

A pregnant woman in a light blue t-shirt and dark pants is carrying several cardboard boxes in a warehouse setting. The image is overlaid with a dark teal color scheme.

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the work and family legal center

Pregnant and *Finally* Protected

One Year Later, the **Pregnant Workers Fairness Act**
Provides a Lifeline to Workers

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One Year Later, the Pregnant Workers Fairness Act Provides a Lifeline to Workers

By Chelsea Thompson, Dina Bakst, and Elizabeth Gedmark



A Better Balance is a national legal nonprofit advocacy organization that uses the power of the law to advance justice for workers, so they can care for themselves and their loved ones without sacrificing their economic security. Through legislative advocacy, direct legal services and strategic litigation, and public education, A Better Balance's expert legal team combats discrimination against pregnant workers and caregivers and advances supportive policies like paid sick time, paid family and medical leave, fair scheduling, and accessible, quality childcare and eldercare. When we value the work of providing care, which has long been marginalized due to sexism and racism, our communities and our nation are healthier and stronger. Learn more at www.abetterbalance.org.

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≡ Executive Summary

On June 27, 2023, the landmark Pregnant Workers Fairness Act (PWFA) went into effect,¹ bringing long overdue² protections to millions of workers affected by pregnancy, childbirth, and related conditions. No longer can pregnant and postpartum workers be forced off the job and denied the temporary accommodations they need to stay healthy and attached to the workforce. A Better Balance launched and led the ten-year movement for the PWFA because we knew, based on our work with scores of expecting and new mothers over the years, mostly those in low-wage and physically demanding jobs, that the status quo was unacceptable. We relentlessly argued since 2012³ that federal law was failing pregnant workers and an affirmative right to accommodations—things like light duty, a modified work schedule, and job-protected leave for prenatal visits, bedrest, and recovery from childbirth—was essential to ensuring fairness and equality under the law. Since the law went into effect last year, A Better Balance has not only been rigorously educating, implementing, enforcing, and defending the law, but also reflecting on the progress made since the law's effective date, lessons learned for other campaigns, and the vast work ahead.



This report illustrates the powerful impact of the PWFA with profiles of workers whom we have assisted over the past year, compared to those who were unable to rely on the law before passage.

First and foremost, it is clear that the PWFA has made an enormous difference for workers. At ABB, we have heard from nearly 500 workers on our free and confidential legal helpline over the last eleven months, including many women in low-wage and physically demanding jobs, with specific questions that related to their rights under the PWFA. Thankfully, the vast majority of these workers had clear law on their side. As a result, with our support, workers have been able to use the law to protect their health during pregnancy and after childbirth, and keep their jobs. For many workers with whom we have spoken, the difference between having and not having the PWFA is like night and day. We also know tens of thousands have relied on our online tools and resources, as well as the Equal Employment Opportunity Commission's (EEOC), to self-advocate independently, and countless others are benefitting from the PWFA's protections in a seamless manner after their employers updated their policies, handbooks, and training materials.

At the same time, without final regulations from the EEOC in effect for nearly this entire period and with many not knowing about the law's broad scope, the report also highlights common challenges we have seen some workers face accessing accommodations. The report concludes with recommendations for the future to ensure the promise of the PWFA is fully realized.



≡ Roadmap for this Report

This report starts in Section I with background information briefly explaining why the PWFA was introduced and passed after a decade-long movement. Then, we provide information about the recently promulgated regulations, which implement the statute. Section II provides insight into what it was like before the PWFA went into effect for pregnant and postpartum workers who required accommodations by sharing the experiences of A Better Balance Community Advocates who fought for the law.

Section III gives a big-picture view of what we are seeing on our helpline post-enactment as well as key statistics. It also profiles the experiences of workers who requested accommodations after the PWFA's effective date and groups them into the following categories:

- A. The PWFA in Action—helping workers prevent discrimination and keep their jobs:** This subsection includes the examples of Victoria, Kirsten, Cristel, Maxine, Louseda, Beca, Katie, and Raquel, all of whom were able to successfully receive accommodations under the

PWFA, ensuring they could take time off for prenatal visits, secure modified work schedules and remote work, get time off to recover from childbirth, have a space to pump breastmilk at work, access light duty work, and much more, without losing their jobs. These powerful examples of successful self-advocacy show that it was not always easy for these women to get accommodations, but thanks to the rights provided by the PWFA and their own tenacity, their stories represent powerful anecdotal evidence that the law is working as intended.

B. Common challenges workers faced when requesting

accommodations: This subsection identifies the patterns and common challenges A Better Balance heard about during the first year of the PWFA, such as requiring workers to complete onerous disability paperwork in order to be granted a modest pregnancy accommodation, as discussed below. We firmly believe, because the final regulations were not in effect,⁴ many workers faced obstacles due to a lack of clarity about details now provided in the regulations. Others continue to suffer due to an ongoing lack of awareness of the law.

Sections IV and V evaluate health and financial benefits post-PWFA, as well as the role of the regulations in promoting maternal and infant health and family economic security.

Next, we discuss legal challenges to the PWFA and final regulations in section VI.

Finally, Section VII looks at our key recommendations looking forward.

I. History and Purpose of the PWFA

In 2011, ABB Co-Founder & Co-President Dina Bakst recognized a disturbing pattern when speaking with workers and reviewing case law—pregnant workers, especially women in low-wage and physically demanding jobs, were being pushed off the job for needing temporary accommodations to remain healthy and working. A Better Balance’s legal research at the time confirmed that in far too many instances, this practice was upheld by courts as perfectly legal due to significant gaps in our civil rights laws. A few months later, Bakst published an Op-Ed in *The New York Times*,⁵ laying out the problem and calling for a legislative fix. **No worker in America “should be forced to choose between her job and a healthy pregnancy,” she wrote.** U.S. Representative Jerry Nadler of New York called A Better Balance the day the Op-Ed was published to discuss working together on federal legislation—shortly thereafter named the Pregnant Workers Fairness Act—and introduced it in the House of Representatives for Mother’s Day of that year. It was later introduced by lead sponsor Senator Bob Casey in the Senate that fall.⁶



Advocates attend PWFA Advocacy Day alongside Rep. Nadler.



As illustrated below by the powerful examples from A Better Balance Community Advocates who fought long and hard for passage of the PWFA, the purpose of the PWFA was to close a gap in our existing legal framework to ensure pregnant and postpartum workers were no longer forced off the job for needing temporary accommodations, facing devastating health or economic consequences as a result. The Pregnancy Discrimination Act of 1978 (PDA) was inadequate to protect workers affected by pregnancy, childbirth, and related medical conditions, primarily because the statute relied on a comparative framework where pregnant workers only had the right to be treated as well as similarly situated co-workers. This problematic framework was left in place even after a landmark 2015 Supreme Court case, *Young v. UPS*. The Americans with Disabilities Act (ADA) also was little help to many pregnant workers because the ADA does not cover pregnancy in and of itself, and even in instances of medically serious pregnancy-related disabilities, courts were ruling against workers who sought relief under the law.⁷

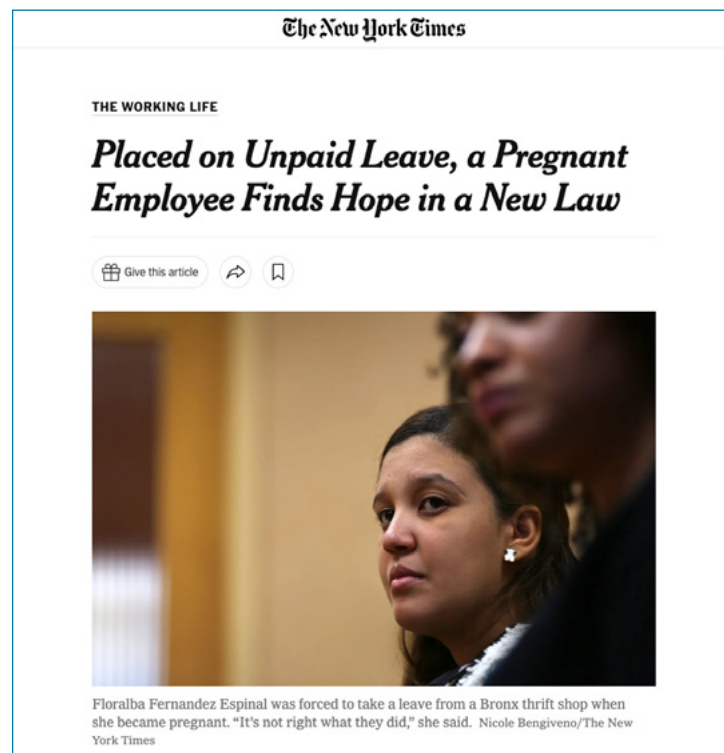
A Better Balance also argued, while pushing for its passage, that the PWFA was necessary for workers to have a clear, affirmative right to reasonable accommodations, in order to facilitate the immediate relief they needed, without

having to resort to costly and lengthy administrative agency investigations and filings or litigation. As Bakst told Congress in 2019:

“ [M]ost workers we hear from simply want an accommodation to continue working and comply with their doctor’s orders. They cannot afford to wait weeks, months, or years for a court decision. Once their baby has started elementary school, it is obviously too late to ensure the pregnancy is healthy at the outset and to prevent a downward spiral of financial woes. Workers need an explicit right to accommodations, not a standard that forces them into a years-long spiral of chasing down co-workers to meet a uniquely burdensome standard.⁸

Simultaneous to the push for the federal law, A Better Balance also worked with partners and coalitions to pass equivalent state and local laws. The movement in the states not only provided protections for millions of workers, but also built the case for the federal legislation, by demonstrating the benefits for employers and employees alike of having a clear law on the books. **For example, we knew we were on the right path when, with our quick assistance, Floralba Espinal, UFCW union member and thrift store employee, was able to get her job back with a light duty accommodation necessary to help her avoid having another miscarriage by relying on the New York City Pregnant Workers Fairness Act just days after it went into effect in 2014.**⁹

Finally, after more than ten long years and diligent efforts building a broad and diverse coalition, Congress passed the PWFA in



December 2022. For more information on the history of the law's passage, read A Better Balance's report, "Winning the Pregnant Workers Fairness Act: An Inside Story and Lessons Learned from the Decade-Long Fight for Justice, Fairness, and Equality."¹⁰

For more about workers' rights under the law visit, <https://www.abetterbalance.org/pregnant-postpartum-workers-know-your-rights/>.

☰ **EEOC's Final Regulations**

On April 19, 2024 the Equal Employment Opportunity Commission (EEOC) published its final regulations implementing the PWFA.¹¹ In August 2023, as required by law, the EEOC issued proposed regulations and invited the public to submit comments to provide feedback on the proposal. A Better Balance responded by submitting a nearly 100-page detailed comment, informed by the experiences of hundreds of workers who had contacted our helpline, urging for robust final regulations by the agency.¹² ABB also delivered over 8,000 comments from individuals urging strong regulations, led by ABB Community Advocates Armanda Legros and Natasha Jackson, discussed in more detail below.¹³ These final regulations provide clarity to employers and employees to understand how the PWFA works in practice, benefitting all parties involved. As described below, in many instances, it is reasonable to assume that negative experiences might have turned out differently had final regulations been released and in effect at the time the worker was struggling to receive an accommodation.

II. Before the Pregnant Workers Fairness Act

As described above, the Pregnant Workers Fairness Act was the result of over a decade of tireless advocacy, and an unwavering commitment to improving the status quo for pregnant and postpartum workers.¹⁴ Most importantly, our movement was grounded in the lived experience of workers, many of whom courageously stepped forward over the past decade to speak about their experiences and demand that their elected representatives hear them.

A Better Balance's Community Advocates fought tirelessly for the PWFA, publishing Op-Eds, talking to the press, appearing on television, signing community letters, speaking at rallies, and even testifying before Congress.¹⁵ By sharing their stories of severe economic hardship and health complications, they forced lawmakers to confront the realities of working while pregnant or after childbirth without the right to accommodations.

Their experiences demonstrate a striking contrast to those who are now able to benefit from the law, as described later in this report. For these mothers, this is what life was like prior to the Pregnant Workers Fairness Act.

Tasha Murrell shared the devastating aftermath of being forced to choose between the health of her pregnancy and her job. When employers denied employees accommodations, they found themselves in the impossible position of risking their pregnancy, or their job. Tasha found herself in this position after her employer ignored her request to avoid heavy lifting on her doctor's advice:

“ I was 12 hours into my shift lifting heavy boxes, when I started experiencing extreme stomach pain. I told my supervisor and requested to leave early. . . . She made clear that if I left early, she would reprimand me. So I stayed and worked an extra hour in terrible pain. I had no choice. I couldn't afford to lose my job. I left when the pain became too much to bear and my feet began to swell. Despite having worked more

than 13 hours straight, my supervisor still reprimanded me for leaving before my shift was complete.

The next morning, I woke up to find my bed drenched in blood. I went to the hospital and my doctor told me there was nothing they could do—I was having a miscarriage. .

.. We need to take a hard look at how our country supports pregnant and postpartum workers, because right now we're failing.¹⁶



Tasha Murrell sharing her experience on the *New York Times* podcast “The Daily” in 2018.

In the report *Pregnant and Jobless*, A Better Balance shared the stories of many pregnant workers who were forced off the job when they requested accommodations.¹⁷ In the years that followed, we often heard from pregnant workers who were immediately sent home when they requested accommodations, facing overwhelming stress and economic hardship as a result. Even when pregnant workers told their employer about minor restrictions that didn't impact their ability to do their job, employers made reactionary employment decisions relying on gender-based stereotypes and beliefs about the commitment that women in particular would have to their jobs once they became mothers.¹⁸

Armanda Legros testified before Congress to demand an end to forced leave for pregnant workers. Armanda spoke to Congress back in 2014 to urge lawmakers to pass the Pregnant Workers Fairness Act.

“ I worked for an armored truck company on Long Island for two years before I was pushed out of my job. I was 6 and 1/2 months pregnant when I pulled a muscle in my stomach doing some heavy lifting at work and had to miss the rest of the week recovering. My doctor told



me to avoid heavy lifting so I wouldn't hurt myself again, and gave me a note to bring into work. My manager took one look at the note and sent me home without pay, indefinitely. He said I could only work if I had no restrictions—company policy. I knew this wasn't true: they had accommodated my co-worker who had injured his back on-the-job.¹⁹

Armanda's experience was distressingly common. Rather than trying to work with pregnant employees to keep them on the job, employers sent them home as soon as they learned about their pregnancy restrictions. Without a federal right to pregnancy accommodations, many workers had no recourse when their employer put them on leave. These workers found themselves without a source of income when they needed it most. Armanda told Congress what happened to her after she lost her job:

“ I tried to get another job, but I was showing and I could tell from the interviews that no one was going to hire me. I had to go 7 months without pay when I needed that income more than ever. My credit score dropped and I almost lost my apartment when I fell behind on rent payments. Even when I applied for emergency rental assistance, I didn't qualify because I didn't have any income coming in. My employer fought my unemployment benefits, and when they did finally arrive, it

was still only a fraction of my original salary. I had no choice but to apply for public assistance. . . .

When I was eight and a half months pregnant, my health insurance was cut off. I couldn't afford the COBRA payments and had to apply for Medicaid for my prenatal care. Once my baby arrived, just putting food on the table for him and my four-year-old was a challenge. I was forced to use water in his cereal at times because I could not afford milk. I was scared every time I looked in my empty fridge.²⁰



Denizer Carter spoke out about the cascading consequences of losing one's job while pregnant. Denizer worked for a large grocery store chain in Louisiana until 2019. When she nearly had a miscarriage, her doctor told her that she needed to take occasional rest breaks and refrain from heavy lifting. Even though there were plenty of tasks Denizer could still do, Denizer's employer pushed her out of the job instead of accommodating her. In 2022, Denizer wrote an Op-Ed for *Ms.* magazine that described the impact this had on her growing family:

“ It was devastating to lose my paycheck with a baby on the way. I also had another child at home to support and the pandemic had just

begun. I used up all of my savings and I eventually had to move in with my mother because we could not afford rent. I was diagnosed with anxiety and suffered multiple panic attacks. I applied for other jobs but no one wanted to hire me while I was visibly pregnant.²¹

Denizer later traveled to Washington, D.C. to demand that her elected representatives hear her story. “I am currently pregnant but I made the effort to come all the way from Louisiana to say: I’m disappointed and angry the Pregnant Workers Fairness Act wasn’t passed years ago,” Denizer said at a rally outside the Capitol on December 1, 2022.²² “Listen to my voice. It has to happen now.”²³ Mere weeks later, the PWFA was signed into law.

Lyndi Trischler had to fight for the same opportunity to work that her fellow officers received. Officer Trischler was a patrol officer in Florence,

Kentucky. Five months into her pregnancy, her doctor put her on light duty. Light duty was available in the police department where Officer Trischler worked, and officers who were injured on the job were given light duty as a matter of policy. However, the City of Florence wouldn’t extend this policy to allow Officer Trischler to continue

working through her pregnancy. Officer Trischler wrote about this experience in an Op-Ed in the *Cincinnati Enquirer*:

“ My pregnancy was complicated and painful physically and emotionally because we had learned that our son had a rare genetic disorder, meaning he would not survive for very long after he was born. No expecting parent should ever have to shoulder devastating news like



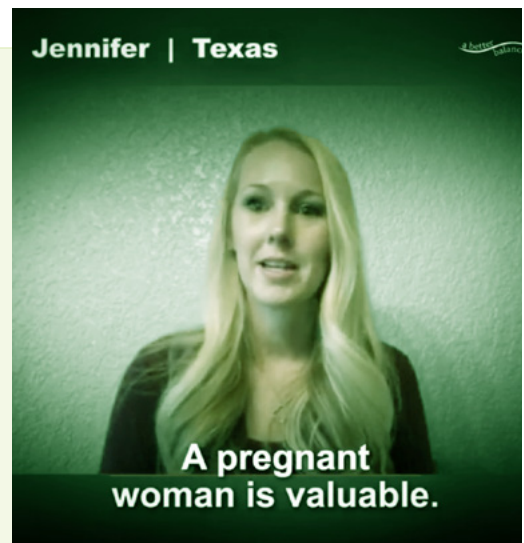
that while also fighting an unsupportive workplace and wondering how to pay expensive medical bills. There was financial stress too from being pushed out of my job—my one-year-old daughter and I moved out of our apartment since we could no longer afford rent.²⁴

A Better Balance represented Officer Trischler and another officer from her department, Samantha Riley, who was also pushed off the job while pregnant because of the same discriminatory policy. On their behalf, we filed a charge of discrimination under the Pregnancy Discrimination Act—at the time, the only law that gave pregnant employees any legal recourse when they were denied accommodations. Officer Trischler and Officer Riley were able to get compensation for the harm they suffered and the City of Florence agreed to change its policy to include accommodations for pregnant workers. However, their victory, which took years to achieve, was the exception to the rule. In a 2019 report, A Better Balance found that two-thirds of employees who tried to bring this kind of legal claim in court lost their cases.²⁵

Officer Trischler became an outspoken advocate for the affirmative right to pregnancy accommodations, both at the state and federal level.

Jennifer, a healthcare worker, was denied the accommodations she needed to protect her pregnancy while on the frontlines of the pandemic.

Jennifer learned she was pregnant shortly before the pandemic started. “At about seven months pregnant, I asked for some basic safety precautions,” Jennifer told A Better Balance in 2022.²⁶ “These were the same safety precautions that were given to a male doctor who had an autoimmune condition. My request was denied, and the company I worked for had a meeting with me and told me they had made the decision to replace me with a non-pregnant person who didn’t need any accommodations and that I was no good to them pregnant.”²⁷



At a time when the nation desperately needed healthcare workers, Jennifer was treated as disposable because she was pregnant. “I know I speak for moms out there, when I say we are exhausted. A pregnant woman is valuable. We’re valuable to the country, we’re valuable to the workforce, and it’s time that we start getting treated that way.”



Natasha Jackson introducing President Biden at a White House event celebrating passage of the PWFPA.

At a Congressional briefing, Natasha Jackson shared what happened after she told her employer about her pregnancy restrictions:

“ [O]nce the district manager found out that I was pregnant, he told me the schedule change I’d worked out with my store manager could not continue. I reassured him repeatedly that I was fully capable of working and that it posed no risks to my pregnancy. . . . I told them that I only occasionally needed to lift anything on the job. I explained that on the few occasions in the past when my job required me to lift something heavy, my coworkers had always helped me out.²⁸

Instead of accommodating her, Natasha’s employer made her take unpaid leave, and then terminated her soon after she gave birth. Natasha’s dreams for her family were immediately derailed:

“ My husband and I had just made a down payment on a house and were about to close the deal. Without my income, we were forced to back out of the contract. I earned more than he did since he worked temporary jobs. So I was out of a job and no longer able to support my family.”²⁹

After the PWFA was passed, Natasha Jackson, Armanda Legros, and Lyndi Trischler joined A Better Balance at a White House event celebrating the law’s passage. “This victory is personal to me,” Natasha shared while speaking at the event. “I have two daughters and nieces. I am so grateful that they—and millions of workers across the country—won’t have to choose between starting a family or keeping their jobs.”³⁰

By sharing some of the most difficult moments of their lives on a national stage, A Better Balance Community Advocates became the voice of millions of workers. Passing the PWFA would not undo the harm they had suffered. But they spoke up anyway and fought for the women who would come after them. Their efforts ensured that, as enacted, the PWFA was a comprehensive law with the potential to dramatically change the workplace for pregnant and postpartum workers. Because of their willingness to speak out, these remarkable women made possible the experiences detailed in this report in the next section—stories of success from real workers who benefitted from the law they fought so hard to pass.

III. The View From the Ground: Worker Experiences From A Better Balance's Legal Helpline

When the PWFA was passed and signed into law in December of 2022, twenty-two states still had no law that gave pregnant workers in the private sector the right to reasonable accommodations. Federal employees also had no legal right to pregnancy accommodations.

Then on June 27, 2023, the PWFA went into effect. **Overnight, millions of workers gained the right to accommodations that would allow them to work during and after their pregnancy. The enormous amount of media attention that the new federal law drew meant that many workers heard for the first time that they could have a right to pregnancy accommodations.** The state laws, while they had changed the lives of workers and built a groundswell of support for the PWFA, had rarely been the subject of national news. Moreover, the federal



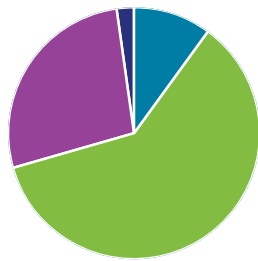
government was now using its significant reach to get the word out, and more workers and employers than ever heard about the PWFA through EEOC trainings and outreach.

The effect of this sudden attention was immediate. Since June 27, 2023, A Better Balance has received tens of thousands of visitors to our online know-your-rights resources about the PWFA, many of whom have accessed the [sample letters](#) we created to help workers request accommodations and explain their PWFA rights to their employer. Our resources were also amplified by dozens of influencers, partners, and elected officials on social media after the law took effect, helping information about the new law reach millions more people.

A Better Balance has also been able to speak to hundreds of workers about their PWFA rights over the last year. We have learned about their experiences, and shared in both their challenges and their triumphs. In the first month alone after the law's effective date, A Better Balance's helpline received 108 calls or messages from workers about the PWFA. At first, we expected to hear mostly from workers who had no existing right to pregnancy accommodations before June 27th, since they would be most impacted by the PWFA. **To our surprise, the majority of these calls were coming from states that already had a pregnancy accommodations law that covered private employees, indicating that the new federal PWFA had done the important work of spreading awareness about the right to accommodations for pregnancy and childbirth.** As of June 3, 2024 we had heard from almost 500 workers from 44 states and Washington, D.C., representing a cross-section of the workforce.

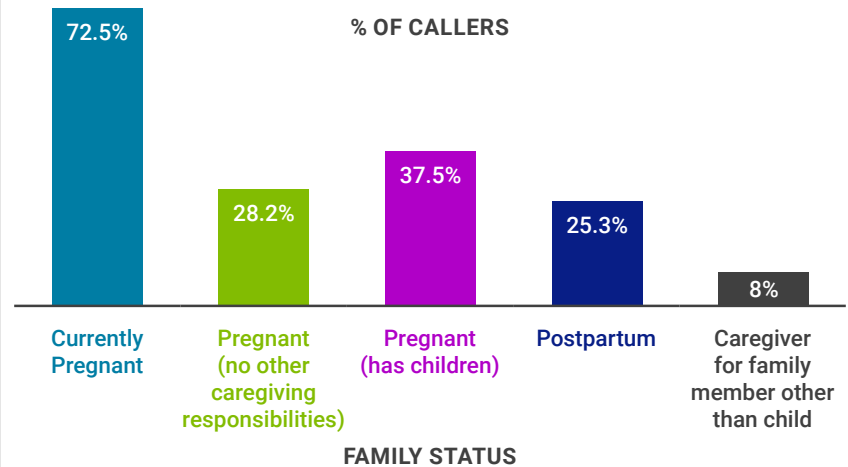
A snapshot of helpline callers

Age Data

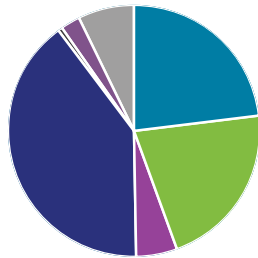


AGE RANGE	% OF CALLERS
18 to 25	10%
26-34	60%
35-42	27%
42+	2%

Family Status Data

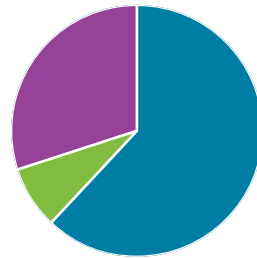


Race/Ethnicity Data



RACE/ETHNICITY	% OF CALLERS
Hispanic/Latinx	23.3%
Black/African American	21.3%
Asian	5.2%
White	40.2%
American Indian/Alaska Native	0.4%
Native Hawaiian/Pacific Islander	0%
Other	2.4%
Multiracial	7.2%

Callers by State + D.C.



% OF CALLERS FROM PWFA STATES (AND D.C.) VS. NON-PWFA STATES

Callers from states with PWFA for all employees	62%
Callers from states with PWFA for public employees	8%
Callers from non-PWFA states	30%

Most Common Industries

INDUSTRY	% OF CALLERS
Healthcare*	30%
Business & Financial	10%
Education	9%
Manufacturing/Warehouse/Distribution	8%

*The fact that healthcare workers are by far the most common callers to our helpline is especially concerning given that the United States is facing a critical shortage of healthcare workers. The Health Resources & Services Administration predicts that the country will face a deficit of over 400,000 nurses in the coming decade. Health Workforce Projections, Health Resources and Services Administration, <https://bhwh.hrsa.gov/data-research/projecting-health-workforce-supply-demand> (last visited Apr. 9, 2024).

A. The PWFA in Action—helping workers prevent discrimination and keep their jobs

For over a decade, A Better Balance’s helpline has provided workers with free information about their legal rights. Through our helpline, we have seen that information can be an incredibly powerful tool in a worker’s hands. Often, callers to our helpline are able to get pregnancy accommodations by sharing information about the PWFA—such as our sample letters—with their employers. Over the first year of the PWFA, we have heard many stories from workers who used the new law to successfully advocate for themselves.

The workers we spoke to said that knowing the law was on their side made them feel more confident about asserting their legal rights. **This is the PWFA working as intended: empowering employees to ask for the accommodations they need, spreading awareness among employers, and shifting the paradigm for pregnant workers in workplaces across the country.**

The following profiles are examples of success stories where workers were able to obtain the reasonable accommodations they needed by using the PWFA, with legal information provided by ABB, and in some cases, through ABB’s direct intervention with their employers through legal representation.

Victoria’s Story: Fighting back against forced leave

Victoria, a pregnant custodial worker in South Carolina, called us because her employer was forcing her to take unpaid leave.

Victoria’s doctor issued a note specifying pregnancy-related work limitations, including restrictions on lifting anything over twenty pounds, limitations on climbing, and the need for additional breaks. Victoria handed her doctor’s note to her employer a few days later, expressing her intention to continue working while following her doctor’s advice. However, Victoria was subsequently informed that she couldn’t return to work until her pregnancy-related restrictions were lifted.

After contacting A Better Balance, Victoria used our PWFA resources to

successfully advocate for herself. Her employer agreed that she could continue working while pregnant and that they could accommodate the restrictions set out by her doctor. She returned to her normal shift the following day.

Victoria wants other pregnant employees to know that they have a right to keep working. "It's important to know that having a baby inside your belly is not a sickness."

She further added that employers need to be thinking about the lives of their employees outside of work if they want to keep employees who have families (particularly women) working for them long-term.

"When for a company is the right time for a woman to have a baby? It would never be the right time if they don't make accommodations."



Victoria later told us that after she came back to work, her employer put up posters in the employee break room about the PWFA and the right to pregnancy accommodations. Victoria hopes this means that other workers won't have to go through what she did, and her employer will work with pregnant employees to find accommodations instead of forcing them on leave.

Victoria's story shows that by asserting their rights, pregnant employees can bring about significant changes in their workplace and get back to work when they are unjustly pushed out.

Kirsten's Story: Getting job-protected time off to recover from childbirth

Kirsten is a part-time enrollment specialist at a community college in Arizona. She recently had her first child. While she was pregnant, Kirsten called A Better Balance's helpline for information about her legal rights. She wasn't eligible for Family and Medical Leave Act (FMLA) leave because she hadn't been with her employer for long enough to qualify.³¹ **Using information about the PWFA that A Better Balance provided, Kirsten was able to request leave to recover from childbirth as an accommodation under the PWFA.**

Being able to get the leave she needed to physically recover from childbirth made all the difference in Kirsten's peace of mind as she welcomed her new baby. "Although this time off is unpaid, it makes me feel more secure financially and in my career," Kirsten told us. "I will have a job to return to and know I will be able to pay my bills and care for my child."

Kirsten said that the right to accommodations has given her peace of mind, since she knows she will be able to continue working through her pregnancy. "Overall, I think knowing that I have the PWFA to support me in my workplace has really allowed me to relieve stress I may have felt otherwise. I believe the PWFA is incredibly important



in supporting new families and those who want to start a family and hopefully in the future the government will implement even more legislation to help families.”

Cristel’s Story: Navigating pregnancy in a male-dominated industry

Cristel, an electrician’s assistant in New York City, was 29 weeks pregnant and needed accommodations to allow her to continue working. Initially, Cristel presented her employer with a doctor’s note outlining several pregnancy-related restrictions, such as limitations on lifting and climbing stairs, common for expecting mothers.

Rather than grant her accommodations or work with her to identify alternate accommodations that could meet her needs, Cristel’s employer tried to push her onto leave. Cristel told our Spanish-language helpline, “[C]uando me quedé embarazada, tenía miedo de sufrir discriminación, y así fue. Como trabajaba en la construcción y sólo había hombres, miraban a las mujeres como si no debieran trabajar sólo porque yo estaba embarazada. Definitivamente hay áreas en las que una podría trabajar que son más fáciles, pero simplemente te mueven y te colocan en áreas difíciles con la esperanza de que renuncies.”

Translated from Spanish: “When I became pregnant, I was afraid I would face discrimination, and I did. Because I work in construction and there were only men, they looked at women as if they shouldn’t be working, just because I was pregnant. There are definitely areas where one could work that are easier, but they just move you around and move you around to hard areas, in the hopes that you quit.”

After Cristel learned about her PWFA rights from A Better Balance and advocated for herself using the law, her employer suddenly exhibited increased flexibility and willingness to accommodate her needs. “They did listen to my doctor and accommodated the restrictions outlined

by my doctor, which was good and helpful,” Cristel told us.³² She feels relieved that she knows her rights and can ensure that her employer is treating her fairly. “I’m feeling hopeful.”

Maxine’s story: Getting leave as an accommodation under the PWFA saved Maxine’s job

Maxine* is a medical assistant in Washington, D.C. Her partner Andrés** reached out to ABB’s helpline on her behalf earlier in the year when Maxine was pregnant with their first child together. They were looking for more information about whether Maxine had the right to keep her job after she gave birth because her employer had advised that she had no options for maternity leave due to her tenure with the company. Specifically, her employer told her that because she would be about one month shy of her one-year anniversary with the company by the time she gave birth, she would not be eligible for leave under the FMLA, and therefore her only option would be to resign from her position.

We spoke with Andrés and explained that even though Maxine would not be eligible for FMLA leave by the time she gave birth, the PWFA still required her employer to provide her with job-protected time off work to recover from childbirth unless they could prove that doing so would create undue hardship for the company.

Using the information and resources about the PWFA we shared, Maxine sent an email to her employer requesting leave to recover from childbirth as an accommodation under the PWFA, and the company immediately changed their tune.

They went from advising that she must resign from her position upon giving birth to telling her that they would be happy to have her continue as an employee following the birth of her child. They then requested medical documentation indicating Maxine’s expected return-to-work date

following her delivery, which she submitted, and soon thereafter, she was approved for six weeks of leave.

Maxine later told us that the information she got from A Better Balance about the PWFA made all the difference:

“ I want to give a very special thank you to [the attorney my partner spoke with at A Better Balance] who is very well informed about the laws. Unfortunately for me I was told to put my two weeks in due to me about to give birth because I didn't have one year with the company. I had literally written up my [notice] and was about to turn it in the next day. Luckily for me that night I had looked up information and came across A Better Balance's free and confidential helpline, which saved me from resigning by informing me about the Pregnant Workers Fairness Act. Wow, this saved me from losing my job, completing now one year with my company and, most importantly, being able to spend that time with my baby. Thank you so much. I really do believe that these services don't get enough credit. Thank you for your hard work and knowledge!

Andrés also told us that without the information ABB shared about the PWFA, he and Maxine “would have been clueless since we didn't know the correct laws that protect us. I really appreciate your help.”

* Maxine has asked us not to use her real name.

** Andrés has asked us not to use his real name.

Louseda's story: Successfully advocating for accommodations in a healthcare setting

Louseda is a registered nurse in Florida. Louseda called our helpline during her recent pregnancy, since she had been experiencing lower abdominal pressure and pain that impacted her ability to work. Many healthcare employers offer light duty to workers injured on or off the job,

in order to keep qualified workers employed. However, when Louseda requested light duty as an accommodation, she was denied.

After researching the Pregnant Workers Fairness Act (PWFA) and seeing A Better Balance's online resources, Louseda asked her employer to reexamine her request under the law. **After a quick conversation with her employer about the PWFA, Louseda was granted several accommodations including a temporary transfer to a position that allowed her greater access to a chair and less walking, as well as a modified schedule.** With these accommodations, she was able to keep working without risking her or her baby's health. Louseda told us that seeing her stick up for her rights had made other pregnant nurses more comfortable asking for accommodations as well.

Louseda's experience as a healthcare worker was not uncommon. Healthcare workers seem to be struggling more than most to get accommodations, and close to 1 in 3 callers to ABB's helpline since the PWFA went into effect work in a healthcare setting. However, Louseda was able to not only get accommodations for herself but bring about larger changes in her workplace, letting her coworkers know that healthcare workers can benefit from the protections of this new law.

Beca's story: Exercising the right to accommodations to prevent pregnancy loss

Beca Macri is a certified nurse assistant in Massachusetts. Beca had previously experienced a pregnancy loss while working for her current employer of ten years. When she became pregnant again, Beca was determined to safeguard her health by seeking accommodations at work to limit the amount of heavy lifting she was doing.

"I feel like a lot of pregnant women across the world don't realize what their rights are," Beca told A Better Balance. "It took me having a miscarriage for me to advocate for myself because I realized my job

didn't care about me. I found the new law that took effect June 27th and did my research. I dug deep, not just to get myself help, but to spread the word to every pregnant person I meet."

Beca was able to use information about the PWFA that she got from A Better Balance's website to successfully advocate for pregnancy accommodations. Beca believes that this information made all the difference. **"When I went into work, I wasn't afraid to request reasonable accommodations because I wasn't alone," Beca said. "I didn't have a person with me, but I had a federal law with me to help me. Suddenly they agreed to accommodate me after being completely resistant before."**

Katie's story: Challenging inflexible return-to-office policies

Katie is a tax specialist in Ohio. Katie has been working remotely since 2020, but in mid-2023 her employer began to require employees to return to the office if they live within a certain distance. Employees who had moved farther away during the pandemic could continue to work remotely. When she called our helpline, Katie was four months pregnant and had gestational hypertension (high blood pressure). Her doctor recommended continued remote work as a pregnancy accommodation, but Katie's employer denied this request without explaining why they were making exceptions for employees who moved away, but not for pregnant workers.

After her request was denied, Katie spoke to A Better Balance about her legal rights under the Pregnant Workers Fairness Act and then used sample letters from A Better Balance's website to write to her employer. Shortly afterwards, her employer granted the accommodation she requested.

Katie told us: **"My employer denied my accommodation. I even had a doctor's note to back it up."**

I called A Better Balance and they helped reassure me that my accommodation was reasonable and provided a letter to give to my employer explaining the new law (PWFA). After reviewing they approved my accommodation! This law is a huge win for women!”

Remote work can make a huge difference for pregnant workers struggling with a variety of conditions. Even the common symptoms associated with pregnancy can make commuting and working in an office environment extremely difficult. Some employees we talked to were experiencing severe nausea that disrupted their workday and left them frequently running for the nearest bathroom or even vomiting at their desk. Others had conditions that required them to manage stress to control their blood pressure, and still others needed to be on bedrest. Postpartum workers who were struggling to produce enough milk by pumping needed to be close to their baby so they could directly breastfeed.

Many workers we spoke to who requested remote work as an accommodation for pregnancy or postpartum conditions were initially denied. Often, these workers weren't given a reason why their employer couldn't accommodate them, let alone an explanation of how it would be an undue hardship (especially given that many of them worked remotely for years during the pandemic). Frequently these workers were told that remote work was simply not an option anymore due to the company's return-to-office policy.

This problem is not isolated to high earners. Many of the workers we spoke to were not highly-paid professionals, but call center or customer service workers trying to support a growing family on less than \$40,000 per year. They wanted and needed to continue working throughout their pregnancies, and their employers had the procedures and technology in place to allow them to work remotely. However, their requests for accommodations were still being denied out of hand.

After speaking with our helpline, many workers (such as Katie) were able to return to their employer with information about their legal rights and

successfully advocate for remote work. However, others ran into roadblocks as their employers stuck to their implausible claims that providing temporary remote work would be extremely difficult or expensive for their business.

Raquel's Story: Unionized workers have the right to accommodations too

Raquel works for a major telecommunications company in Ohio. After Raquel gave birth to her daughter, like many new mothers, she developed severe postpartum mental health conditions. At the time she gave birth, pregnant and postpartum workers in Ohio did not have a right to reasonable accommodations. Raquel was able to take some time off to recover, but when she was ready to return to work, her doctor recommended that she temporarily work from home to make the transition more manageable due to her mental health needs.



When Raquel requested remote work as a reasonable accommodation from her employer under the new Pregnant Workers Fairness Act, her employer denied her accommodation on the grounds that she was a unionized employee. Raquel's union repeatedly advised her employer that it did not object to Raquel's employer providing remote work as an accommodation to union members and that there was nothing about Raquel's union contract that conflicted with the employer's legal obligations under the PWFA. However, Raquel's employer did not listen to the union, and Raquel was forced to remain on leave, losing vital income for her growing family.

Raquel contacted our helpline and learned more information about her rights under the PWFA. **Using information and resources from A Better Balance, Raquel returned to her employer and asserted that she had a legal right to accommodations for medical conditions related to childbirth, even if she was unionized.** Thanks to her self-advocacy, Raquel was able to get the accommodation she needed to return to work. Raquel told us that “if it wasn’t for A Better Balance, I couldn’t have gotten this accommodation.”

Still, the months that it took for Raquel to get this accommodation had lasting personal and financial consequences.

“My employer’s delay in responding to my request took a huge toll on me psychologically,” Raquel told us. “It further delayed my recovery as I was depressed and on pins and needles waiting for an answer. I didn’t know how I would survive if they didn’t approve my accommodation because I am not in shape to return to my office. Economically it affected me because they took so long to make a decision that I used up all of my vacation time and went into non-paid time which meant my paycheck was short and I got behind in many of my household bills.”

Raquel was not the only unionized employee that A Better Balance spoke to who faced this problem. In the early months of the Pregnant Workers Fairness Act, multiple callers told us that employers were using the collective bargaining agreement (CBA) they had with the union as an excuse not to accommodate workers, saying that potential conflicts with the terms of the CBA made accommodating the worker an undue hardship.

However, none of the workers we spoke to on our helpline had received information from their employers explaining how the accommodation they were requesting conflicted with the terms of the CBA. In fact, like Raquel, all of these workers had the support of their union when they requested accommodations.

Ashley's Story: A punitive absence control policy cost a worker her job, the PWFA helped her get it back

Ashley, a hospitality worker in Florida, was a star performer who consistently received excellent performance reviews at work. After she became pregnant, she experienced severe nausea and bleeding, causing her to occasionally come to work late or miss work to rush to the hospital to attend to her severe pregnancy symptoms. Rather than support and accommodate her, her employer punished her, deducting “points” for her pregnancy-related absences in accordance with its points-based absence policy and ultimately terminating her employment in violation of the Pregnant Workers Fairness Act. Ashley’s employer never brought up the option of reasonable accommodations, and she doesn’t believe they were aware of her rights under the new law.

“Losing my job put me and my family in immediate danger of being evicted from our home, and loss of medical coverage for not only ourselves but also our unborn child, making an already stressful and high-risk pregnancy even more stressful,” Ashley explained. “On top of that, the pride and inclusiveness I had felt working for my company was tarnished by being singled out and ignored, all because of my pregnancy symptoms.”

Ashley started researching online and learned about her rights under the PWFA. She contacted A Better Balance’s legal helpline and, using ABB’s and the EEOC’s PWFA resources, educated her employer about its legal obligations, and successfully got her job back. She told us, “Thank you so much for all of your guidance and help with everything. You really were the rock I needed and I am so thankful and will forever be grateful for you!”

About the PWFA, she reflected that **“knowing that the PWFA had my back meant that my voice and rights had to be acknowledged and not pushed aside. I was able to go to not only my HR division, but also to the directors of my department, to provide educational material about pregnant workers’**

rights with confidence, resulting in receiving my full-time status and benefits at work again.”

B. Common challenges workers faced when requesting accommodations

For all of the success stories we heard about on the helpline, as the experiences above show, the process of getting accommodations was not always easy for the workers who called our helpline. Certain patterns began to emerge: many workers were waiting too long for responses to their accommodation requests, struggling with burdensome requests for medical documentation, grappling with their employers who had denied accommodations without explanation, or were even at risk of losing their livelihood because their employer was disciplining them for absences or forcing them onto leave.

The stories below highlight trends that we heard about during the first year—trends that burden the critical rights created by the PWFA and show us that the fight to protect pregnant workers is far from over.



i. Urgent accommodation requests were met with unnecessary delays and obstacles

When a worker lets their employer know about a pregnancy- or childbirth-related limitation, this is supposed to trigger an “interactive process” under the PWFA between the employee and their employer. Employers can’t require workers to accept any accommodation without first engaging in the interactive process. The interactive process should be a dialogue, allowing the employer to gather the information they need to provide the employee with an effective accommodation. In practice, many callers to our helpline described a process that was excessively burdensome and one-sided.

The interactive process was the most common issue raised by workers who contacted our helpline. Some workers described processes that were prohibitively difficult to navigate, as their employers requested highly detailed medical documentation even for minor accommodations, such as a stool to sit on. Others had to wait for weeks or even months for a decision on their accommodation request, often taking (or being forced to take) leave without pay while they waited—if they heard back at all.

These examples identify common themes of barriers in the interactive process we have heard on our helpline.

Robin’s story: Major hurdles even for minor accommodations

Robin* works for a convenience store in Virginia. At thirty-two weeks pregnant, Robin was struggling to stand for long periods of time behind her cash register, and requested a stool to sit on. Robin’s manager said they could not grant her accommodation request, so Robin had to directly reach out to HR. HR then redirected her to a separate company that handles employee benefits. After she submitted her request to that company, she didn’t hear anything for weeks.

It is increasingly common for employers to use third-party administrators to handle accommodation requests, and almost every worker we

spoke to who had to request an accommodation from a third-party administrator dealt with significant communication issues and delays.

They told us that the interactive process ground to a halt as soon as their request was handed off to a third-party administrator, or that they were caught in a feedback loop between their employer and the third-party administrator as neither party took responsibility for making a decision. When

faced with these disheartening obstacles, rather than giving up, Robin contacted A Better Balance. After we learned about her impossible situation, we offered her legal representation and reached out to her employer on her behalf. A Better Balance was able to successfully negotiate accommodations with her employer. Robin was thankful for our assistance, and has been able to continue working without further issues and support her family.

* Robin asked us not to use her real name.

Rachel's story: The cost of getting accommodations shouldn't outweigh the benefits

When Rachel*, a nurse in Virginia, requested light duty, she was put on leave for two weeks. She quickly used up all her paid time off, going into unpaid leave. Her employer then agreed to give her accommodations, but when she returned to work, she was still frequently being asked to do tasks outside of her restrictions. She raised the issue with HR, but they were not supportive. The more she fought to have her accommodations respected, the more stressful it became. Rachel told us that the stress of navigating the accommodations process (and the health risks that creates) was enough to dissuade her from getting accommodations. She was worried that if she pushed the issue, she would be put back on unpaid leave and be under even more stress. She eventually decided to give up on getting accommodations and get a note from her doctor

clearing her work restrictions. She was able to continue working without an official accommodation with the support of her coworkers.

* Rachel has asked us not to use her name.

Janiyah's Story: For some workers, it's too little too late

Janiyah worked for a mid-size retailer in Maryland. During her pregnancy she developed serious back pain, so she asked her employer for a stool behind the cash register so she could sit down as needed during her shift. Her employer denied this request, and when Janiyah found her own stool to use, her employer reprimanded her for sitting down during her shift and eating snacks at her workstation.

They told her she needed a doctor's note if she wanted to sit down during her shift, but even after she got a doctor's note, her employer continued to monitor her over the store's cameras and disciplined her for sitting down. Janiyah told her employer there was a law that required them to accommodate her, but nothing changed.

Janiyah decided to quit her job because of the difficulty she was facing getting accommodations. She spoke to A Better Balance's helpline shortly after she quit, and our helpline staff discussed her legal right to accommodations with her. However, Janiyah didn't want to try to get her job back with accommodations—she was too close to her due date, and after struggling with her employer over every minor thing, she was done.

ii. Requests for unnecessary medical documentation delayed the process or even put accommodations out of reach

Before the PWFA was passed, the only law that gave workers the affirmative right to work-related accommodations was the Americans with Disabilities Act (ADA).³³ As discussed in Section I above, we fought for the PWFA because the ADA was

not enough. Workers who had debilitating yet common pregnancy- or childbirth-related limitations had no right to accommodations, and had to work through health conditions that risked the safety of themselves and their pregnancy. The PWFA changed the landscape by giving pregnant and postpartum workers broader access to accommodations even when they didn't have a particular diagnosis or a condition that met the limited definition of "disability."



And yet, some employers do not seem to have gotten the notice. It was shockingly common for employees to ask for pregnancy accommodations and get handed ADA paperwork that asked them for detailed information about how their condition "limited major life activities" (language that comes directly from the ADA but is not a requirement of the PWFA) or to outright certify that they have a "disability."³⁴ Not only does this mislead employees about their rights under the PWFA, it also requires them to provide medical information that their employer doesn't need to determine the proper accommodation. The limitations associated with pregnancy are not medical mysteries; they are often common sense. **Pregnant employees shouldn't need to turn in detailed information about their diagnoses and medical treatments for their employers to know that they may need additional restroom or snack breaks, the ability to sit down at their workstations, a closer parking spot in their last trimester, or accommodations so they can pump breastmilk at work.**

Moreover, by requiring detailed medical documentation for even simple accommodations, employers put accommodations out of reach for many workers. Especially early in their pregnancies, workers may not have found an OB-GYN, and setting up a costly doctor's visit just to get paperwork filled out is prohibitively expensive for many workers. **Even if an employee could get medical paperwork filled out, employers would frequently reject it for not being specific enough even if it described in detail the employee's limitations and the accommodations they needed.**

As the stories below show, requiring extremely detailed medical documentation can be a barrier to getting accommodations, and employers are not working with their employees to get around this barrier.

Christine's story: When an employer won't take a doctor's advice

Christine* works in marketing for an employer in South Carolina with over 10,000 employees nationwide. Christine was experiencing severe and sudden nausea in her second trimester of pregnancy, making her commute dangerous and working in an office setting nearly impossible. She also experienced pregnancy-exacerbated migraines that she had home treatments for that she couldn't bring into the office.

With her supervisor's support, Christine requested remote work as an accommodation. At first, her employer handed her paperwork for disability accommodations, and her doctor wasn't sure how to fill it out since Christine did not have a disability. Christine looked up her PWFA rights, and got her employer to modify their paperwork to mention pregnancy-related conditions. She eventually submitted medical paperwork from her doctor describing her severe nausea and why it made remote work the safest option for Christine. However, HR denied her request, saying that extreme nausea—even when it caused her to vomit at her desk, disrupting her work and the work of those around her—wasn't a sufficient reason to work remotely.

Christine reached out to A Better Balance for help. Once A Better Balance intervened with her employer, Christine was able to get the accommodation she was looking for, but only after she submitted additional medical documentation that contained detailed information about her diagnoses and treatments. This was far more information than her employer needed to understand her limitations and which accommodations she required, but thankfully Christine's doctor was able to provide it, leaving her employer with no excuse not to accommodate her.

Although it shouldn't have been this difficult for Christine, she was grateful that the PWFA allowed her to be accommodated in the end. "Before I connected with ABB, I felt alone, not heard nor valued, and was beginning to doubt my rights,"

Christine told us. "I am so thankful ABB was able to help my company agree to allow me to work remotely while I experienced these symptoms and navigated this difficult and vulnerable time in my life. Without ABB's support and advocacy for adequate pregnancy accommodations and rights, I would not have been able to continue working."

* Christine asked us not to use her real name.

Sasha's Story: Not all healthcare providers are willing to write documentation

Sasha H. works in a warehouse in Memphis, Tennessee. In the summer of 2023, Sasha sought accommodations for her high-risk pregnancy. However, her employer refused to grant her excused time off to attend prenatal appointments, putting Sasha at risk of being fired.

Sasha also struggled to get her doctor to support her accommodation needs. When she asked for a doctor's note recommending a reserved parking spot closer to the entrance to her worksite to minimize walking,

her doctor declined to write her a note because she “didn’t qualify for a handicap placard.”

Employers can’t assume that getting medical documentation will be straightforward, even for basic or obvious accommodations. Some doctors aren’t even aware that their patients have the right to accommodations and can be an obstacle in themselves.

iii. Employers denied accommodations for reasons that had no basis in the law

Under the PWFA, covered employers are required to accommodate pregnant and postpartum workers and may only deny accommodations if it would be an “undue hardship” (extremely difficult or expensive) to do so. The undue hardship standard allows businesses to refuse accommodation requests that would be highly burdensome to their operations, taking into account factors such as their size, resources, and the nature of their business. However, it does not allow employers to refuse employees the accommodations they need to keep working if they would only be a moderate difficulty or inconvenience to the employer.

In spite of this, we heard from multiple employees who had their request for accommodations denied for reasons that weren’t an undue hardship. Several employees said that their employer was worried that accommodating pregnant workers was unfair to other employees, and would impact “morale.”³⁵ Some employers said that providing the requested accommodation violated their policies.³⁶ Other employers would invoke the terms “hardship” or “undue hardship” when they denied the accommodation, without further explanation or engaging in a dialogue with the employee about alternative accommodations.

Equipped with information about their legal rights and what “undue hardship” actually means, some workers we spoke to were able to get their employer to change their accommodation decision. Others, however, found themselves at an impasse.

Rebecca's Story: Employees deserve more than a generic answer to their accommodation requests

Rebecca is a nurse in New York. She is breastfeeding and requested for her employer to limit her exposure to patients with COVID-19, since getting COVID could impact her milk supply. She felt this would be a reasonable request, as her employer has total discretion over which patients are assigned to her. She requested this accommodation and shared information with her employer about their obligations under the Pregnant Workers Fairness Act.

However, her employer denied her request and gave her a vague letter saying this request would remove an essential function of her job "and/or" is an undue hardship, without any explanation about which essential functions would be impacted or why it was an undue hardship. She is in the process of appealing her employer's accommodation decision using information provided by A Better Balance.

One of the major ways that the PWFA differs from previous laws, such as the Americans with Disabilities Act, is that workers are still qualified for accommodations under the PWFA even if they temporarily can't perform one or more essential job functions. Excusing an essential function *can* be a reasonable accommodation under the PWFA, but many employers (like Rebecca's) haven't updated their processes to reflect this significant change in the law. As far as Rebecca knows, her employer didn't ever take this possibility into account.

iv. Employers were still enforcing punitive absence control policies against pregnant workers in violation of the PWFA

Workers who called our helpline were seriously struggling to balance their jobs with the challenges of pregnancy. With access to little or no sick time,³⁷ workers were unable to take time off work to attend critical prenatal appointments, or to deal with severe morning sickness and other pregnancy-related illnesses. If they took time off anyway, they received "absence points," a common strategy used



(and abused) by employers to control employee absences.³⁸ Accruing enough absence points can lead to automatic termination, and we heard from multiple workers who were one absence away from losing their job.

The PWFA can provide these workers with the time off they so desperately need. **Workers can request time off work for pregnancy-related illness or prenatal care as a reasonable accommodation, and employers must give them time off unless it would be extremely difficult or expensive to do so.** However, many workers we spoke to were not aware that they could request time off as an accommodation, in large part because their employers' absence control policies hadn't been updated to mention the new law. Using the PWFA, workers were able to push back against abusive absence control policies, and get the time off work they needed to manage their pregnancies. But as the story below shows, getting employers to change their overall policies could be a bigger fight.

Hayley's Story: Employers need to update punitive absence control policies

Hayley is a police officer in Texas who just had her first child. Hayley's employer has an absence control policy that gives workers "points" for unplanned time off, even if the worker has PTO available to cover this

absence. This policy contains exceptions for employees with disabilities who need accommodations under the Americans with Disabilities Act, but doesn't mention anything about pregnancy accommodations or the Pregnant Workers Fairness Act.

During her pregnancy, Hayley accumulated points for two unplanned absences due to pregnancy-related illness and received a warning that if she got another point she could be terminated. The resulting stress led to health consequences for Hayley, and she learned that she was too high-risk to give birth at a birth center as she originally planned.

"For me the experience was frustrating and ultimately my blood pressure continued to elevate only while at work to the point I risked out of being able to use the birth center I paid \$7500 for," Hayley shared. "It was a huge financial loss and an even bigger emotional loss."

Using information from A Better Balance, Hayley advocated for her employer to change their absence control policy to account for workers who have unplanned absences due to pregnancy. She was able to get her own absence points removed, but by the time she gave birth, her employer had not updated their policies and other pregnant officers were still struggling to get points excused.

v. Forced out on leave by their employers, workers suffered serious consequences

As the stories of A Better Balance's Community Advocates who were forced on leave after requesting accommodations show, forced leave can have catastrophic consequences for pregnant and postpartum workers. A Better Balance fought to ensure that the PWFA addressed this problem and, as enacted, the new law contains language to specifically prohibit this practice. It is now illegal to put an employee on paid or unpaid leave if any other reasonable accommodation can be provided.³⁹

Workers are undoubtedly better off with the law on their side in avoiding being pushed onto leaves of absence. Yet, employers are still using leave as a way to

avoid accommodating employees. In the first year of the PWFA, almost one out of every seven callers who contacted the helpline told us that they were being threatened with or were already on forced leave even when there were other accommodations available—far too many, given that this is now illegal under the PWFA. **Thankfully, and unlike prior to the PWFA's enactment, many were able to end their leave by advocating for themselves using the law and A Better Balance's resources,** but as the experience below describes, they still suffered financial and personal setbacks as they waited for their employer to correct this violation of their rights.

Abby's Story: Out of sight, out of mind, and out of work

Abby* is a hospital technologist at a hospital in Florida. She has been working for her current employer for ten years. When Abby had her first child, she was able to work for the duration of her pregnancy. However, when she was expecting her second child, it was a very different story.

During Abby's second trimester, her doctor put her on light duty due to tachycardia. The hospital she works at had a light duty program, but when Abby requested light duty, her supervisor sent her home because they were worried that her restrictions made her a "liability." This was only days after the PWFA went into effect. "Getting sent home early from work in front of all my colleagues felt so demeaning," Abby told us. "It made me feel inadequate to do a job that I had worked hard to master all those years."

Abby was placed on leave, without pay, despite the availability of alternate work for her to do, and then forced her to endure months of silence as she waited to learn when and how she could return to her job. Abby called and emailed her employer about getting back to work with accommodations, but they didn't respond.

The financial consequences for Abby's family were immediate and severe. "Since I was no longer able to contribute to my financial household responsibilities, my husband had to take the burden on all

by himself. He had to pick up overtime shifts at work, which meant less time with our family. This placed a strain on my marriage and mental health. I was in a constant state of anguish. After getting silence from my employer, I started to regret my pregnancy, one that I had wholeheartedly prayed for. I felt this wasn't fair to myself or my baby."

After Abby contacted A Better Balance, we directly intervened with her employer. **Abby got her requested accommodations and was able, after months of unpaid leave, to return to work. "When I received the call that my accommodation was approved I burst into tears,"** she shared with A Better Balance. "It felt like a load of bricks had been lifted off my chest. When I returned to work, I walked around with such pride and a high sense of dignity. I was finally able to enjoy my pregnancy and relax. I am able to contribute financially again, giving me my sense of self-worth back. I no longer felt ostracized or incapable because I was pregnant."

Abby requested and received back pay for the period of time that she was on forced leave.

*Abby asked us not to use her real name.

IV. Accommodations Protect the Health of Workers

A. The PWFA was passed to improve the United States's poor record on maternal and infant health

In 2023, only months before the PWFA went into effect, the CDC released statistics showing that maternal mortality in the U.S. increased between 2018 and 2021, with the most significant increases happening during the COVID-19 pandemic.⁴⁰ Provisional data through June 2023 shows a concerning spike in maternal deaths between September 2021 and January 2023, with hundreds more maternal deaths counted in that time period compared to previous years.⁴¹ Although maternal deaths have decreased since they peaked in early 2022, time will only tell if maternal mortality will return to pre-pandemic levels, let alone show signs of decreasing.

For pregnant workers of color, these numbers are even more concerning. Maternal mortality rates for Black expectant mothers in 2021 were 2.6 times the maternal mortality rate for white expectant mothers.⁴² Black mothers are also twice as likely to experience stillbirth.⁴³

At the same time, infant mortality has also been increasing,⁴⁴ particularly for preterm infants.⁴⁵ Preterm birth rates have also been on the rise since 2014,⁴⁶ and the preterm birth rate among babies born to Black, Hispanic, and Indigenous mothers is up to 1.5 times higher than the rate among other babies.⁴⁷

The PWFA is the result of a decade-long coordinated effort among many advocates, from workers' rights and social justice organizations to healthcare providers, to address the underlying cause of these deeply concerning statistics.⁴⁸ In 2022, A Better Balance released a report in partnership with the Black Mamas Matter Alliance that documented how the United States devalues the lives of Black women who work during their pregnancies and the devastating health consequences this can have.⁴⁹ In this report, we urged Congress to pass the PWFA to make working during pregnancy safer for Black women. In the lead-up to passing the PWFA, ABB and PWFA coalition partners

also organized multiple open letters to Congress that were signed by major healthcare professional organizations, including the American Congress of Obstetricians and Gynecologists (ACOG), American Nurses Association, American College of Nurse-Midwives (ACNM), and the American Academy of Pediatrics.⁵⁰ The consensus was clear: Congress needed to pass the PWFA to protect the health of pregnant workers.

||| **B. Accommodations provide demonstrated health benefits for workers**

Although data on the long-term impact of the PWFA on maternal and infant health outcomes nationwide is several years away, the data we do have indicates that the right to pregnancy accommodations could achieve the goal of improving the unacceptable statistics recently seen in the United States. Working while pregnant is generally safe. However, physically demanding work—work that involves extensive standing, hazard exposure, frequent heavy lifting, and working long/overnight shifts—can increase the risk of preterm delivery and low birth weight.⁵¹ There are also limitations that pregnant workers in any line of work commonly struggle with, such as the need to increase food/water intake, or take more frequent restroom breaks.



Before the passage of the PWFA, many workers had to decide between risking the health of their pregnancies or risking their jobs (and often their health insurance as well). No matter their choice, the stress created by this forced decision alone can compound adverse health outcomes for employees and their pregnancies.⁵² The very fact that workers no longer are faced with the choice between their health and their livelihoods has the potential to improve maternal and infant health outcomes.

Work modifications for pregnant and postpartum workers have been shown to have numerous health benefits. According to a 2019 Health Impact Assessment conducted by the Louisville, Kentucky Department of Public Health and Wellness, granting employees even minor accommodations can reduce poor health outcomes, including:

- low birth weight
- birth defects
- dehydration
- insufficient amniotic fluid and related birth outcomes
- unnecessary pain resulting from excessive standing, bending, or lifting
- urinary tract infections and related risk of preeclampsia (dangerous high blood pressure); and
- mastitis (an infection) due to insufficient, safe locations for pumping breastmilk.⁵³

The unavailability of pregnancy accommodations up until now is only one of many factors contributing to poor maternal and infant health outcomes, among others such as systemic racism and lack of access to reproductive healthcare. However, the Pregnant Workers Fairness Act has the potential to make a noticeable and important positive impact on the health of pregnant workers and their babies. In the lives of the workers who call our helpline at least, accommodations have made all the difference.

C. Anecdotal evidence shows that accommodations improve health outcomes for pregnant workers, but procedural hurdles could undermine these positive effects

As the experiences of people who have called our helpline show, by asserting their rights under the PWFA, workers have been able to get accommodations that are critical to their health and safety. Cristel, Katie, and Victoria were able to continue working safely because of the accommodations their employer agreed to. Maxine was able to recover from childbirth, instead of being forced to return to work immediately after giving birth. Raquel's request to work-from-home allowed her the time she so desperately needed to recover from postpartum mental health complications. Kirsten and Abby both spoke about the relief they felt when they learned they were going to get accommodations, and how their stress lifted almost instantaneously.

However, their employers did not always make it easy, even when workers were asking for simple accommodations that would be minimally difficult to provide (like Robin's request for a stool, or Janiyah's request to eat snacks during her shift). By communicating poorly with employees about their rights, making the interactive process needlessly complicated, and requiring burdensome medical



documentation, some employers are counteracting the health benefits of a nationwide right to pregnancy accommodations by making them prohibitively difficult to obtain.

Employers are still learning what the PWFA requires of them, and many workers we spoke to were not granted accommodations the first time they asked for them. Some had to wait weeks or even months (like Victoria, Raquel, and Abby) to get an accommodation. When faced with these extensive delays, workers found themselves in the predicament the PWFA was passed to eliminate, required to either work without an accommodation or go on leave (possibly even losing their job).

Multiple callers to the helpline told us what Hayley described: the stress of fighting for the accommodations they were legally entitled to became a medical problem in and of itself, raising their blood pressure more creating other adverse health outcomes. For some employees, like Rachel, the cost to their health was too much, leading them to give up on getting accommodations and try to do without or begin parental leave early.

D. The new EEOC regulations directly address many barriers preventing workers from receiving the full health benefits of the PWFA

In our comment to the EEOC on their proposed regulations,⁵⁴ we described how procedural hurdles were burdening the right of pregnant and postpartum workers to medically necessary accommodations. The final regulations included important provisions that have the potential to dramatically lower barriers to getting accommodations, including:

- Making unnecessary delay of accommodations an independent violation of the PWFA, even if the accommodation is ultimately granted.⁵⁵
- Prohibiting employers from seeking unnecessary medical documentation when the pregnancy-related limitation is obvious (for example, when an employee is obviously pregnant and requests a maternity uniform).⁵⁶
- Prohibiting employers from making employees provide medical information on a specific form,⁵⁷ especially if they have already provided

a sufficient doctor's note.⁵⁸ The new regulations also make it clear that employers can't require employees to certify that they have a "disability."⁵⁹

- Reiterating that employers can't assert undue hardship "based on employees' fears or prejudices toward the individual's pregnancy, childbirth, or related medical condition,"⁶⁰ or concerns that accommodating a pregnant/postpartum employee "would negatively impact the morale of other employees."⁶¹
- Identifying several accommodations (called "predictable assessments") that are so common and straightforward to provide, they are virtually never an undue hardship including: allowing an employee to keep water at their workstation, take additional restroom/food/drink breaks as necessary, and sit or stand at their workstation as necessary.⁶²

By emphasizing the informal, flexible nature of the interactive process and limiting employers' ability to seek unnecessary documentation, the new regulations directly address many of the obstacles callers to our helpline faced when they requested accommodations.

Compliance with the new regulations may be a different story. The experiences described by callers to our helpline show that many employers need to significantly overhaul their accommodations policies to provide the straightforward, streamlined process that is required by law. But the mandate is clear. Removing barriers for workers seeking accommodations will be critical to achieving the goal of improving health outcomes for pregnant workers.

V. Accommodations Support the Livelihood of Workers

A. The problems the PWFA solves sit at the intersection of racial, gender, reproductive, and economic justice

Pregnant and postpartum workers seek accommodations because they need to keep working in order to support their families. Ninety percent of the workers who called our helpline in the first year of the PWFA were working full time. Seventy-two percent of callers were currently pregnant, and over half of those callers already had one or more children. Eight percent of callers provided care for a family member other than a child, such as a parent, a grandparent, or another relative with a disability.

These trends reflect the larger economic reality that pregnant and postpartum workers provide a significant portion of their household income. Recent data shows that mothers are the primary breadwinners for 40% of households with children under the age of 18, and 70% of working mothers will be the primary



earner at some point during the first eighteen years of motherhood.⁶³ But in spite of the important economic contributions working mothers make, the pay gap for mothers is even larger than the pay gap for women as a whole. The “motherhood penalty” means that mothers are paid sixty-two cents for every dollar paid to fathers.⁶⁴

This disparity falls hardest on women of color. Four out of five Black mothers are breadwinners for their families, and two out of three Native American mothers are breadwinners for their families.⁶⁵ The exacerbated pay differential for women of color means that even though their households are more reliant on their income, mothers of color are taking home less on the dollar than any other group.⁶⁶

Before the PWFA was passed, Takirah Woods, ABB Community Advocate, shined a light on these inequities to implore Congress to pass the bill. Takirah was a family services worker for the state of New Jersey, who was also forced out on leave after her employer refused to accommodate her with light duty. “80 percent of Black women are family breadwinners,” Takirah wrote in *Ms.* magazine in 2020.⁶⁷ **“Black women are the backbone of the American economy, we are rising to the highest ranks of government and making huge economic and educational strides, and yet we are still too often held back at work especially when it comes to pregnancy. It’s still the case that too many women of color are fired or forced out when they request a modest workplace accommodation to protect their health. Longer term, pregnancy discrimination pushes women deeper into poverty, jeopardizing the health and economic well-being of our families.”⁶⁸**



B. Access to pregnancy accommodations will have an enormous positive impact on a large swath of American workers and their families

The fact is that many pregnant workers can't afford to stop working, and three-quarters of working women will be pregnant at least once while employed.⁶⁹ As part of our advocacy for the PWFA, A Better Balance shared the stories of pregnant workers who were faced with the impossible choice between protecting the health of their pregnancies, and bringing home a paycheck that their families relied on.⁷⁰ As discussed in Section II, many of these workers bravely spoke out on behalf of the law to force Congress to confront the life-altering consequences of being forced to make that choice (or having their employer make it for them).

We fought to pass the PWFA so no worker would find themselves in this position again, and we know from our helpline that it is making a difference. Workers like Victoria, Cristel, and Abby were able to use the PWFA to get back to work when their employers forced them out on leave. Ashley was able to get her job restored, and Katie got the accommodations she needed to continue feeding her child even as she returned to work.

What we heard from the helpline aligns with early data about the economic impact of pregnancy accommodations on a broader scale. A recent study of states that passed a pregnancy accommodations law prior to the passage of the federal PWFA shows that the right to pregnancy accommodations had a positive impact on pregnant workers' labor force participation, employment, and earnings during pregnancy.⁷¹ This paper estimates that for women without a college education, pregnancy accommodations could result in a 17-20% increase in all of these factors, and a 9-11% increase for women with some college education.⁷²

But for some workers, accommodations have still come at a price. Workers who were put on forced leave after requesting accommodations or had to take leave because their employers wouldn't accommodate them told us about the significant financial struggles they faced. Although a handful of workers we spoke to (like Abby) were able to get back pay after their employers accommodated them, most of the workers we spoke to went without pay while their employers considered their accommodation requests for weeks or even months. Others experienced a lapse in health insurance that impacted both their physical and financial well-being. As Hayley, the police officer who was so stressed her blood pressure spiked and she became too high-risk to pursue her plans of giving birth at a birth center, powerfully put it, "all of this places even more of a burden on working pregnant women who are already juggling a lot with pregnancy. It's not a surprise to me that women quit the workforce while pregnant. It's too expensive to stay employed."

≡ **C. Enforcing the new EEOC regulations will be crucial to making the promise of the PWFA a reality**

The new regulations from the EEOC take necessary steps to protect the economic well-being of pregnant workers, both by lowering the barriers to getting accommodations in the first instance, but also by clarifying employers' obligations to workers while the interactive process is ongoing. The regulations discuss how employers can mitigate damages and protect themselves from claims that they unnecessarily delayed accommodations by offering interim accommodations as a "best practice."⁷³



The regulations also clarify that leave is *not* an appropriate interim accommodation unless requested by the employee.⁷⁴ Requiring an employee to take leave while they are waiting for a response to their accommodation request or while the interactive process is ongoing could actually be considered illegal retaliation, as it would discourage employees from exercising their legal rights.⁷⁵ In this situation, the employer wouldn't be able to claim that allowing the employee to continue working would be an "undue hardship," as there is no undue hardship defense for claims of retaliation.

Widespread adoption of interim accommodation policies would go far in addressing the economic consequences pregnant workers are still facing as a result of requesting accommodations. Interim accommodations would allow employees to continue working while the employee gathers any necessary medical information and while the employer explores long-term accommodation options. Enforcement of the PWFA against employers who compel an employee to take leave instead of exploring interim accommodations will be critical to encourage wide-spread adoption of these policies.

VI. The Pregnant Workers Fairness Act Under Attack

At the time of publication of this report, several attacks in the courts against the PWFA are well underway. A Better Balance remains committed to defending the PWFA and ensuring there is no confusion among workers about their rights under the law and the important regulations published by the EEOC.

Texas v. Garland:

In February 2023, Texas Attorney General Ken Paxton filed a lawsuit against the Department of Justice and EEOC, among other defendants, challenging the constitutionality of the Consolidated Appropriations Act of 2023, an omnibus spending bill that included many pieces of legislation, including the PWFA.⁷⁶ One year later, Judge Hendrix ruled in Texas's favor, barring the EEOC from accepting any charges of PWFA violations by Texas state employees. The decision is currently on appeal to the Court of Appeals for the Fifth Circuit. Although the legal arguments in the case are unrelated to the merits of the PWFA itself, the underlying reasoning has the potential to undermine the ability of workers in every state, including private sector employees, to exercise their rights under the PWFA.

Dina Bakst, A Better Balance Co-Founder & Co-President immediately released the following statement following the judge's ruling:

The following is a statement from A Better Balance Co-President Dina Bakst:

"This ruling, which eliminates the ability of Texas state employees to exercise their rights under the Pregnant Workers Fairness Act (PWFA), is an outrage. It makes a mockery of our court system and represents an attack on pregnant workers and their families.

"As we at A Better Balance see firsthand everyday through our free legal helpline, the PWFA is a lifeline for pregnant and postpartum workers

in Texas and nationwide, particularly for Black and Latina women in low-wage, physically-demanding jobs. Pregnancy accommodations are critical to reduce preterm birth, low birth weight, and maternal and infant mortality and morbidity. By gutting protections for pregnant state workers, the opinion treats those working for the state of Texas like second-class citizens, unfairly denying them the legal rights they need to safeguard their health and that of their pregnancy—and to remain attached to the workforce when they need their income the most.

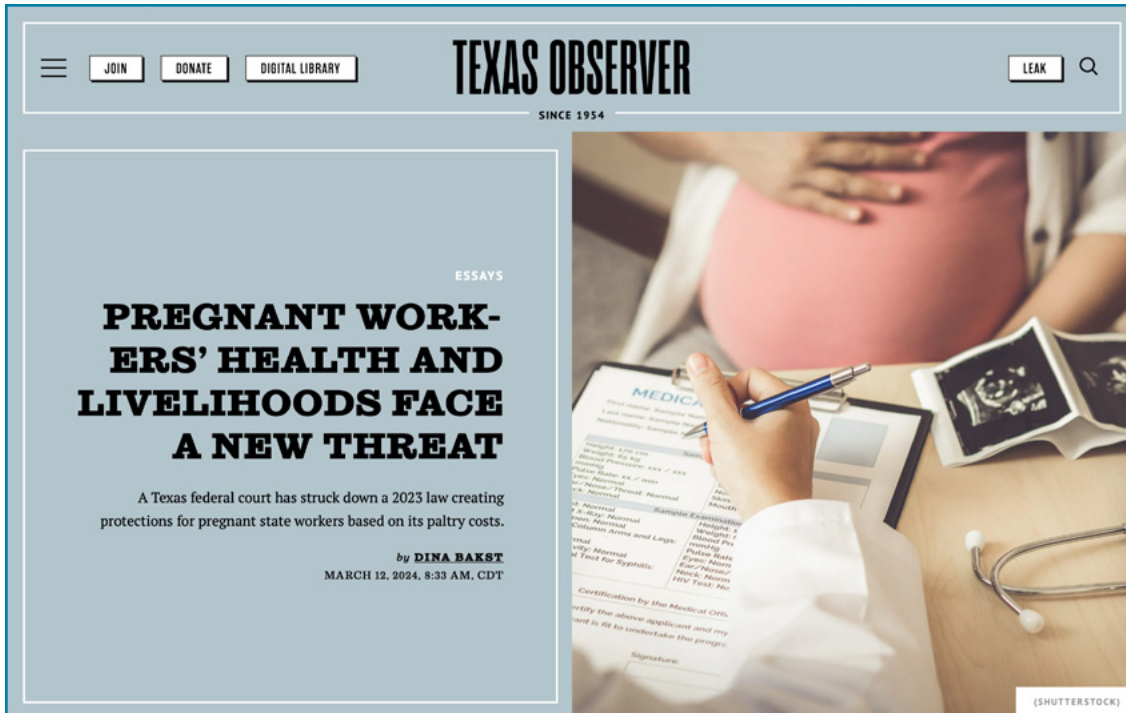
“In addition, the opinion purports that the law would cost employers money. But in reality, the Pregnant Workers Fairness Act, which was passed with bipartisan support and the support of the U.S. Chamber of Commerce, saves employers, including the State of Texas, time and money by providing vital clarity about their obligations under the law, boosting employee morale, and reducing costly turnover and litigation.

...

“We fiercely disagree with this blatant attempt to roll back the rights of pregnant workers, and we fully expect to see this ruling appealed.”⁷⁷

Bakst also penned an Op-Ed in The Texas Tribune, “Pregnant Workers’ Health and Livelihoods Face A New Threat,” stating:

“This recent Texas decision really isn’t about the pennies it would cost the state to comply or any potential administrative burden. By gutting protections for pregnant state workers, the opinion attempts to cement pregnant workers’ status as second-class citizens under the law and, yet again, deprive women of the right to control their reproductive lives.”



☰ **Tennessee v. EEOC:**

Shortly after the EEOC issued its final regulations in April 2024, a coalition of conservative state Attorneys General, led by Tennessee Attorney General Skrmetti, filed a lawsuit in an Arkansas district court challenging the legality of the regulations.⁷⁸ Although public statements focus on the portion of the final regulations that relates to abortion, the states sought for the entire regulations to be set aside.⁷⁹ Again, ABB condemned the lawsuit:

The following is a statement from A Better Balance Co-President Dina Bakst:

“We condemn this lawsuit, brought by the Arkansas Attorney General and Tennessee Attorney General, among others, which baselessly attacks the Pregnant Workers Fairness Act and its vital protections for pregnant and postpartum workers and workers with pregnancy-related conditions. The inclusion of time off for abortion as a reasonable accommodation by the Equal Employment Opportunity Commission appropriately reflects

decades of legal precedent that define the parameters of a ‘pregnancy-related condition.’

“This lawsuit represents a bad faith effort to politicize what is a vital protection for the health and economic security of millions of families, and a continuation of the alarming attacks on women’s health and reproductive choice. We are committed to fighting to defend workers’ rights under the Pregnant Workers Fairness Act.”

A Better Balance also joined an amicus brief (a “friend of the court” brief) highlighting the critical need for the regulations grounded in the experiences of workers who have contacted our helpline.⁸⁰ As is clear from this report as well as illustrated in that brief, workers’ health and economic security often depends on the clarity provided by the regulations.

On June 14th, 2024, in a significant victory for millions of pregnant and postpartum workers, the judge ruled in favor of allowing the PWFA regulations to go into effect because the coalition of conservative Attorneys General lacked standing to bring the lawsuit.⁸¹

However, in May 2024, the Louisiana and Mississippi Attorneys General filed a lawsuit similar to *Tennessee v. EEOC* challenging the PWFA regulations.⁸² Separately, the U.S. Conference of Catholic Bishops, et al., filed a lawsuit challenging the regulations as well.⁸³ The two cases were consolidated and on June 17th, 2024, the judge preliminarily enjoined one discrete portion of the EEOC’s regulations implementing the Pregnant Workers Fairness Act. The enjoined section relates to some employers’ obligations to provide accommodations to workers who need time off for abortions in certain circumstances. The ruling is limited to workers who are employed by Mississippi or Louisiana, primarily report to worksites in Mississippi or Louisiana, or who work for a specific list of religious employers.⁸⁴ A Better Balance condemned the ruling as being out of step with decades of legal precedent.

≡ VII. What's Next?

In this section, we explore what must happen next in order to fully realize the PWFA's potential, recognizing the above identified barriers to access to justice.

≡ A. Courts must uphold the statute and regulations

As discussed above, the Court of Appeals for the Fifth Circuit will consider whether the specious attacks on the PWFA's constitutionality will be allowed to prevail. Other courts have heard challenges to the PWFA's regulations. In each instance, the challengers are attempting to score political points by ripping the rug out from under pregnant workers and others in need of protections for pregnancy, childbirth, and related conditions, causing confusion for workers and employers alike. But the law is clear, and courts should stay above the fray and rule in support of the statute and regulations. ABB will continue to work with partners to vigorously defend the law and regulations to ensure workers in every corner of the country benefit from the law's protections.

≡ B. Expand outreach, education, and enforcement

Far too many employers, employees, healthcare providers, social service providers, and others do not know about the PWFA or its broad scope. Greater investment in resources is necessary to properly effectuate the purpose of the PWFA and ensure that millions of people know and are able to assert their rights under the law. Federal agencies can play an especially helpful role in educating employers, who will listen to an enforcing agency and have an incentive to follow their guidance in order to come into compliance. A Better Balance will also continue to prioritize free information and legal support to workers to help them assert their rights under the law, as well as, where appropriate, take employers to task when they flout the law.

≡ C. Further research and evaluation is needed

Because the PWFA is such a new law, there is not yet scientific research analyzing the economic and health effects of the law (and regulations).

Investment in such research is necessary to demonstrate any quantitative differences that can be attributed to the law, in addition to qualitative and anecdotal evidence cited above. Although research will likely take years, investment is needed now to begin multi-year projects.

≡ Conclusion

In conclusion, in the past eleven months when the PWFA has been in effect, A Better Balance has seen the benefits of the law's protections for many workers who have called our helpline, as profiled above. For so many workers, it has been a lifeline to protecting their health or their paychecks. For others, the law empowered them and made them feel like they deserved accommodations to protect their health or economic security—showcasing the beginnings of a cultural shift, where pregnancy discrimination in all its forms will no longer be tolerated in American workplaces. However, there remains much work to do to overcome identified barriers. The clarity provided by the regulations will go a long way in addressing many of the challenges identified in this report. At the same time, we must also work to ensure employees know about and can access their rights under the law, and diligently pursue employers who think they are above the law. By pursuing multifaceted strategies, we are confident that the PWFA will continue to be an essential tool for economic security and public health for generations to come.

PREGNANT WORKERS FAIRNESS ACT (PWFA)

WHAT IS PWFA?
The Pregnant Workers Fairness Act (PWFA) is a federal law that, starting on May 27, 2023, requires covered employers to provide "reasonable accommodations" to a qualified worker's known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an "undue hardship." An undue hardship is defined as causing significant difficulty or expense.

"Reasonable accommodations" are changes to the work environment or the way things are usually done at work.

WHAT ARE SOME POSSIBLE ACCOMMODATIONS FOR PREGNANT WORKERS?

- Being able to sit or drink water
- Receiving closer parking
- Having flexible hours
- Receiving appropriately sized uniforms and safety apparel
- Receiving additional break time to use the bathroom, eat, and rest
- Taking leave or time off to recover from childbirth
- Being excused from strenuous activities and/or exposure to chemicals not safe for pregnancy

WHAT OTHER FEDERAL EMPLOYMENT LAWS MAY APPLY TO PREGNANT WORKERS?
Other laws that apply to workers affected by pregnancy, childbirth, or related medical conditions, include:

- **Title VII** which prohibits employment discrimination based on sex, pregnancy, or other protected categories (enforced by the U.S. Equal Employment Opportunity Commission (EEOC))
- **The ADA** which prohibits employment discrimination based on disability (enforced by the EEOC)
- **The Family and Medical Leave Act** which provides unpaid leave for certain workers for pregnancy and to bond with a new child (enforced by the U.S. Department of Labor)
- **The PUMP Act** which provides nursing mothers a time and private place to pump at work (enforced by the U.S. Department of Labor)

Learn more at www.EEOC.gov/Pregnancy-Discrimination.

≡ Endnotes

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- 32 Translated from verbal Spanish during a conversation with A Better Balance's helpline.
- 33 The Pregnancy Discrimination Act only provided a comparative, not an affirmative, right to accommodations, see *supra* p. 6.
- 34 A Better Balance shared several of these stories with the Equal Employment Opportunity Commission in our comment on their proposed regulations. See ABB Comment to the EEOC, *supra* note 12, at 73.
- 35 *Id.* at 60.
- 36 *Id.* at 42.
- 37 The United States is the only developed country in the world that doesn't offer any guaranteed sick days to employees. CTR. FOR ECON. POL'Y RES., *CONTAGION NATION 2020: UNITED STATES STILL THE ONLY WEALTHY NATION WITHOUT PAID SICK LEAVE* (Mar. 2020), <https://cepr.net/wp-content/uploads/2020/03/2020-03-Contagion-Nation-2020.pdf>. Only 39% of low-wage workers (workers in the lowest 10% of earners) have access to paid sick time, and only half of part-time workers have paid sick time. See Molly Weston Williamson, *The State of Paid Sick Time in the U.S. in 2024*, CENTER FOR AM. PROGRESS (Jan. 17, 2024), <https://www.americanprogress.org/article/the-state-of-paid-sick-time-in-the-u-s-in-2024/>.
- 38 A BETTER BALANCE, *MISLED & MISINFORMED: HOW SOME U.S. EMPLOYERS USE "NO FAULT" ATTENDANCE POLICIES TO TRAMPLE ON WORKERS' RIGHTS (AND GET AWAY WITH IT)* (June 2020), https://www.abetterbalance.org/wp-content/uploads/2020/06/Misled_and_Misinformed_A_Better_Balance-1-1.pdf.
- 39 42 U.S.C. § 2000gg-1(4).
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- 46 *Shifts in the Distribution of Births by Gestational Age: United States, 2014-2022*, NATIONAL VITAL STATISTICS SYSTEM, CTRS. FOR DISEASE CONTROL & PREVENTION (January 31, 2024), <https://www.cdc.gov/nchs/data/nvsr/nvsr73/nvsr73-01.pdf>.
- 47 MARCH OF DIMES, 2023 MARCH OF DIMES REPORT CARD 3 (2023), <https://www.marchofdimes.org/sites/default/files/2023-11/MarchofDimesReportCard-UnitedStates.pdf>.

- 48 *Fact Sheet: Advancing Equity in Maternal and Infant Health through the Pregnant Workers Fairness Act*, A BETTER BALANCE (March 6, 2023), <https://www.abetterbalance.org/resources/fact-sheet-advancing-equity-in-maternal-and-infant-health-through-the-pregnant-workers-fairness-act/>; see also WINNING THE PWFA, *supra* note 6.
- 49 BLACK MAMMAS MATTER ALLIANCE & A BETTER BALANCE, CENTERING THE EXPERIENCES OF BLACK MAMAS IN THE WORKPLACE: HOW THE PREGNANT WORKERS FAIRNESS ACT CAN SUPPORT BLACK MATERNAL HEALTH (2022), <https://www.abetterbalance.org/wp-content/uploads/2022/03/BMMA-ABB-Final-Report-Web-3.pdf>.
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- 56 *Id.* at 89 Fed. Reg. 29,186 (to be codified at 26 C.F.R. § 1636.3(l)(1)(i)).
- 57 *Id.* (to be codified at 26 C.F.R. § 1636.3(l)(2)(ii)).
- 58 *Id.* (to be codified at 26 C.F.R. § 1636.3(l)(1)(ii)).
- 59 *Id.* (to be codified at 26 C.F.R. § 1636.3(l)(2)(i)(A)); see also *id.* at 29,209 (“[A] n employer may not require that an employee seeking an accommodation under the PWFA complete specific forms that ask for information regarding ‘impairments’ or ‘major life activities.’ These are disability-related inquiries and, because they are not job-related and consistent with business necessity in these circumstances, they would violate the ADA.”).
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- 61 *Id.*
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