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Supporting Pregnant Workers

Women who wish to continue working while pregnant should be supported on the job. Today, a majority of women work throughout pregnancy and return to work soon after childbirth. While many women can and do work successfully until their due date with no modifications, others – particularly those in physically demanding jobs – may require small accommodations to continue their employment. However, a significant number of women are denied these requests, and many more are afraid to ask for fear of losing their jobs. Furthermore, many women lack access to paid or even unpaid leave from work. This means that some pregnant workers are forced to make an untenable choice: continue working without modifications or quit and face financial hardship. This puts women's livelihood and health – and, potentially, the health of their newborns – at risk.

While pregnant workers are protected against discrimination both nationally and at the state level, this does not provide a pregnant worker with an affirmative right to accommodations in the workplace. Many other states, including Kentucky and West Virginia, have fixed this problem by passing legislation that provides pregnant women a right to reasonable accommodations that do not impose an "undue hardship" on their employer – a standard already in place for workers with disabilities. These laws have passed with bipartisan and often unanimous support. Indiana should pass a similar law and should make paid family and medical leave available to all workers. The state should also incentivize and support efforts to change workplace culture to ensure that women can successfully work and experience a healthy pregnancy.

The Needs of Pregnant and Nursing Workers

Three out of four working-age Hoosier women are part of the labor force, meaning that they are either employed or actively looking for work. The vast majority of these women will, at one time, experience pregnancy and childbirth. Nationally, 86 percent of women ages 40-44, which is toward the end of typical childbearing years, had given birth in 2016[i] and approximately eight in ten women who work while pregnant will stay employed up until the final month before giving birth.[ii] This is a very different picture than several decades ago, when marriage and motherhood typically resulted in at least a temporary exit from the workforce. In fact, as Table 1 shows, the workforce participation rate among Hoosier mothers is actually slightly higher than that for women overall. Many women have little choice in the matter: about half of working women report that they are primary breadwinners for their families.[iii]

TABLE 1. Hoosier Women in the Labor Force, Age 20-64

	Labor Force Participation Rate	Employed
Women Overall	73.3%	70.2%
• **With own children under 18 years**	75.4%	71.9%
• **With own children under 6 years only**	73.3%	68.8%
• **With own children under 6 years & 6-17 years**	68.2%	64.6%
• **With own children 6-17 years only**	78.9%	75.7%

Source: U.S. Census Bureau, American Community Survey, 2017

Some pregnant women experience physical limitations that impede their activities, and some job duties or work environments can become temporarily problematic. Often, these limitations can be addressed with small but important accommodations. In particular, low-wage shift workers are more likely to be in need of accommodations to continue working safely.[iv] Table 2 offers a summary of the common workplace challenges women may encounter while pregnant and relevant workplace accommodations.

Table 2. Examples of Risks & Accommodations for Pregnant Workers[v]

Workplace Challenges	***Accommodations:***
Dehydration can lead to overheating or reduced amniotic fluid.	Allow pregnant workers to carry a water bottle at all times.
Physically demanding work like lifting, bending, and standing for long hours has been associated with preterm birth.	More frequent breaks Light duty / lifting exemption A stool and/or footrest
Frequent urination is common during pregnancy, both because of physiological changes and the need to stay hydrated.	More frequent restroom breaks
Exposure to chemicals to like lead or radiation are potentially hazardous to the developing fetus.	Temporary reassignment of duties
Postpartum recovery. The body needs time to heal following childbirth.	Time off Light duty
Lactation. Many women continue to feed their children breastmilk following the return to work. Expressing milk regularly can also prevent mastitis (breast infections).	Break time Quiet, private space Refrigeration

Source: Louisville Department of Health 2019

Unfortunately, women who cannot afford to lose their jobs but need small accommodations may be afraid to ask their employer for these adjustments, and may continue working in dangerous conditions. Others request accommodations, but are denied. Nationwide, an estimated 250,000 pregnant women are denied small accommodations each year, and an even greater number report that they are afraid to ask.[vi] For example, in one survey, seventy-one percent of women reported needing more frequent breaks, but four in ten of these women never asked for this accommodation.[vii]

In addition to putting the mother's health at risk, continuing to work without accommodations – especially in physically demanding jobs that involve prolonged standing, heavy lifting and carrying, shift work, or irregular schedules – may also increase the risk of preterm birth and low birth weight.[viii] Indiana has work to do to improve maternal and child health outcomes. Indiana's preterm birth rate was 10.24 percent in 2018 – higher than the national average of 9.93.[ix] Indiana's infant mortality rate, which is primarily driven by preterm births, was 7.3 out of 1,000 live births in 2017, also higher than the national rate of 5.8.[x] Indiana currently ranks 42nd among U.S. states on infant mortality and 47th for maternal mortality.

There are also significant financial costs associated with preterm birth. Each premature or low birth weight baby is estimated to cost employers an additional $49,760 in newborn health care costs. Adding in the cost of maternal care raises this total to $58,917.[xi] Reducing Indiana's preterm birth rate from 10.24 percent to the March of Dimes 2020 goal of 8.1 percent would result in 1746 fewer preterm births and save approximately $103 million in yearly healthcare costs.[xii]

Following childbirth, some women also need workplace accommodations to heal and to express breastmilk. An estimated one in four women returns to work within two weeks of giving birth, well before the recommended six to eight weeks of recovery time.[xiii] This is due in part to the fact that the United States does not have a national paid leave program, as in most other countries, and, as Table 3 shows, many employers do not offer temporary disability insurance or paid family leave, especially to low-wage or part-time workers. Even when an employer offers temporary disability insurance or other forms of paid leave, an employee may be too new on the job to qualify for it or the wage replacement level may be too low for women to remain out of the workforce.

TABLE 3. Employees with Access to Paid Leave, March 2018

	All Civilian Workers	Workers in the Lowest Wage Quartile	Part-Time Workers
Paid family leave	17%	8%	7%
Temporary disability insurance	39%	19%	16%
Paid sick days	74%	55%	43%

Source: Bureau of Labor Statistics, 2018

Post-birth accommodations may include temporary restrictions on lifting or other physically demanding tasks, as well as opportunities to express breastmilk. The American Academy of Pediatrics (AAP) recommends that infants be fed breast milk exclusively for the first six months after birth, and continue for the first year.[xiv] Accordingly, many women set goals for breastfeeding, but 60% report that they stopped earlier than they would have liked.[xv] In Indiana, 79% of infants were breastfed initially, but only 54% were still breastfed at six months.[xvi] Women with lower incomes tend to have lower rates of breastfeeding. The Center for Disease Control notes, "These rates suggest that mothers may not be getting the support they need from health care providers, family members, and employers to meet their breastfeeding goals."

Current Policy Supports for Pregnant Workers Are Inadequate

While pregnant and lactating women do have protection from discrimination under the federal Pregnancy Discrimination Act, the law has led to confusion among both employers and employees with regard to workplace accommodations. The Supreme Court in *Young v. UPS* interprets the Pregnancy Discrimination Act as requiring a pregnant worker to demonstrate that the employer accommodated others who are similar in their ability or inability to work.

The Indiana Civil Rights Commission uses a similar test for pregnant workers requesting accommodation. For example, in a "Notice of Finding" against Ascension Health at Home in which a pregnant worker requested accommodations for a lifting restriction during pregnancy, the ICRC writes:

> "In order to prevail, Complainant must show that: (1) she is a member of a protected class; (2) she requested an accommodation; (3) Respondent failed to accommodate the request; and (4) *Respondent accommodated other employees with a similar ability or inability to work [italics added]*."[xvii]

This 'comparator' standard can be difficult to satisfy, as there may not be appropriate comparators in the pregnant employee's workplace. The comparator standard is also different – and less generous – than federal or state disability laws. Under the Americans with Disabilities Act, employers have an affirmative duty to accommodate a worker unless the accommodation imposes an undue hardship on the employer. A similar rule applies under Indiana law. Certain pregnancy-related medical conditions may qualify as disabilities, but, in general, uncomplicated pregnancies are not considered disabilities. Pregnant women thus receive less support than workers with other kinds of health conditions.

At the same time, Indiana has no laws requiring employers to provide paid time off from work, so women may have little choice but to continue working throughout pregnancy and to return to work quickly following birth. The state has also prevented localities from passing ordinances to require the provision of

paid leave. Federally, the Family and Medical Leave Act provides up to twelve weeks of unpaid leave to individuals who have worked for a larger company (50 or more employees within a certain radius) for at least one year. This allows pregnant workers an unpaid leave of absence pre-birth (if medically necessary) and/or post-birth, as well as allows non-birth parents to take leave following the birth of a child. It covers approximately 60% of the workforce, although many who qualify cannot afford to take unpaid time off from work.[xviii]

There are federal and state laws that provide some support for employees who have returned to work after childbirth and need to express breastmilk. For example, the federal Fair Labor Standards Act requires employers to provide many employees with unpaid break time to express breastmilk, and to provide a private space, other than a bathroom, that can be used for this purpose. Indiana state laws have similar requirements that apply to many employers.[xix] However, these laws do not cover all employees, and they can be difficult to enforce.

Policy Recommendations

To help women continue working safely while pregnant, recover from childbirth, and return to the workforce, policymakers and leaders should:

Grant pregnant and nursing workers an affirmative right to reasonable accommodations. While women may successfully petition their employer for accommodations, their success currently hinges on employer willingness and/or demonstrating that the employer has already accommodated someone similar in their ability or inability to work. This standard should be changed to ensure that accommodations are provided when they are reasonable, without regard to whether or not the employer has accommodated someone else. More than half of states have passed similar laws to protect pregnant workers.

Expand access to paid family and medical leave. Paid family and medical leave would provide women with a high-risk pregnancy the opportunity to reduce work hours or take a leave of absence if necessary to sustain a healthy pregnancy. Following childbirth, paid leave allows recovery and bonding time, improving the health of both mothers and infants.[xx] Most other countries and several others states guarantee the provision of paid leave through a centralized program, and these approaches can alleviate the sole burden on business or families to absorb the costs associated with a leave of absence from work.

Facilitate safe workplaces by encouraging employers to engage in outreach and education. Even when laws change, employers can have a positive impact on maternal and child health and their own bottom line by going above and beyond basic requirements. For example, AOL's WellBaby Program, which included on-site programming and counseling services, reduced utilization of high-cost pregnancy care and resulted in fewer NICU days, shorter hospital stays, fewer sick-baby visits to pediatricians, and fewer

pregnancy-related disability claims.[xxi] Indiana should promote policies and programs that incentivize and assist employers who create healthy environments for pregnant and nursing women.

Indiana's leaders can provide a work environment that both facilitates labor force attachment and improves health outcomes for pregnant women and their babies, but policy updates are key. Indiana should ensure that pregnant workers receive reasonable accommodations on the job, expand access to paid leave, and foster supportive workplaces.

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[xix] **State and political subdivision of the state** "shall provide reasonable paid break time each day to an employee who needs to express breast milk for the employee's infant child" and "shall make reasonable efforts to provide a room or other location, other than a toilet stall, in close proximity to the work area, where an employee described in subsection (a) can express the employee's breast milk in privacy. The state and political subdivisions shall make reasonable efforts to provide a refrigerator or other cold storage space for keeping milk that has been expressed." **Private employers** with 25 or more employees shall, "To the extent reasonably possible…provide a private location, other than a toilet stall, where an employee can express the employee's breast milk in privacy during any period away from the employee's assigned duties" and "provide a refrigerator or other cold storage space for keeping milk that has been expressed; or allow the employee to provide the employee's own portable cold storage device for keeping milk that has been expressed until the end of the employee's work day." This law makes no provisions for break time, however, and offers no remedy for an employee.

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