

MDDCAFLCIO_FAV_SB225

Uploaded by: Edwards, Donna

Position: FAV



MARYLAND STATE & D.C. AFL-CIO

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President
Donna S. Edwards

Secretary-Treasurer
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**SB 225 – State Personnel – Employee Accommodations – Pregnancy and Childbirth
Senate Finance Committee
February 13, 2020**

SUPPORT

**Donna S. Edwards
President
Maryland State and DC AFL-CIO**

Madam Chair and members of the Committee, thank you for the opportunity to provide testimony in support of SB 225 – State Personnel – Employee Accommodations – Pregnancy and Childbirth. My name is Donna S. Edwards and I am the President of the Maryland State and DC AFL-CIO. On behalf of the 340,000 union members in the state of Maryland, I offer the following comments.

The working mothers that we pay – with our tax dollars – should never have to hear from us that they must choose between motherhood and a career in State service.

Providing reasonable accommodations for working mothers and public servants of the State of Maryland is a “no brainer”. SB 225 would require the State to provide reasonable accommodations for State workers who experience a temporary disability due to pregnancy or childbirth. These include: changes to work hours, duties, locations of work, providing aids for the worker, or granting leave.

These small changes will codify practices that most state agencies already have, and it will positively impact the lives of all of Maryland government’s working mothers, their families, and their communities. If we truly value their contributions to Maryland, then we must value their health and safety, as well as that of their families.

We ask for a favorable report on SB 225.

ACNM_FAV_SB 225

Uploaded by: Elliott, Robyn

Position: FAV



Committee: Senate Finance Committee

Bill Number: SB 225

Title: State Personnel – Employee Accommodations – Pregnancy and Childbirth

Hearing Date: February 13, 2020

Position: Support

The Maryland Affiliate of the American College of Nurse Midwives (ACNM) supports *Senate Bill 225 – State Personnel – Employee Accommodations – Pregnancy and Childbirth*. The bill requires that all state employees be given reasonable accommodation in performing job functions to accommodate a pregnancy. Maryland has a responsibility to ensure that our policies support healthy pregnancies.

As certified nurse midwives, we advise women of the steps they need to take at work and home in order to maintain a health pregnancy. These steps are reasonable and should be implementable by employers. Examples include:

- Ability to sit to work as needed.
- Flexible schedule to accommodate visits to health care providers for prenatal care
- Access to restroom as needed.
- Regular scheduled breaks for rest; and
- Access to fluids during the entire shift.

Please ensure that state employees have access to reasonable accommodations to maintain healthy pregnancies and vote favorably on this bill. If we can provide any further information, please contact Robyn Elliott at relliott@policypartners.net or (443) 926-3443.

PPM_FAV_SB 225

Uploaded by: Elliott, Robyn

Position: FAV

Planned Parenthood of Maryland

Committee: Senate Finance Committee

Bill Number: SB 225

Title: State Personnel – Employee Accommodations – Pregnancy and Childbirth

Hearing: February 13, 2020

Position: Support

Planned Parenthood of Maryland supports *Senate Bill 225 - Discrimination in Employment – Pregnancy and Childbirth*. This bill requires that state employees be provided with reasonable accommodations to all pregnant employees.

As health providers, we support measures to ensure that all pregnant individuals have access to high-quality pre-natal care. All pregnant individuals, including those who are healthy, need pre-natal services to maintain a healthy pregnancy.

Maryland has strong policies in place to ensure that pregnant women have access to health insurance and pre-natal care. It is incongruous that our employment law is not clear. All pregnant individuals should have access to reasonable accommodations from their employers. This bill extends that access to state employees, which is a good start. Reasonable accommodations can be modest, such as modifying an employee’s work hours or changing the location of the employee’s work area.

Please ensure that state employees who are pregnant have access to reasonable accommodations. If we can provide any additional information, please contact Robyn Elliott at (443) 926-3443 or relliott@policypartners.net.

MCCW_FAV_#225

Uploaded by: FINKLESTEIN, JODI

Position: FAV



COMMISSION FOR WOMEN COMMUNITY ENGAGEMENT CLUSTER

February 4, 2020

The Honorable Delores G. Kelley
Chair, Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, Maryland 21401

RE: Letter in Support of SB225, State Personnel - Employee Accommodations - Pregnancy and Childbirth

Dear Chairwoman Kelley and Members of the Committee:

The Montgomery County Commission for Women ("Commission") strongly supports Senate Bill 225 and urges the Senate Finance Committee to issue a favorable report on this bill. The bill provides reasonable accommodations to pregnant women who are employed with the State of Maryland.

This bill states that all pregnant employees are entitled to **reasonable accommodations** in the workplace when pregnant, not just when pregnancy complications arise. Reasonable accommodations in this bill means having the state make the same types of accommodations they are already making every day under the Americans for Disabilities Act, including temporarily changing an employee's job duties, relocating the employee's work area, transferring the employees, changing an employee's work hours, providing mechanical or electrical aids and providing leave.

The Commissioners are charged by law to advise our County Executive, County Council, the public, and county, state and federal government agencies on issues of concern to women.

One of our strategic priorities is to advocate for laws that further protect women's health and well-being. This bill supports our goal and we urge the Committee to issue a favorable report.

Sincerely,

Nicole Y. Drew, Esq.
President
Montgomery County Commission for Women

Commissioners:

Donna Rojas – First Vice President
Diana Rubin – Second Vice President
Tiffany Boiman – Recording Secretary
Tazeen Ahmad
Isabel Argoti
Mona-Lee Belizaire
Tonia Bui
Ijeoma Enendu
Patricia Maclay
Giulia McPherson
Adrienne Prentice
Patricia Swanson
Angela Whitehead Quigley
Meredith Weisel

Executive Director

Jodi Finkelstein

NWLC_FAV_#225

Uploaded by: JOHNSON, ANDREA

Position: FAV



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**Testimony of
Andrea Johnson, Director of State Policy, Workplace Justice & Cross-Cutting Initiatives
National Women's Law Center**

**In SUPPORT of SB 225 – State Personnel – Employee Accommodations – Pregnancy and
Childbirth
Before the Maryland Senate Finance Committee**

February 13, 2020

Thank you for the opportunity to submit this testimony on behalf of the National Women's Law Center. The National Women's Law Center has been working since 1972 to secure and defend women's legal rights and opportunities, and to help women and families achieve economic security.

Pregnant workers should never be forced to choose between their health and their jobs, but under Maryland's current pregnancy accommodation law, too many pregnant workers can still find themselves denied the reasonable accommodations they need to continue to work and maintain a healthy pregnancy.

Maryland's current pregnancy accommodation law is at best ambiguous as to whether all pregnant workers with a need for a workplace accommodation are entitled to reasonable accommodations or only those workers who have limitations arising out of pregnancy *complications*. But a need for a temporary workplace accommodation can arise from a normally-progressing, healthy pregnancy; for example, the need to sit instead of stand during a long shift, to avoid exposure to toxic chemicals, or to avoid lifting heavy objects to ensure your pregnancy remains a healthy pregnancy. These pregnant workers also need the protections of these laws as they are too often forced off the job when they ask for simple, reasonable accommodations. And the failure to accommodate a healthy pregnancy can itself precipitate complications, putting the worker and her pregnancy at risk.

Under the current state law, pregnant employees are entitled to reasonable accommodations for “*disabilities* caused or contributed to by pregnancy or child birth.”¹ In 2017, the United States District Court for the District of Maryland specifically held that Maryland's pregnancy accommodation law “prohibit[s] discrimination on the basis of disability, but not pregnancy alone.”² The court went on to hold that even though the plaintiff, a veterinary assistant, “required help on a ‘case-by-case basis’ during the final three months of her pregnancy with certain of her responsibilities, including ‘performing x-rays, bending over, lifting large objects, and handling large animals,’” “these limitations alone fail[ed] to demonstrate that she suffered a “disability” with respect to her Maryland Fair Employment Practices Act . . . claim” and thus she was not protected under §20-609. Instead, the court held that she needed to show an “additional ‘pregnancy-related *impairment*’” (emphasis added) in order to get protection.

In order to ensure that all pregnant workers in Maryland who have a need for a reasonable accommodation receive one, it is critical that Maryland law make undeniably clear that all pregnant

workers with limitations due to pregnancy, childbirth, or related conditions are entitled to a reasonable accommodations, unless it would pose an undue hardship on the employer—not just those with pregnancy-related “disabilities.” Most of the states that have passed pregnancy accommodation laws in the last several years have required employers to provide reasonable accommodations for *conditions or limitations* related to pregnancy or childbirth.³ There is no reason Maryland shouldn’t do the same.

SB 225 takes an important step towards ensuring that pregnant workers have the right to reasonable accommodations, regardless of whether they are experiencing a pregnancy complication or need an accommodation to ensure their pregnancy *remains* healthy. These protections should be available to Maryland employees regardless of whether they work in the public or private sector. We encourage the legislature to quickly work towards extending these protections to all Maryland workplaces.

¹ Md. Code Ann., State Gov’t § 20-609 (West 2013).

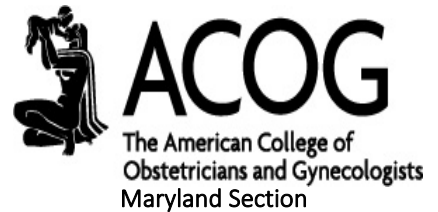
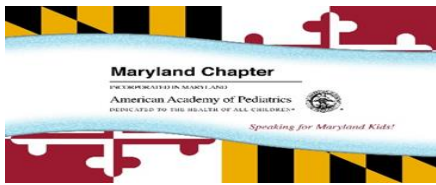
² *Saah v. Thumel*, 2017 WL 491221, at *1 (Feb. 7, 2017 D. Md.).

³ See NAT’L. WOMEN’S LAW CTR., *Pregnancy Accommodations in the States* (September 2019), available at <https://nwlc.org/resources/pregnancy-accommodations-states/>.

MDAAP_MDACOG_Pam Kasemeyer_FAV_SB0225

Uploaded by: Kasemeyer, Pam

Position: FAV



TO: The Honorable Delores G. Kelley, Chair
Members, Senate Finance Committee
The Honorable Brian J. Feldman

FROM: Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman
Richard A. Tabuteau

DATE: February 13, 2020

RE: **SUPPORT** – Senate Bill 225 – *State Personnel – Employee Accommodations – Pregnancy and Childbirth*

On behalf of the Maryland Chapter of the American Academy of Pediatrics (MDAAP) and the Maryland Section of the American College of Obstetricians and Gynecologists (MDACOG), we submit this letter of **support** for Senate Bill 225.

Senate Bill 225 requires a unit of State government to provide reasonable workplace accommodations for an employee who is limited in their ability to perform their job due to pregnancy, childbirth, or related medical conditions. Reasonable accommodations include changing the employee's job duties or work hours, relocating the employee's work area, providing mechanical or electrical aids, transferring the employee to a less strenuous or less hazardous position, or providing leave. The bill applies to all units in the Executive, Judicial, and Legislative branches of the State, including units with independent personnel systems.

The federal Pregnancy Discrimination Act makes it unlawful to discriminate on the basis of pregnancy, childbirth, or related health conditions. While Maryland currently has protections in the law, they are framed as a disability which does not appropriately reflect the range of accommodations, which are often limited or short-term, that may be required during a pregnancy. For example, a pregnant woman may not be able to lift heavy objects, or should rest periodically, if she stands for a long period of time. These accommodations are critical for the health of the woman and to ensure healthy birth outcomes and also assist in protecting the financial stability of the woman and her family by enabling her, if possible, to continue gainful employment and return to the workplace postpartum.

Senate Bill 225 will make it unlawful to refuse an employee's request for reasonable accommodations during pregnancy, and prohibits a requirement to take leave if reasonable accommodations can be provided. The State is also provided certain protections in that an employee may be required to provide a certification from the employee's health care provider concerning the medical advisability of a reasonable accommodation. Senate Bill 225 will protect the health and financial stability of women during pregnancy by ensuring they can obtain reasonable accommodations in the workplace. A favorable report is requested.

For more information call:

Pamela Metz Kasemeyer
J. Steven Wise
Danna L. Kauffman
Richard A. Tabuteau
410-244-7000

MFN_FAV_SB 225

Uploaded by: Macsherry, Clinton

Position: FAV



Testimony Concerning SB 225
“State Personnel - Employee Accommodations - Pregnancy and Childbirth”
Submitted to the Senate Finance Committee
February 13, 2020

Position: Support

Maryland Family Network (MFN) supports SB 225, which would require the State to provide reasonable accommodations for pregnant workers. Reasonable accommodations would have a relatively small impact on business but a long-term significant impact on the health of both the mother and her child.

MFN has worked since 1945 to improve the availability and quality of child care and early childhood education, as well as other supports for children and families in Maryland. We are strongly committed to ensuring that children, along with their parents, have access to work and educational opportunities that promote their health and well-being. MFN has, over time and in various ways, helped employers who seek to develop or expand family-friendly workplace policies.

During their working lives, nearly 85% of women will become mothers. Because new babies generally increase families' expenses, a women's wages can be especially important when they are pregnant. But when pregnant workers lose or forgo employment for lack of basic accommodations their family economic security suffers and they often struggle to re-enter the job market. This can present challenges and lead to negative consequences that affect both children and parents for an extended time.

Helping pregnant workers maintain healthy pregnancies by providing reasonable accommodations benefits not only workers and their families but also employers, and by extension the entire economy. Studies have consistently documented that employers who adopt family-friendly workplace policies reap the rewards of employee loyalty and are better able to attract and retain a productive workforce.

SB 225 would require the State to provide reasonable accommodations for pregnant workers. This is a sorely needed policy for Maryland's working families, and MFN respectfully urges the Committee's favorable consideration.

MDNARAL_FAV_#225

Uploaded by: Phillips, Diana

Position: FAV



SB0225 State Personnel – Employee Accommodations – Pregnancy and Childbirth
Presented to the Honorable Delores Kelley and Members of the Senate Finance Committee
February 13, 2020 1:00 p.m.

POSITION: SUPPORT

NARAL Pro-Choice Maryland urges the House Appropriations Committee to **issue a favorable report on SB0225 State Personnel - Employee Accommodations - Pregnancy and Childbirth**, sponsored by Senator Brian Feldman.

Our organization is an advocate for reproductive health, rights, and justice. Protecting pregnant individuals from workplace discrimination is an essential component of reproductive freedom. We believe that everyone should have the ability to maintain healthy pregnancies by having reasonable accommodations when and where needed, not be unfairly pushed into paid or unpaid leave due to pregnancy or childbirth, and not be forced to accept a change in the workplace that is unnecessary for the employee to continue one's essential job duties. Economic security is essential to parenting with dignity, in good health, and safety. No pregnant employee should be forced to choose between keeping one's job over having a health pregnancy.

In the United States, over 40% of mothers are the sole or primary breadwinners for their family, with an additional 23.2% of mothers acting as "co-breadwinners" who bring in at least 25% of their total household income.¹ In order to advance the overall rights of pregnant and newly parenting workers in our state, SB0225 seeks to establish that state employers are required to grant requests for reasonable accommodations by employees seeking to maintain healthy pregnancies or positive postpartum health. While most pregnant individuals will continue working throughout their pregnancies without incident, some may require temporary adjustments to avoid pregnancy complications and safely work. Reasonable accommodations could include the ability to take more frequent bathroom breaks, access drinking water, or sit instead of stand during a long shift. While most employers could easily provide these accommodations, too many pregnant individuals who make such requests are met with opposition. In some cases, expecting mothers have been fired or forced into another position with lower compensation, passed over for advancement, or denied professional development opportunities. SB0225 prohibits state employers from forcing expectant mothers to agree to certain work conditions—such as unnecessarily depleting their limited paid or unpaid leave time that they will desperately need after childbirth. Additionally, many pregnant breadwinners who do not receive such accommodations will likely have no choice except to continue working in order to support their families, putting their once healthy pregnancies at risk. This legislation recognizes that pregnancy and childbirth are medical events that may require adjustments to address temporary limitations – not events that end the continuation of one's employment or career track.

SB0225 will ensure that state employees who are pregnant or newly parenting will gain support needed to successfully navigate the complex challenges of building and supporting their families. We hope that passage of this legislation will serve as another step towards guaranteeing that all pregnant and newly parenting workers in our state will have the same rights one day. Therefore, **NARAL Pro-Choice Maryland urges a favorable report on SB0225**. Thank you for your time and consideration.

¹ Glynn, Sarah Jane, "Breadwinning Mothers Continue to be the U.S. Norm," Center for American Progress, May 10, 2019, <https://www.americanprogress.org/issues/women/reports/2019/05/10/469739/breadwinning-mothers-continue-u-s-norm/>.

ACY_FAV_SB 225

Uploaded by: Rock, Melissa

Position: FAV



To: The Honorable Chair, Senator Delores G. Kelley
From: Melissa S. Rock, Birth to Three Strategic Initiative Director
Re.: **SB 225: State Personnel – Employee Accommodations—Pregnancy and Childbirth**
Date: February 13, 2020
Position: **SUPPORT**

There are several ways moderate-intensity, rather than light-intensity jobs can lead to increased pregnancy and birth complications. One recent study found that it increases the likelihood of “fetal macrosomia (or having a birth weight of more than 8 pounds, 13 ounces) by 1.5 percentage points.”ⁱ For a mother, fetal macrosomia can lead to “labor difficulties, post-delivery bleeding and uterine rupture, while risks to the child include childhood obesity and lower-than normal blood sugar.”ⁱⁱ Moderate-intensity jobs are also associated with higher risks of gestational diabetes, which can also lead to having an extra large baby.ⁱⁱⁱ

While the federal Pregnancy Discrimination Act (PDA) from 1978 outlaws discrimination against pregnant individuals by including this discrimination under the prohibitions against sex discrimination, there are not specific provisions to protect pregnant employees in the workplace. According to the National Partnership for Women and Families, “despite the longstanding protection of the PDA, nearly 31,000 pregnancy discrimination charges were filed with the U.S. Equal Employment Opportunity Commission (EEOC) and state-level fair employment practice agencies between October 2010 and September 2015.”^{iv} One study from 2013 estimates that each year 250,000 pregnant individuals are denied the reasonable pregnancy accommodations they request.^v

Women of color and immigrant women experience the negative affects of this discrimination because they are more likely than white women to “hold certain inflexible and physically demanding jobs that can present specific challenges for pregnant workers, such as home health aides, food service workers, package handlers and cleaners.”^{vi} **We urge this committee to issue a favorable report on SB 225 which requires all state government jobs include the right to reasonable accommodations for pregnancy employees to help protect pregnant state employees from having to make the decision between protecting their health and retaining their job and minimize the rate of avoidable pregnancy complications.**

ⁱ <https://www.marketwatch.com/story/working-in-a-strenuous-job-while-pregnant-can-lead-to-a-range-of-health-risks-during-and-after-childbirth-2019-10-08>

ⁱⁱ Id.

ⁱⁱⁱ Id.

^{iv} <https://www.nationalpartnership.org/our-work/resources/economic-justice/pregnancy-discrimination/fact-sheet-pwfa.pdf>

^v <https://www.nationalpartnership.org/our-work/resources/economic-justice/pregnancy-discrimination/listening-to-mothers-experiences-of-expecting-and-new-mothers.pdf>

^{vi} https://www.nwlc.org/wpcontent/uploads/2015/08/the_stakes_for_woc_final.pdf

Feldman_FAV_SB225

Uploaded by: Senator Feldman, Senator Feldman

Position: FAV



WORKPLACE JUSTICE

PREGNANCY ACCOMMODATIONS IN THE STATES

Twenty-seven states and the District of Columbia have passed bills or executive orders to explicitly grant pregnant employees the right to accommodations at work. Twenty-two of these laws have been passed since 2013, all with bipartisan support, and in the majority of cases with unanimous or near-unanimous support. Although the details of the laws vary from state to state, they share a core principle: a pregnant worker with a medical need for accommodation should not be pushed out of work when she can be reasonably accommodated without imposing an undue hardship on the employer. These laws affirm that no one should be forced to choose between the health of her pregnancy and her paycheck.

Alaska

- Applies to state employers with at least 21 employees.
- Requires transfer of a pregnant public employee to a less strenuous or hazardous available position for which she is qualified in the same division, when recommended by a licensed health care provider.¹

California

- Applies to all public employers and to all private employers with at least 5 employees.
- Requires the provision of reasonable accommodations for conditions related to pregnancy, childbirth, or related medical conditions when an employee requests an accommodation based on the advice of a health care provider.
- Prohibits employers who have a policy, practice, or a collective bargaining agreement requiring or authorizing transfer of temporarily disabled employees to less strenuous or hazardous positions for the duration of the

disability from refusing to transfer a pregnant employee who so requests.²

Colorado (passed with bipartisan support in 2016)

- Applies to all employers.
- Requires employers to provide an applicant or employee with health conditions related to pregnancy or childbirth with reasonable accommodations to perform the essential functions of the job, if the applicant or employee requests the reasonable accommodations, unless the accommodation would impose an undue hardship on the employer's business. An employer may require an applicant or employee to provide a note from a licensed health care provider before providing a reasonable accommodation.³

Connecticut (passed with bipartisan support in 2017)

- Applies to all employers with at least 3 employees.
- Requires the provision of reasonable accommodations to employees and persons seeking employment for pregnancy, childbirth, or a related conditions including lactation, unless it would impose an undue hardship on the employer.⁴

Delaware (passed unanimously in 2014)

- Applies to all employers with at least 4 employees.
- Requires the provision of reasonable accommodations to employees with known limitations related to pregnancy, childbirth, or related conditions, including the need to express breast milk, unless it would impose an undue hardship on the employer.⁵

District of Columbia (passed unanimously in 2014)

- Applies to all employers.
- Requires the provision of reasonable accommodations to employees with known limitations related to pregnancy,



childbirth, related medical conditions, or breast feeding, unless providing such accommodation would impose an undue hardship on the employer. An employer may require an employee to provide a certificate from the employee's health care provider concerning the medical advisability of a reasonable accommodation to the same extent a certification is required for other temporary disabilities.⁶

Hawaii

- Applies to all employers.
- Requires the provision of reasonable accommodations to employees affected by disability due to pregnancy, childbirth, or related medical conditions.⁷

Illinois (passed unanimously in 2014)

- Applies to all employers.
- Requires the provision of reasonable accommodations to employees for medical or common conditions related to pregnancy or childbirth if an employee requests this, unless the accommodation would impose an undue hardship on the employer. An employer may request documentation from the employee's health care provider concerning the need for the requested reasonable accommodation to the same extent documentation is requested for conditions related to disability, if the employer's request for documentation is job-related and consistent with business necessity.⁸

Kentucky (passed with bipartisan support in 2019)

- Applies to all employers with at least 15 employees.
- Requires the provision of reasonable accommodations to employees with limitations related to pregnancy, childbirth, or related medical conditions, including but not limited to the need to express breast milk, who request an accommodation, unless the accommodation would impose an undue hardship on the employer's program, enterprise, or business.⁹

Louisiana

- Applies to employers with at least 25 employees.
- Prohibits employers who have a policy, practice, or a collective bargaining agreement requiring or authorizing transfer of temporarily disabled employees to less strenuous or hazardous positions for the duration of the disability from refusing to transfer a pregnant employee who so requests.
- Requires transfer of a pregnant employee to a less

strenuous or hazardous position for which she is qualified if she requests this based on advice of her physician and if the transfer can be reasonably accommodated by the employer.¹⁰

Maine (passed with bipartisan support in 2019)

- Applies to all employers.
- Requires the provision of reasonable accommodations for known limitations related to pregnancy, childbirth, or related medical conditions, including lactation, unless the accommodation would impose an undue hardship on the operation of the employer's business.¹¹

Maryland (passed with bipartisan support in 2013)

- Applies to all employers with at least 15 employees.
- Requires the employer to explore all possible means of providing a reasonable accommodation that does not impose an undue hardship on the employer for an employee who requests it for a disability caused or contributed to by pregnancy. An employer may require an employee to provide a certification from the employee's health care provider concerning the medical advisability of a reasonable accommodation to the same extent a certification is required for other temporary disabilities.
- Requires transfer of a pregnant employee to a less strenuous or hazardous available position in some circumstances if she requests such a transfer.¹²

Massachusetts (passed unanimously in 2017)

- Applies to all employer with six or more employees
- Requires the provision of reasonable accommodations for an employee's pregnancy or any condition related to pregnancy, including lactation or the need to express breast milk for a nursing child, if the employee so requests, unless it would impose an undue hardship on the employer's program, enterprise, or business. Employers may require employees to submit documentation about the need for an accommodation from an appropriate health care or rehabilitation professional, but may not require documentation if the employee is requesting more frequent restroom, food, or water breaks; seating; limits on lifting over 20 pounds; or private non-bathroom space for expressing breast milk.¹³

Minnesota (passed with bipartisan support in 2014)

- Applies to all employers with at least 21 employees at any one site.



- Requires the provision of reasonable accommodations for health conditions related to pregnancy or childbirth if the employee so requests, with the advice of her licensed health care provider or certified doula, unless the accommodation would impose an undue hardship on business operations. A pregnant employee is not required to obtain the advice of her licensed health care provider or certified doula, nor can an employer claim undue hardship, for more frequent restroom, food, and water breaks; seating; and limits on lifting over 20 pounds.¹⁴

Nebraska (passed with no dissenting votes in 2015)

- Applies to all employers with at least 15 employees.
- Requires employer to accommodate the known physical limitations of employees who are pregnant, have given birth, or have a related medical condition, unless doing so would impose an undue hardship on the operations of the business.¹⁵

Nevada (passed with bipartisan support in 2017)

- Applies to all employers with 15 or more employees.
- Requires the provision of reasonable accommodations to a female employee or applicant for employment, upon request, for a physical or mental condition relating to pregnancy, childbirth or a related medical condition, including lactation or the need to express breast milk, unless it would impose an undue hardship on the employer. The law includes some limited exceptions for certain construction contractors. An employer may require an employee to provide an explanatory statement from the employee's physician concerning the specific accommodation recommended by the physician.¹⁶

New Jersey (passed with one dissenting vote in 2014)

- Applies to all employers.
- Requires the provision of reasonable accommodations to an employee who is a woman affected by pregnancy, childbirth, or related medical conditions, including recovery from childbirth, when the employee, based on the advice of her physician, requests the accommodation, unless doing so would impose undue hardship on business operations.¹⁷

New York (passed with no dissenting votes in 2015)

- Applies to all employers with at least 4 employees.

- Requires the provision of reasonable accommodations for employees who have known temporary medical conditions related to pregnancy or childbirth that inhibit the exercise of normal bodily function, or are otherwise medically demonstrable, absent undue hardship to the employer. An employer can request medical or other information necessary to verify the existence of the pregnancy-related condition or necessary for consideration of the accommodation.¹⁸

North Carolina (Executive Order issued in 2018)

- Applies to state agencies for which the Governor has oversight responsibility.
- Absent an undue hardship, requires the provision of workplace adjustments to employees due to pregnancy, childbirth, or a related medical condition upon request. A state agency may require documentation from the employee's health care provider certifying the necessity of workplace adjustments.¹⁹

North Dakota (passed with one dissenting vote in 2015)

- Applies to all employers.
- Requires the provision of reasonable accommodations for pregnant employees, unless the accommodation disrupts or interferes with the employer's normal business operations, threatens anyone's health or safety, contradicts a business necessity of the employer, or imposes an undue hardship on the employer.²⁰

Oregon (passed with bipartisan support in 2019)

- Applies to employers with 6 or more employees.
- Requires the provision of reasonable accommodations for known limitations related to pregnancy, childbirth, or related medical conditions, including lactation, unless the accommodation would impose an undue hardship on the operation of the employer's business.²¹

Rhode Island (passed with no dissenting votes in 2015)

- Applies to all employers with at least 4 employees.
- Requires the provision of reasonable accommodations to employees, upon request, who have limitations in their ability to work stemming from pregnancy, childbirth, or a related medical condition, explicitly including the need to express breast milk, absent undue hardship to the employer.²²



South Carolina (passed with bipartisan support in 2018)

- Applies to all employers with at least 15 employees.
- Requires the provision of reasonable accommodations to employees for medical needs that arise from pregnancy, childbirth, or related medical conditions, including lactation, unless the accommodation would impose an undue hardship on the operation of the employer's business.²³

Texas

- Applies to all municipal and county employers.
- Requires the employer to make a reasonable effort to accommodate an employee who is determined by a physician to be partially physically restricted by a pregnancy. In addition, if any employee's physician certifies that the employee cannot perform her duties as a result of her pregnancy, the employee can receive an alternative temporary work assignment if such an assignment is available in the same office.²⁴

Utah (passed with bipartisan support in 2016)

- Applies to all public employers and to all private employers with at least 15 employees.
- Requires the provision of reasonable accommodations related to pregnancy, childbirth, breastfeeding, or related conditions upon the employee's request, unless the accommodation would impose an undue hardship on the employee. An employer may require certification from a health care provider concerning the medical advisability of a reasonable accommodation, unless the accommodation sought is more frequent restroom, food, or water breaks, in which case no certification may be required.²⁵

Vermont (passed with bipartisan support in 2017)

- Applies to all employers.
- Requires the provision of reasonable accommodations for employees who have limitations in their ability to work caused by pregnancy, childbirth, or a medical condition related to pregnancy or childbirth, unless it would impose an undue hardship on the employer.²⁶

Washington (passed unanimously in 2017)

- Applies to employers with 15 or more employees.
- Requires the provision of reasonable accommodations to employees for pregnancy and pregnancy-related health conditions, unless it would impose an undue hardship on the employer's program, enterprise, or business.²⁷

West Virginia (passed unanimously in 2014)

- Applies to all employers with at least 12 employees.
- Requires reasonable accommodations for employees who have limitations in their ability to work documented by a health care provider that stem from pregnancy, childbirth, or related medical conditions, unless the accommodation would impose an undue hardship on the employer.²⁸

Several municipalities have also adopted pregnant workers accommodations laws, all since 2013: New York City, NY (unanimously);²⁹ Philadelphia (no dissenting votes)³⁰ and Pittsburgh (unanimously),³¹ PA; and Providence (unanimously)³² and Central Falls,³³ RI.

1 ALASKA STAT. § 39.20.520 (1992).

2 CAL GOV'T CODE § 12945(A)(3)(A)-(C) (1999).

3 H.B. 16-1438, (to be codified at COLO REV. STAT. § 24-34-401, 402.3).

4 H.B. 6668, 2017 LEG. REG. SESS. (CT. 2017) (to be codified at CONN. CODE § 46A-60) .

5 DEL. CODE ANN. TIT. 19, § 711(A) (2015).

6 D.C.CODE § 32-1231.02 (2014).

7 HAW. REV. STAT. § 12-46-107 (1990).

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14 MINN. STAT, § 181.9414 (2014).

15 NEB. REV. STAT. § 48-1107.02(2) (2015).

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- 17 N.J. REV. STAT. § 10:5-12(s) (2014).
- 18 2015 N.Y. SB No. 8, 238th Leg., amending N.Y. EXEC. LAW § 292 (McKinney 2014) & N.Y. EXEC. LAW § 296 (McKinney 2014).
- 19 N.C. EXEC. ORDER No. 82 (2018).
- 20 2015 N.D. Laws Ch. 121 (2015) (2015 N.D. HB 1463, 64th Leg., amending N.D. CENT. CODE § 14-02.4-03).
- 21 H.B. 2341, 2019 Leg. Reg. Sess. (Or. 2019)
- 22 R.I. GEN. LAWS ANN. § 28-5-7.4 (2015).
- 23 H.B. 3865, 122nd Leg. Reg. Sess. (S.C. 2018) (to be codified at S.C. Code Ann. § 1-13-30, 80).
- 24 TEX. LOC. GOV'T. CODE § 180.004.
- 25 S.B. 59, 2016 Gen. Sess. (Utah 2016) (enacted), amending UTAH CODE § 34A-5-106.
- 26 H.136, 2017-2018 LEG., REG. SESS. (VT. 2017) (to be codified at 21 V.S.A § 495K (2017)).
- 27 S.B. 5835, 2017-2018 LEG. REG. SESS. (WASH. 2017) (to be codified at 43.70 RCW (2017)).
- 28 W. VA. CODE § 5-11B-2 (2014).
- 29 N.Y. Admin. Code 8-107(22) (2013).
- 30 Phila. Code § 9-1128 (2014).
- 31 PITTSBURGH ADMIN. CODE art. VII, § 161.44 (2014).
- 32 PROVIDENCE ORDINANCE No. 2014-10 (2014) (to be codified at Providence Code of Ordinances §§ 16-57).
- 33 CENTRAL FALLS CODE OF ORDINANCES, art. I, § 12-5 (2014).



WomensLawCenterofMD_FAV_#225

Uploaded by: Siri, Michelle

Position: FAV

BILL NO.: Senate Bill 225
TITLE: State Personnel – Employee Accommodations – Pregnancy and Childbirth
COMMITTEE: Senate Finance Committee
DATE: February 13, 2020
POSITION: SUPPORT

In 2013 Maryland amended the Fair Employment Practices Act by passing The Reasonable Accommodations for Disabilities Due to Pregnancy Law. This law provides pregnant workers who suffer pregnancy-related medical conditions the right to temporary, reasonable accommodations by their employers. Arguably, the law intended to include accommodation requests for healthy pregnant workers as well – but as it was not explicitly included in the bill many employers have failed to comply with those requests. In February 2017 a Maryland federal court found that the Maryland Fair Employment Practices Act does not apply to healthy pregnancies and that as such employers are not required to provide reasonable accommodations unless and until a pregnancy-related complication has already arisen¹.

Currently, we know that a pregnant worker with a documented complication is entitled to a reasonable accommodation from her employer. But what about those State employees who are experiencing a normal, healthy pregnancy but have been advised by their doctor that they should take certain precautions as a preventative measure? Should they be required to put their health at risk, and jeopardize their pregnancy, by performing work that goes against common sense, or their doctor's orders, before they are entitled those same, temporary accommodations? As we know, medical needs for temporary accommodations can arise from a normally progressing pregnancy to ensure the pregnancy remains healthy. Shouldn't our laws be pro-active, rather than wait until a pregnancy has developed serious medical conditions?

Senate Bill 225 seeks to address this issue and build upon the 2013 legislation by closing the loop hole established in *Saah*, as it relates to employees within the State Personnel Management System. This bill would clarify that *all* pregnant state workers would be entitled to reasonable accommodations that are necessary preventative measures aimed at maintaining a healthy pregnancy. It further strengthens existing state law by prohibiting the State from forcing a pregnant employee onto leave against her wishes when another reasonable accommodation would allow her to continue work.

It should be noted that in the bill's fiscal note it was determined that “the bill generally codifies existing practice for most State agencies under the State Personnel and Pensions Article. To the extent that a unit of State government does not already comply with the bill's requirements, *State finances are not materially affected.*” To the extent any modifications to existing policies are required, the changes to existing law are small, and would impose little burden on the State, but would have a great impact on women who wish to continue working and supporting their families throughout their pregnancies.

- **It clarifies that all pregnant employees are entitled to temporary, reasonable accommodations**
- It is the same analysis and obligations that the State is already applying to pregnancy complications under our current law, and the accommodations expected would be similar to those already provided to other employees, such as lifting, standing, and walking accommodations. All accommodations would be **temporary** in nature.

¹ *Saah v. Thumel*, (2017 U.S. Dist. LEXIS 17015)

- If an employee's request would create an undue burden, the State **does not** have to provide an accommodation
- If an employer asks for medical documentation, and the employee fails to provide it, the State **does not** have to provide the accommodation
- Nothing changes, except for a slightly greater number of women will receive temporary, reasonable accommodations.

Finally, it is worth noting that 27 states and the District of Columbia have passed bills or issued Executive Orders to explicitly grant pregnant employees the right to reasonable accommodations at work. Twenty-two of these bills have been passed since 2013, all with bipartisan support, and in the majority of cases with unanimous or near-unanimous support. And New Mexico is primed to become the 28th.

The expectations and obligations imposed under this bill are the same as have been in place since the 2013 enactment of the Maryland Pregnancy Discrimination Act. The only difference is the expansion to include pregnant workers at all stages of pregnancy – not just those with complications and disabilities. Because the Women's Law Center of Maryland understands that a diverse and well-rounded workforce includes women in all stages of life, and that Maryland families depend on pregnant women to support them, the WLC urges a favorable report for SB 225.

The Women's Law Center of Maryland is a private, non-profit, membership organization that serves as a leading voice for justice and fairness for women. It advocates for the rights of women through legal assistance to individuals and strategic initiatives to achieve systemic change.

ACLU_Spielberger_FAV_SB225

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**Testimony for the Senate Finance Committee
February 13, 2020**

**SB 225 – State Personnel – Employee Accommodations – Pregnancy
and Childbirth**

JOSEPH SPIELBERGER
PUBLIC POLICY COUNSEL

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The ACLU of Maryland supports SB 225, which would strengthen reasonable accommodation protections for state employees with a limitation caused by, or contributed to by pregnancy or childbirth.

Despite the enactment of the Pregnancy Discrimination Act at the federal level, pregnant women, particularly low-wage workers in male-dominated industries, are routinely pushed out of the workplace by ostensibly “neutral” employment practices. Employers may refuse to grant pregnant workers minor accommodations, like light-duty work, that they regularly grant other workers with temporary physical impairments. This discrimination against pregnant workers and mothers contributes to the gender wage gap and to workplace inequality.

In 2013, Maryland enacted the Reasonable Accommodations for Disabilities Due to Pregnancy Act, which has helped many pregnant workers in Maryland get reasonable accommodations that allow them to continue working during their pregnancies. Maryland law also allows employers to provide unpaid leave as an accommodation to pregnant workers. However, this is often not the appropriate response if the worker can otherwise be reasonably accommodated, and does not otherwise desire to suspend employment.

As employees already face wage gaps and gender discrimination in the workplace, SB 225 is an important step to ensure they are not further punished for pregnancy and childbirth.

For the foregoing reasons, we urge a favorable report on SB 225.

AFSCME3_FWA_SB0225

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Testimony
SB 225 – State Personnel –
Employee Accommodations – Pregnancy and Childbirth
Support with Amendments

AFSCME Council 3 supports SB 225 with amendments. Currently, if a woman is suffering from a complication related to her pregnancy, the State is required to provide reasonable, temporary accommodations to ensure the employee's health. There is no such clear requirement that the State provide similar accommodations to a woman with a healthy pregnancy who requires accommodations to keep her baby healthy. Our members perform a wide array of functions for the state, in a variety of work settings. Regardless if pregnant employees work in our state offices, on our highways, or in our maximum-security institutions, they should all have appropriate access to reasonable accommodations to ensure a healthy pregnancy.

AFSCME proposes two amendments to this legislation (which are attached to this testimony) to address how any dispute and/or denial of an accommodation is to be challenged and resolved. In these situations, time is of the essence and any wrongful denial should be resolved prior to the baby being born. Accordingly, there should be resort to an independent authority quickly and we would like to see Maryland take steps similar to what the Minnesota and New York State legislatures have done recently to fast track pregnancy discrimination related issues. AFSCME also proposes oversight of the accommodations made under this section as an added measure of accountability. AFSCME's amendments thus propose the following:

1. Employee complaints under this section, rather than going through a lengthy grievance procedure, instead are sent to the Office of Fair Practices. The Office of Fair Practices first attempts to resolve the dispute informally by informing all parties of the provisions of the law. The Office of Fair Practices must then contact the appointing authority within two (2) business days of receipt and investigate the complaint, and within ten (10) days provide a response.
2. The Secretary shall collect information on reasonable accommodations requested under this section and provide a report at least annually to the Joint Committee on Fair Practices. Further, the Secretary shall maintain and make publicly available, without individually identifiable health information, a list of the accommodations sought and provided under this section.

While this legislation will impact relatively few employees proportionately, the well-documented staffing challenges in our State Government should serve as added motivation to pass legislation that promotes the retention of qualified and dedicated public employees.

Every AFSCME Maryland State and University contract guarantees a right to union representation.
An employee has the right to a union representative if requested by the employee.
800.492.1996

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For all of these reasons, we urge the committee to adopt AFSCME's amendments and provide a favorable report on SB 225.

STATE PERSONNEL – EMPLOYEE ACCOMMODATIONS - PREGNANCY AND CHILDBIRTH

Proposed Amendments From AFSCME

I. Reporting of Accommodations (a new SPP 2-302(f))

(f) the secretary shall collect information on temporary reasonable accommodations to employees for limitations arising from or caused by pregnancy or childbirth and shall:

(1) at least annually report to the joint committee on fair practices and state personnel oversight; and

(2) maintain and make publicly available, without individually identifiable health information, a list of each accommodation sought and provided and summary information regarding the accommodation.

II. Timing for Investigations

Investigation. The office of fair practices shall receive complaints of employees relating to requests for accommodations under this section and shall investigate informally whether the accommodation was wrongfully denied. The office of fair practices shall attempt to resolve employee complaints by informing all parties of the provisions of the law and directing the unit to comply with the law. The office of fair practices must contact the reporting authority within two business days and investigate the complaint, and provide a response, within ten days of receipt of the complaint.