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February 10, 2016

The Honorable Helen Head  
Chair, House General & Military Affairs  
Vermont Legislature  
Montpelier, Vermont

RE: H.808- Pregnancy Accommodations

Dear Representative Head and Members of the Committee:

Thank you for the opportunity to comment on H.808. The Vermont Human Rights Commission enforces the Vermont Fair Employment Practices Act, (VFEPA), 21 V.S.A. §495 et seq. on behalf of employees of the State of Vermont.

To date, the HRC has not received any complaints that would fall within the scope of the proposed bill. I can easily see, however, how the situation might arise and therefore support the purpose of the bill.

Current laws are inadequate to address some pregnancy related problems. Title VII of the Civil Rights Act of 1964 (which prohibits sex discrimination) was amended to add a section known as the Pregnancy Discrimination Act (PDA). Vermont law uses these laws as guidance for interpretations of the VFEPA. These federal laws (and thus VFEPA) require only that an employer treat a pregnant employee the same as a non-pregnant employee. So, for example, if an employer allows an injured employee to be assigned to light duty or avoid heavy lifting, the employer would have to treat a pregnant woman with those limitations similarly.

The American's with Disabilities Act (ADA) (and thus VFEPA) requires an employer to extend reasonable accommodations to employees with disabilities, but most pregnant women do not meet the definition of disability, making this protection unavailable.

The Family Medical Leave Act (FMLA) which serves as the model for Vermont's Parental Family Leave Act (PFLA) only covers employees if they have worked for a certain amount of time. So if a pregnant woman does not meet these requirements and has no or insufficient sick time, she might be unable to leave work for doctor's appointments or other medically necessary treatment.

What H.808 does is fill the gaps between these laws by requiring an employer to affirmatively accommodate a pregnant employee who is temporarily limited by pregnancy.

The duty to affirmatively accommodate employees is very familiar to employers who have been working with the construct under the ADA since 1992. Like H.808, the ADA's requirement for granting an accommodation is not unlimited. If an employer can show that accommodating an employee will create an undue hardship and administrative burden (generally a financial one), the employer does not have to grant the accommodation. The analysis of hardship also takes into consideration the size of the employer's operation, the number of employees and type of facility, the size of the budget and the cost of the accommodation.

From a public policy standpoint, this bill could be a huge benefit to working women, families, children and the State's economy. Consider the following statistics:<sup>1</sup>

- Women are significantly more likely than men to live in poverty or economic insecurity in large part because of their status as primary caregivers for children;
- 43% of women who work full-time do not make enough money to cover basic expenses;
- The poverty rate for families headed by single women is 37.5%, nine times the poverty rate of married couples;
- Women who work full time are disproportionately employed in low-wage jobs –in every age group and at every education level;
- 66% of Vermont women participate in the labor force- 7 percentage points higher than the national average.

Thus allowing women basic accommodations to be able to remain employed during pregnancy is vital to the stability of families and to our economy as a whole.

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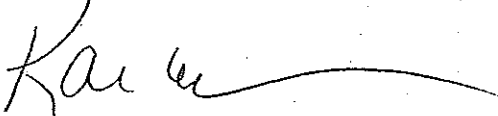
<sup>1</sup> All data references are to the 2016 Status Report: Women, Work and Wages in Vermont.  
<http://changethestoryvt.org/women-work-and-wages-in-vt/>

There are several additions to the bill that I would recommend:

- 1) That employers be required to give notice to all current employees and to new hires as well as posting a statement of rights;
- 2) That employers be required to engage in an interactive process with the employee to determine whether there is an alternative accommodation that would meet an employee's needs if the employer is unable to provide the requested accommodation due to an undue hardship;

Thank you for your attention to this important issue. If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Karen L. Richards", with a long horizontal flourish extending to the right.

Karen L. Richards  
Executive Director