

**Testimony submitted by Cary Brown, Executive Director, Vermont Commission on Women
House Committee on General, Housing, and Military Affairs
Re: H.808 An act relating to accommodations for pregnant employees
February 11, 2016**

Thank you for the opportunity to share with you some information about the impact that H808, an act relating to accommodations for pregnant employees, may have on women in Vermont. Our work at the Vermont Commission on Women has helped us understand some of the personal impacts of pregnancy on working Vermont women, as well as some of the broader issues that concern the economic well-being of women and families in Vermont, and the importance of policies that help keep women working.

Working women are essential to Vermont's economy. 66% of Vermont women are in the labor force, which is 8 percentage points higher than the national average.¹ This is very similar to Vermont men, 69% of whom are in the labor force.²

Women's workforce participation peaks during the child-bearing and child-rearing years – instead of working less when they have children, Vermont women are working more.³

70% of pregnant women and women who've given birth in the last year in Vermont are working.⁴

The earnings of these working women are critical to their families and to Vermont's economy. Women are contributing over 40% of the income in a third of Vermont's families.⁵ But women are struggling as it is – 43% of Vermont women who are working full-time don't make enough to cover their basic expenses.⁶ So every hour that they work is critical to the support of their families. Women can't afford to lose any of their work time just because they're pregnant when there are reasonable adjustments that will allow them to stay on the job.

Unfortunately, too many women in Vermont are finding that working while pregnant is challenging or impossible.

The following is a selection of stories regarding the experiences of women working in Vermont while pregnant. These stories were compiled from three different sources: direct solicitation of the general public; the Vermont Commission on Women's database of Information & Referral Service inquiries; and the Vermont Workers' Center Workers' Rights Hotline. Where stories are in quotation marks, the person's own words are used; in other cases, stories are paraphrased. Identifying information, for example names of employers, has been removed.

¹ U.S. Census Current Population Survey (CPS) 5 Year Average (2011-2015)-Adult Civilian Persons.

² Ibid.

³ Ibid.

⁴ U.S. Census Bureau. (2011). American Community Survey 3 Year Estimates, Geographies: All States within United States, Table B13012: WOMEN 16 TO 50 YEARS WHO HAD A BIRTH IN THE PAST 12 MONTHS BY MARITAL STATUS AND LABOR FORCE STATUS.

⁵ U.S. Census Bureau, Public Use Microdata Sample; American Community Survey 5 Year Data Release (2009-2013).

⁶ As defined by the 2015 Basic Needs Budget figures developed by the Vermont Joint Fiscal Office and controlled for family size. Based on averaging rural and urban estimates.

Recent Stories from Individuals:

- “I suffered from constipation and needing to pee a lot especially during the 2nd trimester. I was pulled into my boss’s office to be spoken to regarding my ‘excessive time away from my desk’ on 2 or 3 occasions. She said she understood I needed to use the bathroom more, but she didn’t believe the amount of time I took was needed, and that I needed to not be away from my desk as much as I was. I tried explaining how constipation works, but was told I was away from my desk too much and my needing to use the bathroom extra was ‘not to be abused’.”
- “When I was pregnant I worked at _____ in a clean room environment. I was constantly having to remove my entire suit just to use the bathroom. There were no ‘other jobs’ available and my work place never gave me the information for FMLA. They ‘didn’t feel like’ doing the paper work. I was young, and being my first pregnancy I had no idea about how to advocate for myself. I worked 12-hour overnight shifts. My drive alone was an hour each way. I was told there was no way to cut my shifts any shorter. I was frequently exhausted but wasn’t ‘allowed’ to nap on my hour break due to the potential image of the company. We were not allowed water bottles on the production floor, so I often had to take walks to get water. The chairs were a standard clean room chair, which offered no support and worsened my sciatica. I had no time to take off otherwise, so I worked up until 38 weeks. I had her on the day of my 39th week. Upon returning to work only weeks later, I was trying to breast feed while I was home during the day as well as get a couple hours of sleep before work all night. As a result of this untenable state of affairs, my husband became a stay-at-home Dad, and our family switched to living off of one income. The lactation room was a 10-minute walk into the building away from where I worked. I was allowed to pump, but I was always given grief. I had to remove myself from a male-dominated work place to go do something none of them understood.”
- “There seemed at the time to be a lack of sensitivity to the very fact that I was pregnant and, later, a new parent. It’s not that I think that the way I lived and worked at _____ was in anyway mean spirited, or marginalizing, it just wasn’t even considered as part of things like my classroom location, my teaching assignments or scheduling for things like breaks. My teaching schedule was often back-to-back classes with no time embedded for things like breast pumping or - when I was heavily pregnant - consideration of breaks.”

Vermont Commission on Women

Select Inquiries to Information & Referral Service re: Pregnancy

- An LNA at a nursing home called. She was 7 months pregnant, and had provided a doctor’s note with orders not to lift to her supervisor. She had the next day off, and upon return to work, her pay had dropped to minimum wage.
- Caller was fired because of pregnancy. She had worked at mill full time ++ with benefits. Was terribly sick and sent to hospital several times from work. She had submitted doctor’s notes, but the time out of work was counted against her and she was fired. She was overwhelmed. She

had lost her health insurance with the job, and hadn't tried applying for unemployment, because she was still sick 4 months into the pregnancy, and had no energy.

- Pregnant, taking time off without pay. Was told she must return in to work in 2 weeks or lose job. Doesn't feel well enough to work.
- Caller had been working full time. Fired because she's pregnant. Got another job, this one was part-time. Thought she'd return to it after maternity leave. Fired again. Needs the income, especially right now.
- Husband calling for pregnant wife. Discriminated against in workplace because of pregnancy. She isn't sick, just pregnant.
- Husband calling. Wife working at _____. She holds the health insurance for the family. Just found out she's pregnant and told her employer. The employer cancelled her health insurance.
- "I am currently 23 weeks pregnant. I just read over The Vermont Guide to Parental and Family Leave on your website. I have attached a copy of the page from my employee handbook from my employer. Can you tell me if this is compliant with all laws? From my understanding, I should be able to use parental leave during my pregnancy without having to provide medical certification to my employer, but they are saying I do. I would like to take one week off before I give birth for personal reasons and it doesn't look like they will approve me for it because there are 'specific criteria to meet' to qualify for leave under either law, which is stated in the handbook."

From Vermont Workers' Center Workers' Rights Hotline

Brief check in the last year and half of calls:

- One husband calling on behalf of his wife who got bronchitis while pregnant and was subsequently fired.
- A _____ worker fired for being pregnant. (She was told in a direct statement that was the reason.)
- A woman called. She was experiencing a lot of pregnancy-related illness and couldn't get paid time off of work. Her employer wanted her to leave, but tried to make her quit so he wouldn't be on the hook for unemployment.
- A _____ employee who reported that a pregnant coworker couldn't get bathroom breaks during her shift unless it was her lunch break. Men, apparently, did not have this issue because they were "faster."

- A woman who worked at a mall retailer and went into labor 6 weeks early. Did not qualify for FMLA and was fired and then denied unemployment because her employer reported it as a voluntary separation.
- A woman who worked in a retail shop who was denied FMLA despite being eligible and returned to work very soon after the birth of her child.

Many of the situations in these stories could have been alleviated with some simple and reasonable accommodations that don't place an undue hardship on employers.

One positive story we received illustrates how things can work well for both employer and employee:

- "I work at _____ full-time and have enjoyed a wonderful, and healthy, pregnancy. My pregnancy has been relatively smooth and I attribute that to being able to support my and my baby's health through a flexible work schedule, access to prenatal appointments, and workplace accommodations. So much is beyond your control when you're pregnant, so knowing that your employer supports you in the efforts you make to maintain a healthy and safe pregnancy is so important. I was extremely sick in the mornings and unable to drive and then incredibly exhausted in the evenings meaning I was unable to exercise properly during pregnancy unless I made a mid-day effort. _____ supported my decision to work from home twice a week so I could take noon walks or prenatal yoga classes. Because of my exercise routine I am healthier, happier and better prepared for labor and delivery. When pregnant you have a whole host of medical appointments you need to attend and _____ has supported me in making those sometimes weekly appointments that are so necessary to maintaining a healthy pregnancy. Additionally, as I approach my due date _____ has been helpful in planning my 12 weeks of FMLA parental leave, and even offer paid time off for part of that absence. While pregnancy is certainly common, it is an extraordinary individual effort that a woman experiences that is both physically and mentally taxing. A supportive workplace during pregnancy is essential."

Current law requires employers to provide reasonable accommodations when women are disabled because of pregnancy-related conditions, but not when they are experiencing a healthy pregnancy. A woman with a healthy pregnancy might have a need to sit, drink more water, or not lift over a certain weight, and the proposed law would allow her to have those accommodations without having to demonstrate that she is disabled.

Current law also protects pregnant women from being discriminated against; for instance, being denied accommodations that other employees are afforded. But this can have the effect of putting the pregnant woman in the position of playing detective in order to gather evidence and proof of unequal treatment – a process which takes time that the progression of a pregnancy doesn't stand still for.

The proposed law would provide clarity for both employers and employees. After California enacted similar legislation, they found that litigation of pregnancy cases actually decreased, and Hawaii as well saw a reduction in pregnancy discrimination complaints and litigation after enacting similar legislation.