



**EQUAL RIGHTS
ADVOCATES**

Moving Women Forward

On the 50th Anniversary of Title VII of the Civil Rights Act

A Three-Part Series

Part Two: Work and Family
Still At Odds



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Moving Women Forward: Executive Summary



All I want is to be human, and American, and have all the same rights, and I will shut up.



Martha Griffiths, former member of the U.S. House of Representatives from Michigan and a chief proponent of adding sex as a protected class to Title VII of the Civil Rights Act of 1964.

When Martha Griffiths, a member of the House of Representatives, fiercely advocated for a last-minute amendment to Title VII of the Civil Rights Act of 1964 to include a prohibition of workplace discrimination based on sex,¹ the world was a different place. Women were excluded outright from many workplaces. Employers could lawfully pay women less for the same work and fire them once their pregnancies became obvious. Sexual harassment was blatant. Marriage and weight gain and getting older were grounds for termination in some industries, for women anyway.

The amendment adding “sex” as a protected category to Title VII, just two days before Congress voted on the bill, was a tremendous opportunity for the women’s movement. Fifty years after passage of the Civil Rights Act of 1964, we ask:

Has Title VII of the Civil Rights Act of 1964 Improved Women’s Economic Opportunity and Security?

Equal Rights Advocates takes a hard look at that question in this Report. Founded in 1974, ERA grew up with the Civil Rights Act of 1964. Over our 40-year history, ERA has relied on Title VII to pursue groundbreaking cases to end sex discrimination in the workplace. Our early equal protection pregnancy discrimination cases before the U.S. Supreme Court, like *Geduldig v. Aiello* (1974),² buoyed passage of an amendment to Title VII to confirm the law’s prohibition against pregnancy discrimination as a form of sex discrimination (the Pregnancy Discrimination Act of 1978).³ ERA also led cases to combat workplace sexual harassment (*Miller v. Bank of America*),⁴ the exclusion of women from male-dominated fields like firefighting (*Davis*

v. San Francisco),⁵ and pay and promotion discrimination (*Dukes v. Wal-Mart Stores*).⁶ ERA has fielded calls from tens of thousands of women across the country with concerns about discrimination and harassment at work. The stories of our many clients, recent data from the Equal Employment Opportunity Commission, and input from the nation’s top gender equity experts, all informed this Report.

The answer to whether Title VII has improved women’s economic opportunities and security depends on which women are the subject of the question. This Report focuses on low-wage women workers and women of color. Troubling statistics drive this focus. Women are nearly two-thirds of minimum wage workers in this country.⁷ They are twice as likely as men to be employed in occupations that pay poverty wages.⁸ African-American women and Latinas are even more likely than women as a whole to be employed in lower-paying service occupations and significantly more likely to be among the working poor.⁹ Women with children remain concentrated in low-wage jobs and are paid substantially less than fathers or men and women who are not parents.¹⁰

This Report is a three-part series that examines: sexual harassment and violence, discrimination against pregnant workers and working mothers, and the gender wage gap.

The first obstacle examined in this report – sexual harassment and violence in the workplace – has been largely ignored as an economic issue despite its devastating impact on a large number of working women. Sexual harassment compromises the economic security of women workers because women who are harassed are often denied or deterred from promotions, fired, or forced to leave their jobs, regardless of whether they file

THREE PERSISTENT BARRIERS TO EQUAL OPPORTUNITY FOR WOMEN:

sexual harassment and violence
discrimination against pregnant workers and working mothers
the gender wage gap

a complaint.¹¹ And millions of women workers who rely on customer tips to support themselves and their families (particularly in states where the tipped minimum wage is just \$2.13 per hour) too often face the impossible choice of enduring sexual harassment or losing income critical to their survival.¹²

The second part of this Report examines discrimination and lack of accommodation for pregnant workers and caregivers. It is a problem that is only getting worse. The number of pregnant women who are fired or laid off has actually grown over the past two decades¹³ and is especially high for African-American women and Latinas.¹⁴ Pregnant women and new mothers working in low-wage jobs are heavily burdened by discrimination.¹⁵ Low-wage workers are filing a disproportionate number of pregnancy discrimination charges,¹⁶ and the discrimination these women face has long-term negative effects on their earning capacity and economic stability.¹⁷

The third installment of this Report addresses the gender wage gap – a glaring and measurable example of persistent sex discrimination in the American workforce. The wage gap between male and female workers has remained stagnant for over a decade and closed by only about 14 cents in the last five decades.¹⁸ Women working **full-time** earn on average 77 cents for every dollar paid to male workers, and women of color fare even worse. Despite laws prohibiting discrimination, most women and men work in different fields that are highly segregated by gender, and “women’s work” continues to be worth less than work done mostly by men.

How Has Title VII Succeeded? How Has it Failed?

The cases, stories, and data examined in this Report reveal a law that has bright spots as a tool in the movement for women’s equality, but one that has its blind spots, too. In many ways, advocates seized the opportunity presented by the last minute addition to Title VII prohibiting sex discrimination. We have enforced the

law to protect and advance opportunities for women and used it to successfully challenge sex discrimination in hiring, pay, promotion, other working conditions. Title VII can be credited, in part, for the radical increase in women’s and mothers’ participation in the workforce and labor market. Women now make up nearly half the workforce and have entered almost every profession.

But today, as *Dukes v. Wal-Mart Stores* and subsequent retail cases demonstrate, entire industries remain infected by sex discrimination and other unfair practices. Today, ERA represents women shipyard workers in Norfolk, Virginia who suffer from blatant discrimination and harassment in their workplace, where they are outnumbered by men 16 to 1. Many are women of color who have been denied raises and higher paying jobs despite decades of service and exemplary qualifications. It is a workplace where women are commonly called “whores” and other slurs, and where supervisors and senior managers alike participate in or turn a blind eye to this rampant sexual harassment.

Why Are We Lagging in 2014?

Title VII was not designed to address many of the barriers to economic security for women that still exist today, such as a lack of paid leave and poor access to affordable, quality child care. Moreover, while we have enjoyed some tremendous victories in the courts, judicial misinterpretations of Title VII have held back progress for many women workers in significant ways. Fundamental obstacles also remain to even accessing the protections of Title VII for far too many workers, leading to widespread under-enforcement in low-wage industries and occupations. Few women know their rights or can access a qualified lawyer to represent them when they need legal help. Many are fearful of retaliation or are too financially vulnerable to challenge discrimination at all. Others have been stopped by attacks on workers’ ability to challenge discriminatory practices collectively through class actions.

These gaps and obstacles pose serious threats to the economic security of women in this country. And while we are heartened by the efforts of partners nationwide to enforce Title VII, including for women of color and low-wage women workers, we cannot wait another 50 years for workplace equality. A recent poll shows that more than 70 percent of Americans believe that women's contributions to our national economy are essential.¹⁹ A significant 90 percent of American voters favor policies that would help women get equal pay for equal work and raise wages for women and families.²⁰ This polling data reflects the consensus documented in a number of reports released over the past year: Americans want women to be treated fairly in the workplace and will support policies to even the playing field for working women and their families.

How Will We Seize on Today's Moment of Opportunity for the Women's Movement?

Fifty years after Title VII's historic passage, the time has come once again to revolutionize the judicial system to better protect women workers. This Report's three sections detail specific recommendations for policy makers, administrative agencies, advocates, and employers to get this process started. These recommendations include suggestions for improving the enforcement of Title VII and to correct flagrant misinterpretation of the law's provisions. We also make recommendations on how to fill Title VII's gaps through a series of policy initiatives that take a holistic approach to improving the economic security of women in this country today.

This bold and comprehensive approach to boost and equalize economic opportunity and security for women is gaining traction. In 2013, U.S. House of Representatives Minority Leader Nancy Pelosi (D-CA) and U.S. Representative Rosa DeLauro (D-CT) unveiled a policy platform called *When Women Succeed, America Succeeds: An Economic Agenda for Women and Families*. The agenda outlines a broad set of federal policy initiatives to advance the economic security of working families by promoting fair pay, family-friendly workplaces, and universal child care. The momentum for similar agendas is growing strong at the state level too. Minnesota, for example, recently passed the Women's Economic Security Act,²¹ which strengthens fair pay laws and expands protections for pregnant workers. Equal Rights Advocates has joined a chorus of partners calling for a sweeping women's economic agenda in California that will lead the nation in its inclusion of initiatives to meet the basic needs of impoverished women and families.

The work of our movement is not done. Let us draw inspiration from Title VII's 50th Anniversary and push ahead now to reach its intended goal – to create and protect workplaces in which all workers have a chance to contribute, participate, and flourish, no matter their sex.

Onward,

Moreen Farrell

Executive Director
Equal Rights Advocates
October 9, 2014

Moving Women Forward: Part Two

Work and Family Still At Odds

When ERA Client Crystal became pregnant, her employment at a production facility dramatically changed. Her employer reduced her pay and then fired her after she took leave to have her baby. It was only after Crystal was fired that she discovered that she had also been paid less than a male colleague for the same work.



Moving Women Forward: Part Two

In the wake of the first-ever White House Summit on Working Families this year, the buzz about what it will take to help workers balance work and pregnancy and caregiver responsibilities is louder than ever.¹⁰³

In professional sectors, debate and discussion have been revitalized by figures like Yahoo CEO Marissa Mayer (who took just a few weeks of maternity leave),¹⁰⁴ Princeton University's Anne Marie Slaughter (including her provocative piece about "Why Women Still Can't Have it All"),¹⁰⁵ and Facebook COO Sheryl Sandberg (who advises women to "Lean In" and not "leave before [they] leave").¹⁰⁶

As to workforce sectors in which women make far less, however, the silence has been deafening. Minimal attention has been paid to the particular challenges that low-wage women workers face as they try to navigate pregnancy, caregiving, and work. Women working in low-wage sectors frequently lack access to any leave, let alone paid leave. There is no way for them to "leave before they leave" because if they leave, they will be out of a job – period. And women earning the minimum wage or something close to it are less likely to be concerned with "having it all" and more likely occupied with having enough food on the table, and a roof over their heads.

Why Are We Still Here in 2014?

Societal ambivalence about mothers and caregivers in the workplace runs deep. The passage of Title VII of the Civil Rights Act of 1964 did little to remedy that ambivalence.¹⁰⁷ Indeed, employers could legally discriminate against women based on pregnancy for some time after passage of Title VII. It took 14 years, several Supreme Court cases, and ultimately an act of Congress, the Pregnancy Discrimination Act of 1978 (PDA),¹⁰⁸ to finally establish the obvious principle that pregnancy discrimination is a form of unlawful sex discrimination. While conditions have improved over the last 50 years for many women workers when it comes to pregnancy or parenting, that progress has not come easily and is nowhere near complete.

While Title VII and the PDA have increased women's workforce participation¹⁰⁹ and helped to reduce or eliminate the most blatant forms of discrimination against pregnant workers and working mothers, we still have

a long way to go to provide truly equal employment opportunity for pregnant and parenting women. In fact, while the number of pregnancy discrimination claims has surged at various points over the past decade,¹¹⁰ there have been serious setbacks in courts' interpretation of existing legal protections, and major gaps in the rights afforded under current law remain unaddressed.

With a majority of women becoming pregnant at some point in their working lives,¹¹¹ and a record number of households supported solely or primarily by women breadwinners,¹¹² ensuring workplace fairness for pregnant workers and working mothers, especially those who are low-wage earners, is something we cannot afford to ignore. The 50th Anniversary of Title VII prompts consideration of important questions related to work, life, and family for women in this country:

- ◆ **How has Title VII helped protect pregnant workers and working mothers from sex discrimination?**
- ◆ **How has Title VII failed these women?**
- ◆ **What can be done, both within and outside the bounds of Title VII, to make things better?**

Title VII's Bright Spots for Pregnant Women and Working Mothers

Before Title VII was amended to prohibit pregnancy discrimination, employers routinely forced their pregnant employees into unpaid leaves, refused to hire pregnant women, fired women once they became pregnant, and excluded pregnant women from employer benefit plans.¹¹³ The Supreme Court's initial examination of pregnancy discrimination under Title VII did little to discourage such workplace discrimination, as the Court reached the absurd conclusion that discrimination against pregnant women did not count as discrimination based on gender, since *non-pregnant* women were not affected by it.¹¹⁴



ERA Client Michelle Maher, a mother and a professional athlete, dreamed of becoming a firefighter. She aced the entry exams only to face severe gender discrimination during training at the fire academy. One superior recommended that she give up custody of her children because she would not be able to be both a mother and a firefighter. When the department held her to a higher standard than men and then discharged her from the academy, Maher filed suit. She prevailed with a \$2.46 million jury verdict and the case later settled.

Fortunately, Congress passed the PDA in 1978 to correct this misinterpretation of Title VII, clarifying that discrimination based on pregnancy is sex discrimination and recognizing that penalizing workers based on pregnancy “is at the root of the discriminatory practices which keep women in low-paying and dead-end jobs.”¹¹⁵

Today, Title VII remains an effective tool to address blatant forms of sex discrimination based on pregnancy or motherhood – for example, when an employer makes disparaging comments about pregnancy or motherhood before taking a negative action against the employee or admits that it took an adverse action against the

employee because of negative views about pregnancy or motherhood.¹¹⁶

Title VII has also been useful in challenging stereotypes about pregnant women and mothers in the workplace. Today, fortunately, it is generally accepted that Title VII prohibits discrimination against mothers (and fathers) based on gender stereotypes, for example, that “a woman, because she is a woman, will neglect her job responsibilities in favor of her presumed child care responsibilities” or that mothers cannot do a good job at work and also be pregnant or be a “good mom.”¹¹⁸

Title VII has also radically improved the representation of women and mothers in the workplace. Women now make up nearly half of the workforce¹¹⁹ and are represented, though not equally, in nearly every profession.¹²⁰ Mothers are the primary or sole breadwinner in over 40 percent of households in the United States (compared to just 11 percent in 1960!).¹²¹ Before Title VII was enacted, more than two-thirds of pregnant women stopped working while pregnant;¹²² now it is common for women to work during pregnancy and return to the workforce shortly after they give birth.¹²³ Moreover, the largest increases in the percentage of women working further into their pregnancies and continuing to work after their first child followed on the heels of the PDA’s enactment.¹²⁴

Title VII’s Reversals and Blind Spots: Pregnant Women and Working Mothers Remain Unprotected

Although Title VII and the PDA have triggered important advancements, the cards are still heavily stacked against pregnant women and working mothers. Women with children remain concentrated in low-wage jobs and are paid substantially less than fathers or childless men and women.¹²⁵ Single working mothers fall disproportionately below the poverty line and are concentrated in low-wage jobs, and single mothers of color fare far worse than single white mothers.¹²⁶

And it is not just that these issues are not improving – in some respects they are getting worse. The number of pregnant women who are fired or laid off has actually grown over the past two decades¹²⁷ and is especially high for African American and Latina women.¹²⁸ Also, compared to white women, pregnancy discrimination claims by African American and Latina women have

skyrocketed over the past several years.¹²⁹ Pregnant women and new mothers working in low-wage jobs have fared even worse.¹³⁰ Indeed, low-wage workers are filing a disproportionate number of pregnancy discrimination charges,¹³¹ and the discrimination these women face has long-term negative effects on their economic stability.¹³²



ERA client Tara, an African American single mother of three, was fired a week after she told her boss that she was pregnant. Her boss explained that Tara had “too much going on” between her pregnancy, her young children, and her need for employment verification to receive public assistance. Less than two weeks after she was fired, Tara had a stress-induced miscarriage. Three other pregnant employees who were not African American and who did not have similar caregiving responsibilities were treated better, including being accommodated with longer breaks.*

Why Is Title VII Failing These Women?

Title VII has not been effective in eradicating mistreatment of pregnant workers and mothers in the workplace for several reasons. Gaps in the law are exacerbated by the failure of employers to comply with, and of courts to enforce, its existing requirements. Many pregnant women and working mothers are falling through the cracks as a result, and low-wage women workers appear to fare the worst.



Employer Bias against Pregnant Employees and New Mothers Persists

ERA Client Lana was a loyal employee at a local bar for a decade, earning minimum wage plus tips, until she was fired for being pregnant. Her boss had threatened to fire pregnant bartenders in the past, commenting that “customers did not want to see pregnant women in the bar,” and made a similar statement to Lana at the time she fired her. A year later, Lana struggles as a single mother still trying to find work.*

As Lana’s story illustrates, women routinely face harassment, demotion, and termination based on hostility and negative stereotypes about pregnant women and mothers.¹³³ Employers have fired employees immediately after they have given notice of their pregnancy¹³⁴ or expressed anger at employees’ decisions to get pregnant.¹³⁵ Some have even told their pregnant employees to get abortions to avoid losing their jobs.¹³⁶ Even when employers are not consciously hostile towards pregnant and parenting women, social science studies confirm the prevalence of negative stereotypes and biases against these employees.¹³⁷ The skyrocketing of pregnancy discrimination claims by women of color in recent years¹³⁸ suggests that those who suffer most from this biased decision-making are women of color.¹³⁹ Although Title VII prohibits such stereotyping of pregnant women and mothers, detrimental biases remain entrenched in the workplace and result in unequal treatment.¹⁴⁰

*Real name not used.

WHAT'S THE FIX?

EEOC's New Pregnancy Discrimination Guidance

EEOC, the federal agency specifically tasked with the enforcement of Title VII, the ADA, and other discrimination laws, recently provided a much-needed update to its Pregnancy Discrimination guidance. The new guidance provides clarity in an area of law that is ever-expanding and often confusing for courts. In an attempt to educate courts, employees, and employers, the EEOC provides detailed explanation and many examples of when, why, and how the current federal laws protect pregnant women on the job. EEOC even goes further by outlining "Best Practices" employers should adopt to be confident they are treating pregnant women fairly and honoring the spirit of pregnancy discrimination protections.

A sampling of what the EEOC says pregnancy law requires:

- Do not fire, refuse to hire, demote, or take adverse action against a worker because she is pregnant.
- Do not discriminate against an employee for her past pregnancy, her potential to become pregnant, or her expressed intent to become pregnant.
- Do not deny benefits to a pregnant worker that is provided to other workers. This includes health insurance, temporary light duty assignments, and leave.
- Do not discriminate against a pregnant worker who needs breaks to express breast milk if others are allowed to take breaks for other reasons.

Best Practices the EEOC recommends businesses adopt:

- Regularly review even neutral policies to be sure they do not negatively impact pregnant women on the job.
- Respond to any pregnancy discrimination complaint in a speedy and effective manner.
- Disregard stereotypes or assumptions about pregnancy and childbirth when making any kind of hiring, firing or promotion decision related to a pregnant worker.
- Disclose any fetal hazards on the job and allow reassignment if a pregnant women requests it.
- Grant pregnancy accommodations upon request whenever feasible.



Restrictive Readings of the PDA by Courts Deprive Pregnant Workers of Title VII Protections

ERA recently received a call from Hannah, a day laborer at a large manufacturing plant in Ohio and soon-to-be single mom who requested a temporary light duty assignment after she became pregnant. Her employer had allowed light duty for many employees with injuries or temporary disabilities. But it forced Hannah to decide between continuing to work without any accommodation and jeopardizing the health of her pregnancy, or losing her job and the health care benefits that came with it. Hannah was also told that she was not eligible for job-protected leave. After Hannah lost her job during her second trimester, she was left without financial support and had to rely on government assistance to put food on the table.*

ERA hears from countless workers like Hannah. Her situation flies in the face of the PDA, which requires employers to treat pregnant employees like other employees who might have limitations on their work for non-pregnancy-related reasons.¹⁴¹ If an employer excuses an employee with a back injury from lifting heavy boxes, it must also excuse a pregnant employee who has a similar lifting restriction.

Unfortunately, women are being denied many of Title VII's protections because courts are misreading the law. A telling example is the case of Peggy, a UPS truck driver who was refused relief from lifting more than 20 pounds during her pregnancy.¹⁴² UPS had granted similar requests to employees with non-pregnancy related injuries or disabilities but said its policies did not cover accommodations related to pregnancy.¹⁴³ Peggy was forced into a seven-month leave (most of which was unpaid), lost her health insurance benefits, and was pushed into financial instability at a time when she most needed stability.¹⁴⁴ A federal circuit court, misreading and misapplying the PDA, upheld UPS's unlawful policy. The U.S. Supreme Court is currently reviewing this case.

A number of courts have adopted similar flawed reasoning to uphold discriminatory policies in cases where the employer has an ostensibly neutral basis for determining which employees get an accommodation.¹⁴⁵ Other courts have imposed insurmountable barriers that prevent pregnant employees from obtaining the accommodations they need.¹⁴⁶

As Hannah's story demonstrates, short-term accommodations are often essential for pregnant women in the workplace.¹⁴⁷

WHAT'S THE FIX?

Advocates must demand an accurate interpretation of the **Pregnancy Discrimination Act of Title VII** and other laws affecting pregnant workers from courts deciding accommodation discrimination cases. The **EEOC's July 2014 Enforcement Guidance on Pregnancy Discrimination and Related Issues** offers strong support for women workers facing unfair treatment because they are pregnant.¹⁴⁸



Title VII Does Not Address a Number of Obstacles to Equal Opportunity Faced by Pregnant Women and New Mothers at Work.

After sharing the news with her employer that she was expecting a child, ERA client Amira, a nursing assistant, was suddenly confronted with new barriers at work. Not only were Amira's repeated requests for accommodations refused, she was assigned more physically strenuous tasks than she previously handled. She was also denied a day of sick leave for pregnancy-related complications, which then caused her to be hospitalized. Worse yet, the employer fired Amira shortly before she was going to start her maternity leave. Amira struggled for over a year after her maternity leave to find other work to help support her family.*

Amira's story is important because it highlights how 50 years later, Title VII still lacks certain essential protections that are necessary to fulfill its promise of equal employment opportunities for pregnant workers and working mothers: **reasonable accommodations during pregnancy, family and medical leave, access to affordable and quality child care, and flexible work policies.**

Although Title VII requires equal treatment of pregnant and non-pregnant workers (and thus requires accommodation of pregnant women when non-pregnant workers are accommodated), it does not mandate reasonable accommodation of pregnant women across the board. That means that a pregnant woman is not entitled to even the smallest needed adjustment – such as being allowed to carry a water bottle on the

sales floor or alter her work uniform – if her employer does not provide such accommodations for other employees.¹⁴⁹ This lack of protection disproportionately affects low-wage workers, who are most likely to work in occupations that require heavy lifting, climbing, or bending, and most likely to need accommodations.¹⁵⁰

WHAT'S THE FIX?

Because some pregnant woman need minor adjustments to continue working (regardless of how others in the workplace are treated), Congress must enact the federal **Pregnant Workers Fairness Act (PWFA)**. If passed, the PWFA would expressly require employers to make the same types of accommodations for limitations arising from pregnancy, childbirth, or related medical conditions that are already required for limitations arising from disabilities.

The PWFA could require an employer to:

- Allow a pregnant woman to drink water or ingest snacks while on a factory or sales floor;
- Allow a pregnant worker to use a stool while cashiering or to sit from time to time while bartending;
- Reassign heavy lifting to a co-worker for the duration of a pregnant workers pregnancy;
- Not terminate or place a pregnant worker on unpaid leave when some reasonable adjustment to her job would allow her to continue working.¹⁵¹

The PDA also does not require paid or unpaid leave for women to care for themselves while pregnant or to fulfill child-care or family care obligations.¹⁵² More than two-thirds of low-wage workers have no paid sick days, and nearly all lack access to paid family leave.¹⁵³ Because women of color are disproportionately represented in the low-wage sector,¹⁵⁴ they are even less likely than white women to have access to paid sick leave.¹⁵⁵ As for unpaid leave, only about half of workers are entitled to such leave under the Family and Medical Leave Act,¹⁵⁶ a protection from which low-wage workers are disproportionately excluded.¹⁵⁷ And as a practical matter, most low-wage working women cannot afford to take unpaid leave even if they have the legal right to do so.¹⁵⁸

WHAT'S THE FIX?

Support passage of the **FAMILY Act**, pending federal legislation that would provide partial wage replacement for workers on leave to care for family members or to bond with new babies/adopted children.¹⁵⁹

In addition, Title VII was not designed to address the fact that women cannot obtain and keep jobs unless they have access to quality and affordable child care.¹⁶⁰ The dearth of quality and affordable child care in this country is compounded by the fact that Title VII does not protect women when they need workplace flexibility – for example, to shift their working hours to take care of a sick family member on a particular day.¹⁶¹ Low-wage workers are the hardest hit, as they have little to no flexibility in their jobs.¹⁶² Many low-wage workers also need, but are not provided, a set schedule so they can arrange child care.¹⁶³

WHAT'S THE FIX?

- Support legislation and policies that increase access to affordable and high quality child care, increase funding for child care programs, and ensure adequate training and pay for child care workers.¹⁶⁴
- Support legislation like the **Healthy Families Act**, which would ensure that workers can take days off when they are sick.¹⁶⁵
- Support and replicate state and municipal policies¹⁶⁶ that give employees the right to request **flexible working arrangements**. These laws protect workers from discrimination or retaliation when they request flexible arrangements, while encouraging employers and employees to discuss flexible arrangements.
- Support legislation like the **Schedules that Work Act**, federal legislation introduced earlier this year last week would (1) provide employees with the right to request and receive a flexible, predictable or stable work schedule; (2) ensure that employees who show up for a scheduled shift, only to be sent home, receive at least four hours' worth of pay; and (3) ensure that if employees' schedule were to change, they are to be notified with a new schedule at least two weeks before it goes into effect.

Employers' failure to accommodate pregnancy-related medical needs, failure to provide job-protected leave, and inflexible work policies prevent pregnant women and women with families from succeeding at work. Many women are forced from their jobs altogether.

Conclusion

Effective laws that protect against, and provide remedies for, discrimination based on pregnancy or motherhood are vital to the well-being of working women and their families. While some notable progress has been made toward achieving this goal in the decades since Title VII was enacted and the PDA became law, equal employment opportunity remains aspirational for many pregnant and parenting workers, especially low-wage earners and women of color.

The many challenges ahead are difficult, but not impossible, to overcome. Stronger enforcement of Title VII by the EEOC is critical, as is the vigilant work of advocates in the courts to prevent further backsliding in the interpretation of the Pregnancy Discrimination Act. Creative policy reform efforts are underway to fill the gaps of Title VII that leave too many pregnant workers and caregivers without protection or assistance. Let's seize the moment to ensure jobs that work for working families.

Seizing the Moment:

Summary of Part Two Recommendations

To address persistent conflicts between work and family faced by pregnant workers and caregivers, a broad set of measures and actions are needed to move women forward on this 50th Anniversary of the Civil Rights Act of 1964. These suggested actions will correct misinterpretations of Title VII, improve enforcement of this law and others designed to advance women at work, and fill policy gaps that leave too many without the help and protection they need to enjoy economic security and equal opportunity.

1. **Policymakers should enact broad women's economic security policy agendas at the federal and state level**, like the federal "When Women Succeed", America Succeeds: An Economic Agenda for Women and Families, introduced by House Democrats, and the recently-passed Minnesota Women's Economic Security Act. The agendas should take a comprehensive approach with initiatives to meet the basic needs of women in poverty, raise income, open pathways to quality jobs, improve workplace fairness, and improve access to high quality and affordable childcare.
2. **Policymakers should pass the Pregnant Workers Fairness Act** which would require employers to provide reasonable accommodations to pregnant employees, unless doing so would pose an undue hardship to the business. This legislation will allow more women to keep their jobs and provide for their families while pregnant.
3. **Policymakers should pass the Healthy Families Act** to boost the economic security of all workers, especially those with caregiving responsibilities (the majority of whom are women). This law would give workers the right to earn paid sick days at work and allow them to use those sick days to care for themselves or a sick family member.
4. **Policymakers should pass the Family and Medical Insurance Leave Act (FAMILY Act)** which would create a national insurance program providing paid family and medical leave to workers who need to take time off to care for a new child or seriously ill family member.
5. **Policymakers should pass legislation like the Schedules That Work Act** which would, among other things, protect employees from retaliation for requesting a more flexible, predictable or stable work schedule.
6. **Policymakers should address the lack of affordable and high-quality child care** by supporting policy solutions like those set forth in "When Women Succeed, America Succeeds: An Economic Agenda for Women and Families" backed by House Democrats. The agenda calls for increased funding for child care programs, better training for child care workers, and better access to child support, among other reforms.
7. **The Equal Employment Opportunity Commission should better protect pregnant workers and mothers through regulation, data collection, and aggressive enforcement.** Both the EEOC and state fair employment practices agencies should interpret pregnancy discrimination laws more broadly, collect more comprehensive data on claims filed by pregnant employees and working mothers, and enforce anti-discrimination laws protecting such workers more rigorously.
8. **Advocates should demand accurate interpretations of the Pregnancy Discrimination Act** and use the EEOC's recently updated pregnancy discrimination guidelines as a basis for strong support of women workers.
9. **Employers should closely follow the EEOC's updated guidelines for the treatment of pregnant women workers.**
10. **Employers should expand policies that support workers with families and other caregiving responsibilities.** Things like child care and paid leave while caring for an ailing loved one should not be considered luxuries. The more employers choose to provide such benefits, the more likely it is that policy change requiring such benefits will follow.

Endnotes

Executive Summary

- 1 The original draft of Title VII of the Civil Rights Act of 1964 would have prohibited workplace discrimination on the basis “race, color, religion, or national origin.” See, e.g., Louis Menand, *The Sex Amendment*, THE NEW YORKER (July 21, 2014), <http://www.newyorker.com/magazine/2014/07/21/sex-amendment>. Two days before the bill went to vote in the House of Representatives, the amendment to add sex was introduced by Representative Howard W. Smith, a Democrat from Virginia who was vocally opposed to civil rights for African-Americans. See Robert C. Bird, *More than a Congressional Joke: A Fresh Look at the Legislative History of Sex Discrimination in the 1964 Civil Rights Act*, 3 WM. & MARY J. WOMEN & L. 137, 150 (1997) (citing 100 Cong. Rec. 2577). While there are several theories about why Smith introduced the sex amendment, it is undisputed that Representative Martha Griffiths’ passionate defense of it contributed to its passage in the House. *Id.* at 139-40, 155-56; see also United States House of Representatives History, Art & Archives, *Griffiths, Martha Wright*, <http://history.house.gov/People/Listing/G/GRIFFITHS,-Martha-Wright-%28G000471%29/> (last visited July 31, 2014).
- 2 2417 U.S. 484 (1974).
- 3 42 U.S.C. § 2000e(k).
- 4 600 F.2d 211 (9th Cir. 1979).
- 5 890 F.2d 1438 (9th Cir. 1989) (affirming consent decree).
- 6 603 F.3d 571 (9th Cir. 2010), rev’d, 131 S. Ct. 2541 (2011).
- 7 See Nat’l Women’s Law Ctr., *10 Reasons Raising the Minimum Wage to \$10.10 Is a Women’s Issue*, at 1 n.1 (Feb. 2014), http://www.nwlc.org/sites/default/files/pdfs/10.10_minimumwagefactsheet_green.pdf (citing U.S. Dep’t of Labor, Bureau of Labor Statistics, *Characteristics of Minimum Wage Workers: 2012*, Table 1, available at <http://www.bls.gov/cps/minwage2012bls.htm>).
- 8 See Ariane Hegewisch & Maxwell Matite, Inst. for Women’s Policy Research, Fact Sheet #C350a, *The Gender Wage Gap by Occupation*, at 4 (Apr. 2013), available at <http://www.iwpr.org/publications/pubs/the-gender-wage-gap-by-occupation-2>.
- 9 See U.S. Dep’t of Labor, Bureau of Labor Statistics, *supra* note 7, at Table 1 (Black and Latina women are more than twice as likely as white women to be living in poverty and more than twice as likely as white men to work in jobs that pay at or below the minimum wage).
- 10 Joya Misra et al., *Cross-National Patterns in Individual and Household Employment and Work Hours by Gender and Parenthood*, 28, 39 (Luxembourg Income Study Working Paper Series, July 2010) (rates and hours of employment); Joya Misra et al., *Work-family policies and the effects of children on women’s employment hours and wages*, in *Community, Work & Family* 14:2, 148-49 (Routledge ed., 2011)
- 11 John W. Whitehead, *Eleventh Hour Amendment or Serious Business: Sexual Harassment and the United States Supreme Court’s 1997-1998 Term*, 71 TEMPLE L. REV. 773, 779 (2005); Gillian K. Hadfield, *Rational Women: A Test for Sex-Based Harassment*, 83 CALIF. L. REV. 1151, 1174 (1995).
- 12 Rest. Opportunities Ctrs. United, *Tipped Over the Edge: Gender Inequity in the Restaurant Industry* (Feb. 13, 2012), http://rocunited.org/files/2012/02/ROC_GenderInequity_F1-1.pdf; see also Steven Rosenfeld, *National Restaurant Association Ensures Poverty Wages*, SALON (Aug. 28, 2013, 5:41 AM), http://www.salon.com/2013/08/28/the_other_nra_how_the_national_restaurant_association_ensures_poverty_wages_partner/; Jeanne Smalek, *Waitresses Stuck at \$2.13 Hourly Minimum for 22 Years*, BLOOMBERG (Apr. 25, 2013, 9:01 PM), <http://www.bloomberg.com/news/2013-04-25/waitresses-stuck-at-2-13-hourly-minimum-for-22-years.html>; Living Off Tips, ROCUnited.org, <http://rocunited.org/living-off-tips-our-campaign-to-raise-the-tipped-minimum-wage/> (last visited June 12, 2014).
- 13 U.S. Census Bureau, *Maternity Leave and Employment Patterns of First Time Mothers: 1961-2008*, at 9 (Oct. 2011), available at www.census.gov/prod/2011pubs/p70-128.pdf (percentage of pregnant employees fired or laid off increased from 3.5 percent in 1981-1985 to 4.7 percent in 2006-2008).
- 14 Latina pregnant women/new mothers, for example, were fired or laid off at nearly double the rate of their white counterparts, and African Americans at nearly one and a half times the rate of their white female counterparts. *Id.* at 11, Table 7 (data from 2006-2008).
- 15 Pregnant women or new mothers without a high school degree—those likely to work in lower-wage jobs—are three times more likely than more educated women workers to be fired upon the birth of their first child. Ann O’Leary, *How Family Leave Laws Left Out Low-Income Workers*, 28 BERKELEY J. EMP. & LAB. L. 1, 7 (2007).
- 16 U.S. Equal Emp’t Opportunity Comm’n, Office of Legal Counsel, Response to Equal Rights Advocates Freedom of Information Act (FOIA) Request (Aug. 27, 2013) (on file with Equal Rights Advocates); Nat’l P’ship for Women & Families, *The Pregnancy Discrimination Act: Where We Stand 30 Years Later*, 4-6, 8-9 (Oct. 2008), available at http://go.nationalpartnership.org/site/DocServer/Pregnancy_Discrimination_Act_-_Where_We_Stand_30_Years_L.pdf (discussing the rise in pregnancy discrimination claims across the country).
- 17 See Diane M. Houston & Gillian Marks, *The Role of Planning and Workplace Support in Returning to Work After Maternity Leave*, 41 British J. of Indus. Rel. 197, 199 (2003).
- 18 See Ariane Hegewisch et al., Inst. for Women’s Policy Research, Fact Sheet #C413, *The Gender Wage Gap: 2013*, at 3 (Mar. 2014), available at <http://www.iwpr.org/publications/pubs/the-gender-wage-gap-2013-differences-by-race-and-ethnicity-no-growth-in-real-wages-for-women>.
- 19 Maria Shriver & Ctr. for Am. Progress, *The Shriver Report: Woman’s Nation Pushes Back from the Brink: Executive Summary* (Jan. 12, 2014), available at <http://shriverrreport.org/a-womans-nation-pushes-back-from-the-brink-executive-summary-maria-shriver/>. This data was drawn from a poll conducted by Greenberg Quinlan Rosner Research, in collaboration with the Center for American Progress and The Shriver Report, which contacted 3,500 adults by landline, including Spanish speakers. See *The Shriver Report: Woman’s Nation Pushes Back from the Brink* (Jan. 12, 2014), at Loc. 44 (“Powerful and Powerless” chapter) n.12.
- 20 See Women’s Voices Women Vote Action Fund, *Americans Overwhelmingly Support Economic Proposals that Aid Women* (July 22, 2013), available at <http://www.wvaf.org/news/american-voters-overwhelmingly-support-economic-proposals-that-aid-women/>.
- 21 H.F. 2536, 88th Leg. (Minn. 2013-14).

Part Two: Work and Family Still At Odds

- 103 *The White House Summit on Working Families*, U.S. Dep't of Labor, <http://www.dol.gov/wb/workingfamilies/> (last visited June 18, 2014) (announcing the Summit).
- 104 See, e.g., Ruth Margalit, *Marissa Mayer's Choice*, THE NEW YORKER (Oct. 8, 2012), available at <http://www.newyorker.com/news/news-desk/marissa-mayers-choice>.
- 105 See Anne-Marie Slaughter, *Why Women Still Can't Have it All*, THE ATLANTIC (July/Aug. 2012), available at <http://www.theatlantic.com/magazine/archive/2012/07/why-women-still-cant-have-it-all/309020/>; see also Rebecca Traister, Can Modern Women "Have it All?", SALON (June 21, 2012, 12:25 PM), http://www.salon.com/2012/06/21/can_modern_women_have_it_all/ (suggesting that Slaughter's piece peddles a "dangerous myth" about the modern woman, and that we should "strike the phrase 'having it all' from the feminist lexicon.").
- 106 See Sheryl Sandberg, *Lean In: Women, Work, and the Will to Lead* (2013); see also Anne-Marie Slaughter, *Yes You Can*, N.Y. TIMES (Mar. 7, 2013), available at <http://www.nytimes.com/2013/03/10/books/review/sheryl-sandbergs-lean-in.html?pagewanted=all> (reviewing Sandberg's book).
- 107 42 U.S.C. § 2000e *et seq.*
- 108 Pub. L. No. 95-555, 92 Stat. 2076 (1978) (codified at 42 U.S.C. § 2000e(k)).
- 109 Women now make up nearly half of the workforce. U.S. Dep't of Labor, Bureau of Labor Statistics, *Women in the Labor Force: A Databook* 31-42, Table 11 (2013), <http://www.bls.gov/cps/wlf-databook-2012.pdf>. Women are also more likely now than ever to work during their pregnancies and are returning to the workforce shortly after childbirth. U.S. Census Bureau, *Maternity Leave and Employment Patterns of First Time Mothers: 1961-2008*, 3-4 (2011), www.census.gov/prod/2011pubs/p70-128.pdf.
- 110 U.S. Equal Emp't Opportunity Comm'n, *Pregnancy Discrimination Charges, EEOC & FEPAs Combined: FY 1997-2011*, <http://www.eeoc.gov/eeoc/statistics/enforcement/pregnancy.cfm>. In the past three years alone, calls to the Equal Rights Advocates' (ERA) national hotline concerning pregnancy discrimination have doubled. See A&C Statistical Reports, *supra* note 30.
- 111 Joanna L. Grossman, *Pregnancy, Work, and the Promise of Equal Citizenship*, 98 GEO. L.J. 567, 569, 569 n. 7 (2010). Also, "more than 80 percent of women have children by the time they're 44 years old." Kristin Rowe-Finkbeiner & Linda Hallman, *Don't Pay Me Less Because I'm a Mom*, HUFFINGTON POST (June 14, 2014, 10:59 A.M.), http://www.huffingtonpost.com/kristin-rowefinkbeiner/dont-pay-me-less-just-bec_b_5490265.html; see also Linda Meric, *Mom's Equal Pay Day Highlights How Far We Still Have to Go*, HUFFINGTON POST (June 12, 2014, 7:59 A.M.), http://www.huffingtonpost.com/linda-meric/moms-equal-pay-day-highli_b_5488950.html?utm_hp_ref=politics.
- 112 See Wendy Wang et al., Pew Research Ctr., *Breadwinner Moms* 1 (May 2013), http://www.pewsocialtrends.org/files/2013/05/Breadwinner_moms_final.pdf.
- 113 See, e.g., Joanna L. Grossman & Gillian Thomas, *Making Pregnancy Work: Overcoming the Pregnancy Discrimination Act's Capacity-Based Model*, 21 YALE J.L. & FEMINISM 15, 23 (2009).
- 114 In *Gen. Elect. Co. v. Gilbert*, 429 U.S. 125 (1976), the Court held that an employer's exclusion of pregnant employees from the employer's disability benefits plan did not violate Title VII. It reasoned that favoring "nonpregnant persons" over "pregnant women" was not by itself sex discrimination, since women were in both the pregnant and non-pregnant groups.
- 115 H.R. Rep. No. 95-948, 95th Cong., 2d Sess. 3 (1978).
- 116 See, e.g., Press Release, Equal Emp't Opportunity Comm'n, Warren Tricomi to Pay \$30,000 to Settle EEOC Pregnancy Discrimination Suit (Mar. 15, 2012), <http://www.eeoc.gov/eeoc/newsroom/release/3-15-12.cfm>; Press Release, Equal Emp't Opportunity Comm'n, EEOC Wins Jury Award from Phoenix Subway Franchisee for Pregnancy Discrimination (Jan. 30, 2012), available at www.eeoc.gov/eeoc/newsroom/release/1-30-12b.cfm; Press Release, Equal Emp't Opportunity Comm'n, Akai Security Pays \$1.62 Million To Settle EEOC Class Pregnancy Discrimination Claims (Dec. 1, 2010), available at www.eeoc.gov/eeoc/newsroom/release/12-1-10.cfm; *Chadwick v. WellPoint, Inc.*, 561 F.3d 38 (1st Cir. 2009); *Lettieri v. Equant, Inc.*, 478 F.3d 640 (4th Cir. 2007); *Lust v. Sealy, Inc.*, 383 F.3d 580, 582-83 (7th Cir. 2004); *Quinlan v. Elysian Hotel Co. L.L.C.*, 916 F. Supp. 2d 843 (N.D. Ill. 2013).
- 117 *Chadwick*, 561 F.3d at 45.
- 118 *Quinlan*, 916 F. Supp. 2d at 853; see also *Lust*, 383 F.3d at 582-83 (Title VII claims could proceed to trial when denial of promotion was based on the assumption that a female employee with young children was not interested because the promotion would require relocating her family); *Lettieri*, 478 F.3d at 648-49 (Title VII claims could proceed to trial when evidence showed that employer denied plaintiff a promotion because she was a mother); cf. *Price Waterhouse v. Hopkins*, 490 U.S. 228, 251 (1989) (Title VII prohibits employers from denying employment opportunities based on gender stereotypes: "we are beyond the day when an employer could evaluate employees by assuming or insisting that they matched the stereotype associated with their group").
- 119 Bureau of Labor Statistics, *supra* note 109, at 31, Table 11.
- 120 *Id.* at 31-42, Table 11.
- 121 Wang et al., *supra* note 112, at 1.
- 122 O'Leary, *supra* note 15, at 6.
- 123 U.S. Census Bureau, *Maternity Leave and Employment Patterns of First Time Mothers: 1961-2008*, at 3-4 (Oct. 2011), www.census.gov/prod/2011pubs/p70-128.pdf. For example, 65 percent of women who worked during their pregnancy from 2006-2008 worked into the last month of their pregnancy; 64 percent of women from 2005-2007 were working within one year of giving birth, compared to only 17 percent of women in the 1960s. *Id.* at 19.
- 124 *Id.* at 13.

- 125 Joya Misra et al., *Cross-National Patterns in Individual and Household Employment and Work Hours by Gender and Parenthood*, 28, 39 (Luxembourg Income Study Working Paper Series, July 2010) (rates and hours of employment); Joya Misra et al., *Work-Family Policies and the Effects of Children on Women's Employment Hours and Wages*, in COMMUNITY, WORK & FAMILY 14:2, 148-49 (Routledge ed., 2011) (the wages of mothers tend to be 10 percent less than the wages of childless women). Some academics have concluded that it is mothers who account for the wide gender wage gap in the United States. See Shelley Correll et al., *Is There A Motherhood Penalty?*, 112 AM. J. SOCIOL. OGY 5, 1297-98 (2007), available at <http://gender.stanford.edu/sites/default/files/motherhoodpenalty.pdf>; Jennifer Glass, *Blessing or Curse? Work-Family Policies and Mothers' Wage Growth over Time*, 31 WORK & OCCUPATIONS 367-94 (Aug. 2004).
- 126 See Wang et al., *supra* note 112, at 1 (median income for families headed by single mothers is \$23,000, as compared to the median income of \$57,000 for all families with children; and single mothers are more likely to be African American or Latina); see also Nat'l Women's Law Ctr., *National Snapshot: Poverty Among Women & Families, 2011*, at 2-3 (2012), <http://www.nwlc.org/sites/default/files/pdfs/povertysnapshot-2011version2.pdf> (2011 poverty rates for single mothers: white (33 percent); African American (47.3 percent); Latina (49.1 percent); and Native American (53.8 percent); more than 13 percent of single mothers working full time lived in poverty); Timothy Casey and Laurie Maldonado, *Legal Momentum, Worst Off – Single-Parent Families in the United States: A Cross-National Comparison of Single Parenthood in the U.S. and Sixteen Other High-Income Countries* 9, 28 (Dec. 2012) (single mothers are much more likely to be in low-wage jobs than single fathers, married fathers, or married mothers; single mothers are paid far less than comparably educated men; and single mothers face high rates of poverty even when employed), http://www.ncds.org/images/LM_WorstOff-SingleParentFamiliesInTheUSCross-NationalComparision_12-2012.pdf.
- 127 U.S. Census Bureau, *supra* note 123, at 9, Table 5 (percentage of pregnant employees fired or laid off increased from 3.5 percent in 1981-1985 to 4.7 percent in 2006-2008).
- 128 Latina pregnant women/new mothers, for example, were fired or laid off at nearly 200 percent of the rate of their white counterparts, and African Americans at nearly 150 percent of the rate of their white counterparts. *Id.* at 11, Table 7 (data from 2006-2008).
- 129 Between 2000 and 2012, the number of pregnancy discrimination EEOC charges filed by African American women more than doubled, and the number filed by Latina women nearly doubled, while charges filed by white women increased at a much lower rate. U.S. Equal Emp't Opportunity Comm'n, Office of Legal Counsel, *Response to Equal Rights Advocates Freedom of Information Act Request* (Aug. 27, 2013) (on file with Equal Rights Advocates) (between 2000 and 2012, EEOC charges filed by African American women jumped from 484 to 1,090; for Latinas the number went from 211 to 413, and for white women from 1,216 to 1,864).
- 130 Pregnant women or new mothers without a high school degree—those likely to work in lower-wage jobs—are three times more likely than more educated women workers to be fired upon the birth of their first child. O'Leary, *supra* note 15, at 7.
- 131 U.S. Equal Emp't Opportunity Comm'n, *supra* note 129; Nat'l P'ship for Women & Families, *The Pregnancy Discrimination Act: Where We Stand 30 Years Later*, 4-6, 8-9 (Oct. 2008), http://go.nationalpartnership.org/site/DocServer/Pregnancy_Discrimination_Act_-_Where_We_Stand_30_Years_L.pdf (discussing the rise in pregnancy discrimination claims across the country).
- 132 See Diane M. Houston & Gillian Marks, *The Role of Planning and Workplace Support in Returning to Work After Maternity Leave*, 41 BRITISH J. OF INDUS. REL. 197, 199 (2003).
- 133 See, e.g., Stephanie Bornstein, Ctr. for WorkLife Law, *Poor, Pregnant, and Fired* 10-28 (2011), available at worklifelaw.org/pubs/PoorPregnantAndFired.pdf; see also Nat'l P'ship for Women & Families, *supra* note 131, at 10; Correll et al., *supra* note 125, at 1315-17.
- 134 See, e.g., *Linder v. Pac. Dataware, Inc.*, 142 F.3d 444 (9th Cir. 1998) (pregnant employee fired six hours after giving notice of her pregnancy); see also Bornstein, *supra* note 133, at 11.
- 135 See, e.g., *Walsh v. Nat'l Computer Sys., Inc.*, 332 F.3d 1150, 1155 (8th Cir. 2003); see also Written Testimony of Joan C. Williams, EEOC Meeting on Unlawful Discrimination Against Pregnant Workers and Workers with Caregiving Responsibilities 13-14 (2012), <http://www.eeoc.gov/eeoc/meetings/2-15-12/williams.cfm> (listing cases involving other examples of sex stereotyping of pregnant women and caregivers); Nat'l P'ship for Women & Families, *supra* note 131, at 10 (more examples).
- 136 See, e.g., *Paz v. Wauconda Healthcare & Rehab. Ctr., LLC*, 464 F.3d 659, 662 (7th Cir. 2006); *Bergstrom-EK v. Best Oil Co.*, 153 F.3d 851, 854 (8th Cir. 1998); *Rosales v. Keyes Co.*, 2007 U.S. Dist. LEXIS 32, at *5 (S.D. Fla. Jan. 2, 2007); see also *Lawrence Hammock, Waitress Settles Pregnancy Discrimination Lawsuit Against Radford Restaurant*, ROANOKE TIMES (Aug. 30, 2012), ww2.roanoke.com/news/breaking/wb/313459; Elizabeth Warherdam, *BofA: Bank of America or Bank of Abortion?*, COURTHOUSE NEWS SERVICE (July 25, 2013, 2:13 P.M.), www.courthousenews.com/2013/07/25/59676.htm; Claire Gordon, *Doctor Demanded Receptionist Have Abortion For Sake of His 'Image,' Lawsuit Claims*, AOL JOBS (Aug. 21, 2012, 3:29 P.M.), <http://jobs.aol.com/articles/2012/08/21/doctor-tells-his-receptionist-to-have-abortion-because-it-isnt/>
- 137 For example, several studies have shown that supervisors rank mothers of young children and pregnant employees as substantially less competent and less committed to work than non-mothers or non-pregnant employees who have the same actual performance levels, and that this affects hiring, promotion, and compensation decisions. See, e.g., Correll et al., *supra* note 125, at 1315-17; Jane A. Halpert et al., *Pregnancy as a Source of Bias in Performance Appraisals*, 14 J. ORG. BEHAVIOR 649 (1993). In one study, participants recommended hiring 84 percent of non-mothers, but only 47 percent of mothers—even though they were equally-qualified. The mothers were considered 10 percent less competent and 15 percent less committed than non-mothers, and their recommended salaries were 7.4 percent lower than recommended salaries for non-mothers. Mothers were also held to stricter punctuality standards, greater performance standards, and were required to have higher scores on a management test before being considered hireable. Correll et al., *supra* note 125, at 1316. In another study of equally-qualified mother and non-mother job applicants, the non-mothers were more than twice as likely as mothers to be called for an interview. *Id.* at 1327-30.
- 138 See *supra* note 129.
- 139 For example, "African-American mothers are ... more likely to be stereotyped as single mothers, which translates to biased assumptions that they will be bad workers or unreliable." Bornstein, *supra* note 133, at 27. Studies also show that negative stereotypes are particularly pronounced in male-dominated industries. Michelle R. Hebl et al., *Hostile and Benevolent Reactions Toward Pregnant Women: Complementary Interpersonal Punishments and Rewards that Maintain Traditional Roles*, 92(6) J. APPLIED PSYCHOL. 1499, 1508-11 (2007).
- 140 To fill this gap in federal law, some states and many municipalities specifically prohibit discrimination based on family responsibilities or parental status. See Stephanie Bornstein & Robert J. Rathmell, Ctr. for WorkLife Law, *Caregivers as a Protected Class?: The Growth of State and Local Laws Prohibiting Family Responsibilities Discrimination*, 4-8 (2009), www.worklifelaw.org/pubs/LocalFRDLawsReport.pdf.

- 141 42 U.S.C. § 2000e(k). The Pregnancy Discrimination Act's legislative history confirms that the law was intended to require employers to provide the same benefits, such as light duty accommodation, to pregnant workers as they provide to other workers with disabilities or temporarily disabling medical conditions. H.R. Rep. No. 95-948, 95th Cong., 2d Sess., at 5 (1978) (providing the example of transferring pregnant employees to light duty assignments); S. Rep. No. 331, 95th Cong., at 4 (1978). For a comprehensive history of the Act and Congress's intent to ensure that pregnant workers receive employment benefits, such as disability benefits and accommodations, given to other employees, see Deborah Widiss, *Gilbert Redux: The Interaction of the Pregnancy Discrimination Act and the Amended Americans with Disabilities Act*, 46 U.C. DAVIS L. REV. 961, 984-98 (2013).
- 142 See *Young v. United Parcel Service*, 707 F.3d 437, 439-41 (4th Cir. 2013), cert. granted, 2014 U.S. Lexis 4683 (July 1, 2014).
- 143 *Id.* at 441.
- 144 *Id.* at 441-42.
- 145 *Serednyj v. Beverly Healthcare, L.L.C.*, 656 F.3d 540, 548-49 (7th Cir. 2011); *Reeves v. Swift Transp. Co., Inc.*, 446 F.3d 637, 641-42 (6th Cir. 2006); *Spivey v. Beverly Enters., Inc.*, 196 F.3d 1309, 1311-12 (11th Cir. 1999); *Urbano v. Cont'l Airlines, Inc.*, 138 F.3d 204, 205 (5th Cir. 1998).
- 146 *Grace v. Adtran, Inc.*, 2012 U.S. App. LEXIS 8583, at *815 (11th Cir. Apr. 27, 2012) (affirming summary judgment for defendant and finding that plaintiff warehouse worker could not demonstrate discrimination based on employer's refusal to accommodate her 10-pound lifting restriction because employees who were accommodated for their 15-pound or 10-pound restrictions for a shorter period of time than plaintiff would require were not similarly situated to plaintiff); *Raciti-Hur v. Homan*, 1999 U.S. App. LEXIS 9551, at *11 (6th Cir. May 13, 1999) (holding that employees provided light duty positions for permanent disabilities were not appropriate comparators to plaintiff who had a temporary disability due to pregnancy); *Russell v. St. Bernard's Hosp., Inc.*, 2011 U.S. Dist. LEXIS 86492, at *14-15 (E.D. Ark. Aug. 4, 2011) (holding plaintiff failed to show she was denied leave on the basis of pregnancy, because the 36 examples of similar employees granted leave for reasons other than pregnancy did not have the same supervisor as the plaintiff); *Welch v. Lincare, Inc.*, 2011 U.S. Dist. LEXIS 36901, at **10, 15-16 (M.D. Ga. Apr. 4, 2011); *Sermons v. Fleetwood Homes of Georgia*, 227 F. Supp. 2d 1368, 1378-80 (S.D. Ga. 2002) (granting summary judgment against plaintiff for pregnancy discrimination claims for failure to accommodate her pregnancy, despite plaintiff's evidence that the employer provided light duty assignment to 65 other non-pregnant employees who were injured on the job, and to seven non-pregnant employees who were not injured on the job, because plaintiff could only point to three employees were given light duty within the same time frame); *Murray v. Wackenhut Corp.*, 2001 U.S. Dist. LEXIS 3042, at *15-17 (E.D. La. Mar. 15, 2001) (holding that plaintiff failed to provide evidence of pregnancy discrimination in her employer's failure to provide light duty to accommodate her pregnancy, because she neither held the exact same position nor was governed by the same contract as employees for whom the employer provided light duty, even though the contracts did not provide for light duty for any employees).
- 147 See Noreen Farrell et al., Equal Rights Advocates, *Expecting a Baby, Not a Lay-Off: Why Federal Law Should Require the Reasonable Accommodation of Pregnant Workers* (2012).
- 148 See U.S. Equal Emp't Opportunity Comm'n, Enforcement Guidance: Pregnancy Discrimination and Related Issues (July 14, 2014), http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm.
- 149 See, e.g., Bornstein, *supra* note 133, at 17; Written Testimony of Joan C. Williams, *supra* note 135, at 3.
- 150 Laura Schlichtmann, Comment, *Accommodation of Pregnancy-Related Disabilities on the Job*, 15 BERKELEY J. EMP. & LAB. L. 335, 338, 357 (1994) (discussing pregnancy-related conditions and complications, and some potential accommodations); see also Jeanette Cox, *Pregnancy as a "Disability" and the Amended Americans with Disabilities Act*, 53 B.C. L. REV. 443, 454 (2012) ("These gaps in the law for pregnant women ... frequently affect women in low-income work, where rigid work rules restrict workers' ability to consume water, vary their working positions, and curtail repetitive, physically demanding activities." (internal quotation marks and citation omitted)).
- 151 H.R. No. 1975, 113th Cong. (2013-14); S. No. 942, 113th Cong. (2013-14).
- 152 Laws in several states attempt to fill this gap in federal law. A handful of states, including California, require employers to provide reasonable unpaid leave for workers with pregnancy-related disabilities. CAL. GOV'T CODE § 12945(a)(1) (2013); CONN. GEN. STAT. § 46a-60(a)(7) (2013); HAW. CODE R. § 12-46-108 (2013); LA. REV. STAT. § 23:342(2) (2013). Two states provide for paid leave for new parents. CAL. UNEMP. INS. CODE § 3301(a)(1); N.J. STAT. ANN. §§ 43:21-27(o), 43:21-38. Connecticut recently became the first state to require large employers to provide paid sick days for certain employees to care for a sick child or spouse or attend to medical needs. Conn. Pub. Acts 11-52 (2012); CONN. GEN. STAT. § 31-57r-31-57w (2013).
- 153 Nat'l P'ship for Women & Families, *supra* note 131, at 12 (for workers in the lowest wage quartile (earning \$10.69 per hour or less), 95 percent have no paid family leave, 68 percent have no paid sick leave, 83 percent have no short-term disability insurance, and 49 percent have no vacation leave); see also O'Leary, *supra* note 15, at 7.
- 154 Of low-wage workers, three-quarters are women and more than one-third are women of color. See Nat'l Women's Law Ctr., *Fact Sheet: 60 Percent of Women's Job Gains in the Recovery Are in the 10 Largest Low-Wage Jobs* (July 2013), <http://www.nwlc.org/press-release/60-percent-women%E2%80%99s-job-gains-recovery-are-low-wage-jobs-nwlc-analysis-finds>.
- 155 See Farah Ahmad & Sarah Iverson, Center for American Progress, *The State of Women of Color in the United States: Too Many Barriers Remain for This Growing and Increasingly Important Population*, at 7 (2013), <http://www.americanprogress.org/wp-content/uploads/2013/10/StateOf-WomenColor-1.pdf>. Latina women compose 24 percent of those who lack access to both paid leave and workplace flexibility, but represent less than 15 percent of the workforce. See Sarah Jane Glynn & Jane Farrell, Ctr. for Am. Progress, *Workers Deserve Equal Access to Paid Leave and Workplace Flexibility 4* (Nov. 2012), <http://www.americanprogress.org/wp-content/uploads/2012/11/GlynnPaidLeaveFlexBrief-21.pdf>; Sarah Jane Glynn & Jane Farrell, Ctr. for Am. Progress, *Latinos Least Likely to Have Paid Leave or Workplace Flexibility 2-4* (Nov. 2012), <http://www.americanprogress.org/wp-content/uploads/2012/11/GlynnLatinosPaidLeave1.pdf>.
- 156 Family and Medical Leave Act Regulations: A Report of the Department of Labor's Request for Information, 72 Fed. Reg. 35550, 35622 (2007), available at <http://www.gpo.gov/fdsys/pkg/FR-2007-06-28/pdf/07-3102.pdf> (in 2005, only 76.1 million out of 141.7 total U.S. employees were eligible for FMLA leave).
- 157 See Nat'l P'ship for Women & Families, *Expecting Better: A State-by-State Analysis of Laws that Help New Parents* 12 (May 2012), <http://www.nationalpartnership.org/research-library/work-family/expecting-better.pdf>; see also O'Leary, *supra* note 15 at 39, 41-45.
- 158 O'Leary, *supra* note 15, at 45.

- 159 H.R. No. 3712, 113th Cong. (2013-14).
- 160 A recent report from the National Women's Law Center finds that low-wage workers in particular face significant barriers to affordable, quality childcare. For example, the average annual cost of full-time child care for one child ranges from \$4,000 to \$16,000 depending on the state, type of care, the age of the child, and where the family lives. Nat'l Women's Law Ctr., *Listening to Workers, Child Care Challenges in Low-Wage Jobs*, at 1, 4-5 (June 2014), http://www.nwlc.org/sites/default/files/pdfs/listening_to_workers_child_care_challenges_in_low-wage_jobs_6.24.14.pdf; see also House Democrats, *When Women Succeed, America Succeeds*, <http://womensucceed.tumblr.com/economicagendaforwomenandfamilies> (last visited July 29, 2014).
- 161 Vermont and San Francisco are taking the lead on filling this gap in the law by passing workplace flexibility laws to give employees the right to request flexible or predictable work schedules. 21 VT. STAT. ANN. § 309 (2014); San Francisco Admin. Code Ch. 12Z (2014).
- 162 See O'Leary, *supra* note 15, at 6, 17-19; Joan C. Williams, Ctr. for WorkLife Law, *One Sick Child Away From Being Fired: When Opting Out is Not an Option* (2006), <http://www.worklifelaw.org/pubs/onesickchild.pdf>.
- 163 See, e.g., Rest. Opportunities Ctrs. United, *Child Care Needs and Access For Working Mothers in Restaurants 10-14* (2013), <http://rocunited.org/the-third-shift/>.
- 164 See *When Women Succeed, America Succeeds*, *supra* note 160.
- 165 S. No. 631, 113th Cong. (2013-14). Currently, four in ten private sector workers and over 80 percent of low-wage workers do not have a single paid sick day. For more on the Healthy Families Act, see Nat'l P'ship for Women & Families, *Healthy Families Act Fact Sheet* (Apr. 2013), http://go.nationalpartnership.org/site/DocServer/HFA_Expanded_Overview.pdf?docID=10741.
- 166 See, e.g., 21 VT. STAT. ANN. § 309 (2014); San Francisco Admin. Code Ch. 12Z (2014).

Equal Rights Advocates is a nonprofit legal organization dedicated to protecting and expanding economic and educational opportunities 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.



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