous or hazardous position” with the advice of a physician, and (2) provide reasonable unpaid leave for up to four months for a pregnancy-related disability.¹⁵⁵ California’s law additionally requires employers to grant pregnant workers “reasonable accommodation” for a “condition related to pregnancy, childbirth, or a related medical condition.”¹⁵⁶ California’s law is broader than Louisiana’s law because it has an accommodation provision in addition to the transfer provision. Additionally, the California law, like the Hawaii law, applies to workers affected by a pregnancy-related condition (not just to workers who are pregnant at the time).¹⁵⁷

In the only published Louisiana court case discussing the reasonable accommodation requirement, a pregnant retail worker was denied light duty, while another non-pregnant worker in the same position was assigned light duty based on the employer’s perception that that employee was physically weak.¹⁵⁸

Alaska, Texas, Illinois

Alaska, Texas, and Illinois enacted pregnancy accommodation laws in 1992, 2001, and 2007, respectively.¹⁵⁹ All three laws require certain public employers to provide pregnant employees with reasonable temporary transfers.¹⁶⁰ While the Alaska and Illinois transfer provisions only apply to workers who are pregnant at the time, the Texas transfer provision applies to workers who are “partially restricted by a pregnancy,” thus possibly extending beyond a worker’s pregnancy term.¹⁶¹ Texas’ law additionally requires employers to “make a reasonable effort to accommodate an employee” who is “partially physically restricted by a pregnancy.”¹⁶² The three laws also apply to different workers: Texas pregnancy accommodation law applies to county and municipality employees, Alaska pregnancy accommodation law applies to public officers, and the Illinois law applies to peace officers and firefighters.¹⁶³



Appendix B

Methodology

- For purposes of this report, ERA limited its analysis to California decisions addressing accommodation issues, which ERA defined as decisions discussing a pre-delivery or post-delivery accommodation of the employee's pregnancy-related medical conditions to enable the employee to continue working. This does not include cases where the employee sought an accommodation, such as requests to "accommodate" the employee's child care needs (for example by allowing the employee to bring a new baby to work), and other non-medical conditions. Further, ERA did not consider decisions addressing the employee's right to take pregnancy-related disability leave for an extended period. The essential issue in de-



termining whether a decision raised a relevant accommodation issue was whether the accommodation related to the employee's ability to continue working during or after pregnancy, rather than the employee's ability to take time away from work.

- ERA did not consider lactation accommodation for the purposes of this report because the right to lactation accommodation is addressed under a separate California statute.¹⁶⁴
- ERA examined all decisions addressing an accommodation issue, whether an accommodation was requested by the employee, presumed necessary by the employer without an employee request, included in the employee's claims against the employer, and/or mentioned as part of the court's analysis or the parties' arguments.
- ERA analyzed all unpublished and published California court decisions available via electronic databases, along with all Fair Employment and Housing Commission ("FEHC") decisions. (Note that ERA searched for relevant cases in both California state and federal courts, but most/all of the decisions are from state courts.) ERA did not include complaints, orders, briefs, settlements, jury verdicts, and arbitration decisions and other informal memoranda in its analysis.

Appendix C

List of Relevant Pregnancy Accommodation Cases

Daidone v. Alchemy Glass & Light, No. B167836, 2004 Cal. App. Unpub. LEXIS 10176 (Cal. Ct. App. Nov. 8, 2004).

DFEH v. A Penny Wise, Inc., No. 95-06, 1995 CAFEHC LEXIS 8 (F.E.H.C. Oct. 10, 1995).

DFEH v. BIW Connector Sys., Inc., No. 97-11, 1997 CAFEHC LEXIS 12 (F.E.H.C. Oct. 15, 1997).

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Gonzalez v. IHG Mgmt (Ma), LLC, No. B215952, 2010 Cal. App. Unpub. LEXIS 3671 (Cal. Ct. App. May 18, 2010).

Imperial Tile & Stone v. State Farm Gen. Ins. Co., No. B230937, 2012 Cal. App. Unpub. LEXIS 1557 (Cal. Ct. App. Feb. 29, 2012).

James v. Childtime Childcare, Inc., No. S-06-2676, 2007 U.S. Dist. LEXIS 43753 (E.D. Cal. June 1, 2007).

Kobbervig-Harrell v. Nike, Inc., No. B190656, 2007 Cal. App. Unpub. LEXIS 3104 (Cal. Ct. App. Apr. 18, 2007).

Liebrand v. Brinker Rest. Corp., No. G039017, 2008 Cal. App. Unpub. LEXIS 4959 (Cal. Ct. App. June 18, 2008).

Lopez v. Bimbo Bakeries USA, Inc., No. A119720, 2009 Cal. App. Unpub. LEXIS 3171 (Cal. Ct. App. Apr. 23, 2009).

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Michaelian v. Frank S Seo DDS, Inc., No. BC328702, 2005 WL 5086478 (Cal. Super. Ct. 2005).

Murphy v. Metro. Furniture Corp., No. A10757s, 2005 Cal. App. Unpub. LEXIS 7766 (Cal. Ct. App. Aug. 29, 2005).

Orozco v. Russell F. Coser, D.D.S., Inc., No. B214292, 2009 Cal. App. Unpub. LEXIS 8280 (Cal. Ct. App. Oct. 19, 2009).

Rosenman v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro et al., 91 Cal. App. 4th 859 (Cal. Ct. App. 2001).

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Schaffer v. GTE, Inc., 40 Fed. Appx. 552 (9th Cir. 2002).

Vasquez v. Del Rio Sanitarium, Inc., No. B231327, 2012 Cal. App. Unpub. LEXIS 1692 (Cal. Ct. App. March 5, 2012).

Endnotes

1. For more information about the Pregnant Worker Fairness Act, visit ERA's website at www.equalrights.org.
2. See Hillmer, Hillmer, & McRoberts, *The Real Costs of Turnover: Lessons from a Call Center*, 27 HUMAN RESOURCE PLANNING 34 (Issue 3) (2004) available at http://www.fehc.ca.gov/act/pdf/pregnancyregulations/NPR_Ex_22_Real_Costs_of_Turnover.pdf (finding that the vacancy of one employee costs nearly the value of the employee's yearly salary).
3. U.S. DEPT OF LABOR, JOB ACCOMMODATION NETWORK, WORKPLACE ACCOMMODATIONS: LOW COST, HIGH IMPACT 4 (2011).
4. See "States Lead the Way," section of this Report.
5. See NAT'L BUS. GROUP ON HEALTH, HEALTHY PREGNANCY AND HEALTHY CHILDREN: OPPORTUNITIES AND CHALLENGES FOR EMPLOYERS: THE BUSINESS CASE FOR PROMOTING HEALTHY PREGNANCY 2-4, 13, available at http://www.businessgrouphealth.org/health-topics/maternalchild/investing/docs/4_businesscasepregnancy.pdf (last visited May 1, 2012). Death rates from pregnancy complications are three to four times higher among women who receive no prenatal care compared to women who receive basic prenatal care. *Id.*
6. See *id.* at 2-4, 12.
7. BUREAU OF LABOR STATISTICS, WOMEN IN THE LABOR FORCE: A DATABOOK (2011), available at <http://www.bls.gov/cps/wlf-databook2011.htm>.
8. *Id.* See generally INSTITUTE FOR WOMEN'S POLICY RESEARCH, *The Gender Wage Gap By Occupation* (April 2012), available for download at <http://www.iwpr.org/publications/pubs/the-gender-wage-gap-by-occupation-updated-april-2011> (last visited May 3, 2012). CITE IWPR Report and Census Data
9. BUREAU OF LABOR STATISTICS, LABOR FORCE PARTICIPATION RATE OF MOTHERS (2006) <http://www.bls.gov/opub/ted/2006/dec/wk1/art01.htm>; BUREAU OF LABOR STATISTICS, WOMEN IN THE LABOR FORCE: A DATABOOK (2006), available at <http://www.bls.gov/cps/wlf-databook2006.htm>. See also U.S. Census Bureau, (2005) "Maternity Leave and Employment Patterns of First Time Mothers," p. 6, available at <http://www.census.gov/prod/2005pubs/p70-103.pdf> (last visited May 3, 2012).
10. NWLC Calculations from U.S. CENSUS BUREAU, AMERICA'S FAMILIES AND LIVING ARRANGEMENTS SURVEY: 2011, Tables FG1, FG5 One, FG5 Two, and UC3, available at <http://www.census.gov/population/www/socdemo/hh-fam/cps2011.html>; Written Testimony of Emily Martin, Vice President and General Counsel for Nat'l Women's Law Cntr., at U.S. Equal Employment Opportunity Comm'n Meeting (February 15, 2012), <http://www.eeoc.gov/eeoc/meetings/2-15-12/martin.cfm>.
11. MARIA SHRIVER, CTR. FOR AM. PROGRESS, THE SHRIVER REPORT: A WOMAN'S NATION CHANGES EVERYTHING 1 (Heather Boushey & Ann O'Leary eds., 2009), at 36, available at http://www.americanprogress.org/issues/2009/10/pdf/awn/a_womans_nation.pdf.
12. U.S. Census Bureau, (2005) "Maternity Leave and Employment Patterns of First Time Mothers," p. 6, available at <http://www.census.gov/prod/2005pubs/p70-103.pdf>.
13. *Id.*
14. U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, PREGNANCY DISCRIMINATION CHARGES: EEOC & FEPAS COMBINED: FY 1997 – FY 2011, available at <http://www.eeoc.gov/eeoc/statistics/enforcement/pregnancy.cfm>.
15. Written Testimony of Peggy Mastroianni, Legal Counsel, EEOC, p. 5, at U.S. Equal Employment Opportunity Comm'n Meeting (February 15, 2012), available at <http://www.eeoc.gov/eeoc/meetings/2-15-12/mastroianni.cfm>
16. See Press Release, U.S. Equal Employment Opportunity Comm'n, Unlawful Discrimination Based on Pregnancy and Caregiving Responsibilities Widespread Problem, Panelists Tell EEOC (February 15, 2012), www.eeoc.gov/eeoc/newsroom/release/2-15-12.cfm.
17. See Written Submission of Noreen Farrell and Mia Munro, Equal Rights Advocates, at U.S. Equal Employment Opportunity Comm'n Meeting (February 15, 2012), available at www.equalrights.org.
18. See *id.*; U.S. EQUAL EMPLOYMENT OPPORTUNITY COMM'N, MEETING OF FEBRUARY 15, 2012 – UNLAWFUL DISCRIMINATION AGAINST PREGNANT WORKERS AND WORKERS WITH CAREGIVING RESPONSIBILITIES (February 15, 2012), www.eeoc.gov/eeoc/meetings/2-15-12/index.cfm.
19. See *id.*; Written Testimony of Sharon Terman, Senior Staff Attorney of The Legal Aid Society Employment Law Center, at U.S. Equal Employment Opportunity Comm'n Meeting (February 15, 2012), <http://www.eeoc.gov/eeoc/meetings/2-15-12/terman.cfm>; Written Testimony of Emily Martin, Vice President and General Counsel for Nat'l Women's Law Cntr., at U.S. Equal Employment Opportunity Comm'n Meeting (February 15, 2012), <http://www.eeoc.gov/eeoc/meetings/2-15-12/martin.cfm>; Written Testimony of Joan Williams, Director of the Center for Worklife Law, at U.S. Equal Employment Opportunity Comm'n Meeting (February 15, 2012), <http://www.eeoc.gov/eeoc/meetings/2-15-12/williams.cfm>.
20. 42 U.S.C. § 2000e(k) (2012).
21. Elizabeth Grossman & Gillian Thomas, *Making Pregnancy Work: Overcoming the Pregnancy Discrimination Act's Capacity-Based Model*, 21 YALE J. L. & FEMINISM 15, 26-27 (2009).
22. *Cal. Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272, 280 (1987) (holding that states may require employers to offer protections for pregnant workers not offered other employees because "Congress intended the PDA to be a floor beneath which pregnancy disability benefits may not drop-not a ceiling above which they may not rise")
23. 42 U.S.C § 2000e-2 (2012).
24. See Grossman & Thomas, *supra* note 21, at 22, 33-35.
25. See, e.g., *Young v. United Parcel Serv., Inc.*, No. DKC 08-2586, 2011 U.S. Dist. LEXIS 14266, *39-41 (D. Md. Feb. 14, 2011).
26. See Grossman & Thomas, *supra* note 24, at 23.
27. *Reeves v. Swift Transp. Co.*, 446 F.3d 637, 638-39, 641 (6th Cir. 2006).

28. *Young v. United Parcel Serv., Inc.*, No. DKC 08-2586, 2011 U.S. Dist. LEXIS 14266, *14-16 (D. Md. Feb. 14, 2011).
29. See *Young*, *supra* note 28, at 26-27; Reeves, *supra* note 27, at 638.
30. *Wiseman v. Wal-Mart Stores, Inc.*, No. 08-1244-EFM, 2009 U.S. Dist. LEXIS 48020, *1-2 (D. Kan. June 9, 2009).
31. *Serednyj v. Beverly Healthcare, LLC*, 656 F.3d 540, 545-46 (7th Cir. 2011).
32. 29 U.S.C. § 2612(a) (2012). To be eligible for FMLA leave, an employee must have worked at least 1,250 hours in the previous year for an employer that has at least 50 employees within a 75-mile radius of where the employee reports to work. *Id.*; 29 U.S.C. § 2611(2)(A)-(B) (2012).
33. 29 U.S.C. § 2614(c)(1) (2012). This section specifies that employers must maintain coverage under any “group health plan” during the leave. A “group health plan” is “a plan (including a self-insured plan) of, or contributed to by, an employer (including a self-employed person) or employee organization to provide health care (directly or otherwise) to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families.” 29 U.S.C. § 5000(b)(1) (2012).
34. See 29 C.F.R. § 825.120(4) (2008).
35. See 29 U.S.C. § 2611(2)(B) (2012) (exempting employers with less than 50 employees within a 75-mile radius from FMLA coverage).
36. Victoria A. Lipnic & Paul Decamp, U.S. DEPT OF LABOR, FAMILY AND MEDICAL LEAVE ACT REGULATIONS: A REPORT ON THE DEPARTMENT OF LABOR’S REQUEST FOR INFORMATION 128-29 (2007), available at http://digitalcommons.ilr.cornell.edu/key_workplace/315.
37. *Id.*
38. Ann O’Leary, How Family Leave Laws Left Out Low-Income Workers, 28 BERKELEY J. EMP. & LAB. L. 1, 45 (2007).
39. See 29 U.S.C. § 2612(a) (2012).
40. See 29 U.S.C. § 2612(a)(D) (2012); 29 C.F.R. § 825.123(a) (2008); 29 C.F.R. § 825.120(a)(4) (2008).
41. ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (2008).
42. 42 U.S.C. § 12112(a) (2012).
43. 42 U.S.C. § 12111(8) (2012).
44. 42 U.S.C. § 12112(5)(A) (2012).
45. ADA Amendments Act of 2008, Pub. L. No. 110-325, §§ 2(b)(5), (4)(a)(2)(A), 122 Stat. 3553, 3554 (2008).
46. 29 C.F.R., pt. 1630 app. (2011), § 1630.2(f)(1)(ix).
47. See 42 U.S.C.S. § 12102 (1) (defining “disability” as a “physical or mental impairment” that “substantially limits” any of the “major life activities” of an individual); see also, e.g., *Villarreal v. J.E. Merit Constructors, Inc.*, 895 F. Supp. 149, 152 (S.D. Tex. 1995) (holding that “pregnancy and related medical conditions do not, absent unusual circumstances, constitute a ‘physical impairment’ under the ADA”); *Gabriel v. City of Chicago*, 9 F. Supp. 2d 974, 981-83 (N.D. Ill. 1998) (engaging in detailed analysis of plaintiff’s pregnancy-related restrictions in order to determine whether or not she had a “physical impairment” that “substantially limits” a “major lifetime activity”).
48. See generally Jeannette Cox, *Pregnancy as “Disability” And The Amended Americans With Disabilities Act*, 53 B.C. L. REV. 443 (2012).
49. 29 C.F.R., pt. 1630 app. (2011), § 1630.2(h) (2011).
50. See *supra* note 47; 76 Fed. Reg. 16982 (Mar. 25, 2011) (stating that the duration of an impairment is “one factor in determining whether the impairment substantially limits a major life activity”); 29 C.F.R. pt. 1630 app. § 1630.2(i) (stating that a qualifying disability is one that “substantially limits his or her ability to perform a class of jobs to broad range of jobs in various classes”).
51. See CONN. GEN. STAT. § 46a-60(a)(7) (2012); HAW. REV. STAT. § 378-2 (2012); LA. REV. STAT. § 23:342 (2012); CAL. GOVT. CODE § 12940 (2012); 775 ILL. COMP. STAT. 5/2-102(H) (2012); ALASKA STAT. § 18.80.220 (2012); TEX. LAB. CODE, §§ 21.051, 21.106 (2012).
52. See CONN. GEN. STAT. § 46a-60(a)(7)(B)-(G) (2012); HAW. CODE R. §§ 12-46-107, 108 (2012); ALASKA STAT. § 39.20.520(a) (2012); LA. REV. STAT. § 23:342(1)-(4) (2012); CAL. GOVT. CODE § 12945 (2012); TEX. LOC. GOVT CODE, § 180.004(a)-(c) (2012); 775 ILL. COMP. STAT. 5/2-102(H) (2012).
53. Connecticut pregnancy accommodation law applies to employers with three or more employees; Hawaii law applies to all employers, Louisiana law applies to employers with 25 or more employees; and California law applies to employers with five or more employees. See CONN. GEN. STAT. § 46a-51(10) (2012); HAW. REV. STAT. § 368-3 (2012); LA. REV. STAT. § 23:342(1)-(4) (2012); CAL. GOVT. CODE, § 12940 (2012).
54. See *supra* note 52.
55. The New York law would apply to employers with four or more employees. See NEW YORK CONSOL. LAW, § 292 (2012).
56. See S. 6273 (N.Y. 2012); A. 9114 (N.Y. 2012).
57. Texas pregnancy accommodation law applies to county and municipality employees, Alaska pregnancy accommodation law applies to public officers, and Illinois law applies to peace officers and firefighters. See *supra* note 52.
58. See MINN. STAT. § 363A.08(5); The Right Focus On...Pregnancy Discrimination, MINNESOTA DEPT OF HUMAN RIGHTS (July 2008) available at www.humanrights.state.mn.us/education/video/pregnancy.html.
59. See MICH. COMP. LAWS, § 37.2202(1)(d); Michigan Dep’t of Civil Rights, *Employment Rights: A Guide for Women*, 9 (2005), available at www.michigan.gov/.../Final_Employment_Guide_124633_7.doc
60. HAWAII CIVIL RIGHTS COMMISSION, PREGNANCY DISCRIMINATION IN THE WORKPLACE (November 2000), available at <http://hawaii.gov/labor/hcrc/hcrc-links/pdf/INFOpreg.pdf>.
61. S. 6273 (N.Y. 2012); A. 9114 (N.Y. 2012).
62. For up to date information on the status of the New York bill, visit: <http://www.abetterbalance.org/web/ourissues/fairnessworkplace/192-new-york-reasonable-accommodations-for-pregnant-women>.
63. Dina Bakst, *Pregnant, and Pushed Out of a Job*, N.Y. TIMES, January 30, 2012, available at <http://www.nytimes.com/2012/01/31/opinion/pregnant-and-pushed-out-of-a-job.html>.
64. Statutes of 1978, Ch. 1321, p. 4320. The Statutes of 1978 also required employers to give pregnant women the “same privileges and benefits” as other temporarily disabled employees.

65. *Id.*
66. *Id.* at 4320-4321. Although employers with 15 or more employees were originally exempt from this transfer requirement In 1992, California amended FEHA to extend the transfer requirements of the original 1978 law to all employers with 5 or more employees, including those with 15 or more employees also covered by the federal PDA.
67. A.B. 1670 / Stats. 1999, c. 591, sec. 9.
68. See Committee Report of 1999, California Assembly Bill No. 1670, Assembly Committee on the Judiciary.
69. The California Chamber of Commerce objected that “reasonable accommodation” has no definition and would therefore lead to increased litigation. See Committee Report of 1999, California Assembly Bill No. 1670, Assembly Committee on the Judiciary, p. 10. However, the Assembly Judiciary Committee dismissed this objection, pointing out that California law already defined reasonable accommodation. *Id.*
70. This includes only cases where an employee made an accommodation request that was sufficiently specific and medically-supported to trigger the employer’s obligations to provide a reasonable accommodation under California law. This category does not include decisions where a request was made that was vague, not medically supported, or otherwise insufficient to entitle the employee to an accommodation, nor does it include decisions that lacked sufficient factual details about the accommodation request to determine whether a proper request was actually made. Of the remaining eight decisions, five decisions (22%) involved situations where the employee did not actually request an accommodation, and three decisions (13%) could not be categorized due to insufficient information.
71. *Sasco Electric v. FEHC*, 176 Cal. App. 4th 532 (Cal. Ct. App. 2009); *DFEH v. Cal-lidac, Inc.*, No. 93-03, 1993 CAFEHC LEXIS 5 (F.E.H.C. March 4, 1993).
72. *Id.*
73. Cal. Gov. Code § 12945(a)(3).
74. California law requires employers to provide information about pregnancy leave rights to their employees and post this information in a conspicuous place where employees tend to gather. 2 Cal. Regs. § 7291.16 (a)-(e) (2012). Employers who provide employee handbooks which describe other kinds of temporary disability leaves or transfers available to its employees must include information about pregnancy leave in the handbook. *Id.*
75. There were 15 cases in which an accommodation was requested; the employer provided an accommodation in eight cases and refused to provide an accommodation in seven of the 15 cases (or 47% of the cases where accommodation was requested).
76. *Murphy v. Metro. Furniture Corp.*, No. A10757s, 2005 Cal. App. Unpub. LEXIS 7766 (Cal. Ct. App. Aug. 29, 2005).
77. *Id.* at *10.
78. *DFEH v. BIW Connector Systems, Inc.*, No. 97-11, 1997 CAFEHC LEXIS 12 at *4-11 (F.E.H.C. Oct. 15, 1997).
79. *Id.*
80. *Id.*
81. *DFEH v. Penny Wise*, No. 95-06, 1995 CAFEHC LEXIS 8 at *10-11 (F.E.H.C. Oct. 10, 1995).
82. *Id.* at *10-17.
83. *Id.* at *10-11.
84. *Id.*
85. *Id.* at *10-12.
86. *Id.*
87. *Id.*
88. A few decisions did not identify a particular accommodation request. In one case the employee asserted a vague pregnancy accommodation claim but she failed identify what specific accommodation was needed. *Franco v. Otto Nemenz Int’l, Inc.*, No. B219350, 2011 Cal. App. Unpub. LEXIS 5972 (Cal. Ct. App. Aug. 9, 2011) (The employee also failed to provide a doctor’s note in support of her request). Three decisions did not provide sufficient factual details to determine what type of accommodation was requested. *Daidone v. Alchemy Glass & Light*, No. B167836, 2004 Cal. App. Unpub. LEXIS 10176 (Cal. Ct. App. Nov. 8, 2004); *Liebrand v. Brinker Rest. Corp.*, No. G039017, 2008 Cal. App. Unpub. LEXIS 4959 (Cal. Ct. App. June 18, 2008); *Imperial Tile & Stone v. State Farm Gen. Ins. Co.*, No. B230937, 2012 Cal. App. Unpub. LEXIS 1557 (Cal. Ct. App. Feb. 29, 2012).
89. *DFEH v. Save Mart*, No. 92-01, 1992 CAFEHC LEXIS 3 (F.E.H.C. Feb. 20, 1992) (no lifting more than ten pounds); *James v. Childtime Childcare, Inc.*, 2007 U.S. Dist. LEXIS 43753 (E.D. Cal. June 1, 2007) (10 pounds); *Vasquez v. Del Rio Sanitarium, Inc.*, No. B231327, 2012 Cal. App. Unpub. LEXIS 1692 (Cal. Ct. App. March 5, 2012) (11 pounds); *DFEH v. Delta Thrift Stores*, No. E-200910-E-0591-00-se, 2011 CAFEHC LEXIS 11 (F.E.H.C. Nov. 1, 2011) (15 pounds); *Lopez v. Bimbo Bakeries USA, Inc.*, No. A119720, 2009 Cal. App. Unpub. LEXIS 3171 (Cal. Ct. App. Apr. 23, 2009) (20 pounds); *DFEH v. A Penny Wise, Inc.*, No. 95-06, 1995 CAFEHC LEXIS 8 (F.E.H.C. Oct. 10, 1995) (25 pounds); *Schaffer v. GTE, Inc.*, 40 Fed. Appx. 552 (9th Cir. 2002) (60 pounds).
90. *Sasco Electric v. FEHC*, 176 Cal. App. 4th 532 (Cal. Ct. App. 2009). See also *DFEH v. Care Net Fullerton, L.P.*, No. 94-07, 1994 CAFEHC LEXIS 7 (F.E.H.C. April 27, 1994) (Note that, in this case, the discrimination occurred before the California pregnancy accommodation law was passed, but the court found that to deny the plaintiff light duty when the employer provided it for other similarly situated non-pregnant employees was pregnancy discrimination in violation of California’s law prohibiting pregnancy discrimination, CAL. GOV. CODE sec. 12940. *Id.* at *13-17).
91. *Lopez v. Bimbo Bakeries USA, Inc.*, No. A119720, 2009 Cal. App. Unpub. LEXIS 3171 (Cal. Ct. App. Apr. 23, 2009).
92. *DFEH v. Delta Thrift Stores*, No. E-200910-E-0591-00-se, 2011 CAFEHC LEXIS 11 (F.E.H.C. Nov. 1, 2011).
93. *Rosenman v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro et al.*, 91 Cal. App. 4th 859, 862-863 (Cal. Ct. App. 2001). Note that the employee also requested a reduction in her workload to accommodate her inability to sit or work for long hours because of her pregnancy-related health issues.
94. *DFEH v. Delta Thrift Stores*, No. E-200910-E-0591-00-se, 2011 CAFEHC LEXIS 11 (F.E.H.C. Nov. 1, 2011); *DFEH v. A Penny Wise, Inc.*, No. 95-06, 1995 CAFEHC LEXIS 8 (F.E.H.C. Oct. 10, 1995).
95. *DFEH v. Save Mart*, No. 92-01, 1992 CAFEHC LEXIS 3 (F.E.H.C. Feb. 20, 1992); *Lopez v. Bimbo Bakeries USA, Inc.*, No. A119720, 2009 Cal. App. Unpub. LEXIS 3171 (Cal. Ct. App. Apr. 23, 2009); *DFEH v. A Penny Wise, Inc.*, No. 95-06, 1995 CAFEHC LEXIS 8 (F.E.H.C. Oct. 10, 1995); *DFEH v. Delta Thrift Stores*, No. E-200910-E-0591-00-se, 2011 CAFEHC LEXIS 11 (F.E.H.C. Nov. 1, 2011).

96. *Kobbervig-Harrell v. Nike, Inc.*, 2007 Cal. App. Unpub. LEXIS 3104 (Cal. Ct. App. Apr. 18, 2007) (no more than 8 hours per day); *DFEH v. A Penny Wise, Inc.*, No. 95-06, 1995 CAFEHC LEXIS 8 (F.E.H.C. Oct. 10, 1995) (no more than 8 hours per day); *James v. Childtime Childcare, Inc.*, 2007 U.S. Dist. LEXIS 43753 (E.D. Cal. June 1, 2007) (no more than 40 hours per week).
97. *Michaelian v. Frank S Seo DDS MPH, Inc.*, 2005 WL 5086478 (Cal. Super. Ct. 2005); *Orozco v. Russell F. Coser, D.D.S., Inc.*, No. B214292, 2009 Cal. App. Unpub. LEXIS 8280 (Cal. Ct. App. Oct. 19, 2009); *DFEH v. Callidac, Inc.*, No. 93-03, 1993 CAFEHC LEXIS 5 (F.E.H.C. March 4, 1993). Note that in *DFEH v. Callidac*, the employee did not request an accommodation; rather the employer rescinded an offer of employment after learning that the employee was pregnant based on incorrect assumptions about her need for an accommodation.
98. *DFEH v. BIW Connector Sys., Inc.*, No. 97-11, 1997 CAFEHC LEXIS 12 (F.E.H.C. Oct. 15, 1997).
99. *Eroh v. M.T. Serv.*, No. E036409, 2006 Cal. App. Unpub. LEXIS 716 (Cal. Ct. App. Jan. 26, 2006).
100. *Rosenman v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro et al.*, 91 Cal. App. 4th 859, 862-863; (Cal. Ct. App. 2001); *Murphy v. Metro. Furniture Corp.*, No. A107578, 2005 Cal. App. Unpub. LEXIS 7766 at *9-10 (Cal. Ct. App. Aug. 29, 2005).
101. *Gonzalez v. IHG Mgmt (Ma), LLC*, No. B215952 2010 Cal. App. Unpub. LEXIS 3671 (Cal. Ct. App. May 18, 2010).
102. *DFEH v. Delta Thrift Stores*, No. E-200910-E-0591-00-se, 2011 CAFEHC LEXIS 11 (F.E.H.C. Nov. 1, 2011); *Mayfield v. Trevors Store, Inc.*, 2004 U.S. Dist. LEXIS 24576 (N.D. Cal. 2004).
103. *DFEH v. Delta Thrift Stores*, No. E-200910-E-0591-00-se, 2011 CAFEHC LEXIS 11 (F.E.H.C. Nov. 1, 2011).
104. *Lopez v. Bimbo Bakeries USA, Inc.*, No. A119720, 2009 Cal. App. Unpub. LEXIS 3171 at *19-24, 59 (Cal. Ct. App. Apr. 23, 2009) (Note that the plaintiff always worked with at least one other employee and the court found that employees regularly helped one another lift objects, when necessary.). No. B231327, 2012 Cal. App. Unpub. LEXIS 1692 (Cal. Ct. App. March 5, 2012).
105. For example, in *Vasquez v. Del Rio Sanitarium, Inc.*, the plaintiff could not lift more than 11 pounds but could still fold laundry, watch the parking lot, perform several patient care tasks, or hold the wheelchair steady while her coworkers lifted patients. See No. B231327, 2012 Cal. App. Unpub. LEXIS 1692 at *9-10 (Cal. Ct. App. March 5, 2012). See also *DFEH v. Save Mart*, No. 92-01, 1992 CAFEHC LEXIS 3 (Feb. 20, 1992); *Lopez v. Bimbo Bakeries USA, Inc.*, No. A119720, 2009 Cal. App. Unpub. LEXIS 3171 (Cal. Ct. App. Apr. 23, 2009)
106. *Vasquez v. Del Rio Sanitarium, Inc.*, No. B231327, 2012 Cal. App. Unpub. LEXIS 1692 at *9-10 (Cal. Ct. App. March 5, 2012); *DFEH v. Save Mart*, No. 92-01, 1992 CAFEHC LEXIS 3 at *4-10 (F.E.H.C. Feb. 20, 1992); *DFEH v. Care Net Fullerton, L.P.*, No. 94-07, 1994 CAFEHC LEXIS 7 at *5-10 (F.E.H.C. April 27, 1994).
107. *Mayfield v. Trevors Store, Inc.*, 2004 U.S. Dist. LEXIS 24576 (N.D. Cal. 2004). Although the employer here was not obligated to accommodate this request because the plaintiff failed to provide a doctor's note or otherwise show that her request was based on the advice of a health care provider, the court held that this request could constitute a request that would require employer accommodation under the statute if a doctor's note had been provided. *Id.* at 6-7.
108. *DFEH v. Delta Thrift Stores*, No. E-200910-E-0591-00-se, 2011 CAFEHC LEXIS 11 at *18-20 (F.E.H.C. Nov. 1, 2011) (holding that employee had a right to take two weeks of pregnancy-related disability leave for morning sickness and employer was obligated to reinstate her to her original position when she returned from leave).
109. *Soldinger v. Northwest Airlines, Inc.* 51 Cal. App. 4th 345, 370 (Cal. Ct. App. 1996); *Eroh v. M.T. Serv.*, No. E036409, 2006 Cal. App. Unpub. LEXIS 716 at *16-18 (Cal. Ct. App. Jan. 26, 2006).
110. *Id.*
111. No. B214292, 2009 Cal. App. Unpub. LEXIS 8280 (Cal. Ct. App. Oct. 19, 2009).
112. *Id.* at *2-7.
113. *Id.* at *4-11, 18-21.
114. *Id.*
115. *Mayfield v. Trevors Store, Inc.*, 2004 U.S. Dist. LEXIS 24576 (N.D. Cal. 2004); See Cal. Gov. Code § 12945(a)(3)(A), which makes it unlawful “[f]or an employer to refuse to provide reasonable accommodation for an employee for a condition related to pregnancy, childbirth, or a related medical condition, if she so requests, with the advice of her health care provider...”
116. *Franco v. Otto Nemenz Int'l, Inc.*, No. B219350, 2011 Cal. App. Unpub. LEXIS 5972 (Cal. Ct. App. Aug. 9, 2011).
117. *Orozco v. Russell F. Coser, D.D.S., Inc.*, No. B214292, 2009 Cal. App. Unpub. LEXIS 8280 (Cal. Ct. App. Oct. 19, 2009).
118. *Eroh v. M.T. Serv.*, No. E036409, 2006 Cal. App. Unpub. LEXIS 716 (Cal. Ct. App. Jan. 26, 2006).
119. No. 97-11, 1997 CAFEHC LEXIS 12 at *5-9 (F.E.H.C. Oct. 15, 1997).
120. *Id.* Note that the plaintiff was later terminated as part of a legitimate reduction in force. *Id.* at *10-15. The Fair Employment and Housing Commission cited the employer's repeated willingness to accommodate the plaintiff's pregnancy as evidence that it did not discriminate against the plaintiff. *Id.* at *10-15.
121. No. A119720, 2009 Cal. App. Unpub. LEXIS 3171 at *3-6 (Cal. Ct. App. Apr. 23, 2009).
122. *Id.* at *3-10.
123. *Id.* at *3-10, 19-24.
124. *Id.*
125. *Id.*
126. *Id.* See also *DFEH v. Care Net Fullerton, L.P.*, No. 94-07, 1994 CAFEHC LEXIS 7 at *6-7 (F.E.H.C. April 27, 1994) (There were many light duty tasks that could have been assigned to the employee consistent with her restrictions, including taking patients' vital signs, passing out nourishments, grooming patients, recording their food intake); *DFEH v. Callidac, Inc.*, No. 93-03, 1993 CAFEHC LEXIS 5 at *21-24 (F.E.H.C. March 4, 1993) (FEHC looked at other parts of the Chiropractic Assistant duties that could be safely performed without an accommodation).
127. Last name omitted to protect client privacy.
128. As of July 24, 2009, the federal minimum wage for covered nonexempt employees is \$7.25 per hour. The federal minimum wage provisions are

- contained in the Fair Labor Standards Act of 1938 (FLSA), as amended. 29 USC §201 et seq.; 29 C.F.R. Parts 510 to 794. Note that many states also have minimum wage laws, and in situations where an employee is subject to both the state and federal minimum wage laws, the employee is entitled to the higher of the two minimum wages. *Id.*
129. *Rosenman v. Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro*, 91 Cal. App. 4th 859 (Cal. Ct. App. 2001).
 130. *Schaffer v. GTE, Inc.*, 40 Fed. Appx. 552 (9th Cir. 2002) (plaintiff worked in a technical service position earning \$30,000 per year); *Murphy v. Metro. Furniture Corp.*, No. A10757s, 2005 Cal. App. Unpub. LEXIS 7766 (Cal. Ct. App. Aug. 29, 2005) (plaintiff was a sales consultant); *James v. Childtime Childcare, Inc.*, 2007 U.S. Dist. LEXIS 43753 (E.D. Cal. June 1, 2007) (plaintiff was a childcare center director); *Imperial Tile & Stone v. State Farm Gen. Ins. Co.*, No. B230937, 2012 Cal. App. Unpub. LEXIS 1557 (Cal. Ct. App. Feb. 29, 2012) (plaintiff was a sales manager).
 131. Note that one decision did not state the plaintiff's job title – *Daidone v. Alchemy Glass & Light*, No. B167836, 2004 Cal. App. Unpub. LEXIS 10176 (Cal. Ct. App. Nov. 8, 2004).
 132. DFEH chart on “Employment Cases Filed – Count of Bases” from 1997-2010, provided on request by Department of Fair Employment and Housing to Equal Rights Advocates (2012)
 133. *Id.*
 134. *Id.*
 135. AFL-CIO, “Family Friendly Work Schedules,” <http://www.aflcio.org/issues/workfamily/workscheduls.cfm> (62% and 31% respectively).
 136. Jody Heymann, *The Widening Gap: Why America's Working Families Are In Jeopardy & What Can Be Done About It*, 231, 115 fig. 6.1 (2000).
 137. *Id.*
 138. *DFEH v. Save Mart*, No. 92-01, 1992 CAFEHC LEXIS 3 (F.E.H.C. Feb. 20, 1992).
 139. *DFEH v. Care Net Fullerton, L.P.*, No. 94-07, 1994 CAFEHC LEXIS 7 at *9-11 (F.E.H.C. April 27, 1994).
 140. For example, see *DFEH v. Save Mart*, No. 92-01, 1992 CAFEHC LEXIS 3 (F.E.H.C. Feb. 20, 1992) (requesting periodic rest breaks); *DFEH v. A Penny Wise, Inc.*, No. 95-06, 1995 CAFEHC LEXIS 8 (F.E.H.C. Oct. 10, 1995) (requesting a ten-minute break every two to three hours); *Lopez v. Bimbo Bakeries USA, Inc.*, No. A119720, 2009 Cal. App. Unpub. LEXIS 3171 (Cal. Ct. App. Apr. 23, 2009) (requesting periodic rest breaks).
 141. No. 93-03, 1993 CAFEHC LEXIS 5 (F.E.H.C. March 4, 1993).
 142. No. 97-11, 1997 CAFEHC LEXIS 12 (F.E.H.C. Oct. 15, 1997).
 143. Hillmer, Hillmer, & McRoberts, *The Real Costs of Turnover: Lessons from a Call Center*, 27 HUMAN RESOURCE PLANNING 34 (Issue 3) (2004) available at http://www.fehc.ca.gov/act/pdf/pregnancyregulations/NPR_Ex_22_Real_Costs_of_Turnover.pdf; Job Accommodation Network, “Workplace Accommodations: Low Cost, High Impact”, p. 2 (last updated September 1, 2011); National Business Group on Health, “Healthy Pregnancy and Healthy Children: Opportunities and Challenges for Employers: The Business Case for Promoting Healthy Pregnancy,” pp. 3-5 available at http://www.businessgrouphealth.org/healthtopics/maternalchild/investing/docs/4_businesscasepregnancy.pdf (last visited April 26, 2012).
 144. Hillmer, Hillmer, & McRoberts, *The Real Costs of Turnover: Lessons from a Call Center*, 27 HUMAN RESOURCE PLANNING 34 (Issue 3) (2004) available at http://www.fehc.ca.gov/act/pdf/pregnancyregulations/NPR_Ex_22_Real_Costs_of_Turnover.pdf; Job Accommodation Network, “Workplace Accommodations: Low Cost, High Impact”, p. 2 (last updated September 1, 2011); National Business Group on Health, “Healthy Pregnancy and Healthy Children: Opportunities and Challenges for Employers: The Business Case for Promoting Healthy Pregnancy,” pp. 3-5 available at http://www.businessgrouphealth.org/healthtopics/maternalchild/investing/docs/4_businesscasepregnancy.pdf.
 145. See 1979 CONN. PUB. ACTS 79-152.
 146. CONN. GEN. STAT. § 46a-60(a)(7)(B)-(G) (2012)
 147. See *Davis v. Manchester Health Ctr*, 867 A.2d 876, 877-79 (Conn. Ct. App. 2005).
 148. *Id.*
 149. *Id.* at 884.
 150. *CHRO v. Connecticut Credit Union League*, Case No. 9230162 Monahan (February 8, 1995), available at <http://www.ct.gov/chro/cwp/view.asp?a=2528&q=316080>.
 151. HAW. CODE R. §§ 12-46-107, 108 (2012).
 152. See *Teague, Ltd. v. Hawaii Civil Rights Comm'n*, 971 P.2d 1104, 1107, 1116 (Haw. 1999).
 153. See note 12, *supra*.
 154. See 1997 LA. ACTS 1409 (2012); 1999 CAL. STATS. Ch. 591 (2012).
 155. LA. REV. STAT. § 23:342(1)-(4) (2012); CAL. GOVT. CODE § 12945(a)(1)-(3) (2012).
 156. CAL. GOVT. CODE § 12945(a)(3)(A) (2012).
 157. More discussion on the California law can be found in the previous section.
 158. See *Rent-A-Center v. Barker*, 633 F. Supp. 2d 245, 247, 254-56 (W.D. La. 2009)
 159. See 1992 ALASKA SESS. LAWS 96 (2012); 2001 TEX. GEN LAWS 533 (2012); 2007 ILL. LAWS 25 (2012).
 160. See ALASKA STAT. § 39.20.520(a) (2012); TEX. LOC. GOVT CODE, § 180.004(a)-(c); 775 ILL. COMP. STAT. 5/2-102(H) (2007).
 161. See *supra*, note 20.
 162. See TEX. LOC. GOVT CODE, § 180.004(b).
 163. See TEX. LOC. GOVT CODE, § 180.004(a)-(c) (2012); 775 ILL. COMP. STAT. 5/2-102(H) (2012).
 164. CAL. LABOR CODE § 1030 et seq. (2001) provides that employers need to allow a break and provide a room for a mother who desires to express milk in private.



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