

**Testimony submitted by Cary Brown, Executive Director of the Vermont Commission on Women
House Committee on General, Housing, and Military Affairs**

February 23, 2017

Re: H.136 An act relating to accommodations for pregnant employees

Good morning. My name is Cary Brown and I am the Executive Director of the Vermont Commission on Women. Thank you for the opportunity to share with you some information about the impact that H136, 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.

OVERVIEW

Under current state and federal law, pregnant employees have some protections from discrimination and some opportunities for reasonable accommodations in limited circumstances, but they are not necessarily entitled to workplace accommodations for issues related to healthy, uncomplicated pregnancies. Workers who have pregnancy-related medical conditions or disabilities, such as pre-eclampsia, gestational diabetes, or pregnancy-related carpal tunnel syndrome, are protected by the Americans with Disabilities Act, and employers must make reasonable accommodations for them. But 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 rapid progression of a pregnancy doesn't stand still for, and which has no guarantee of success.

Legal experts testifying on this bill will be able to give you detailed explanations of how and why this gap in protections exists, but the point I want to stress with you today is that there are many women in Vermont who are in need of simple accommodations to allow them to continue working in their jobs while pregnant, and they are unable to get them. Because of this, some of them are leaving their jobs or working less than they otherwise would, and their attachment to the workforce is jeopardized.

ECONOMIC IMPACT

Women in Vermont earn only 84% of what men in Vermont earn¹, and while the reasons for this wage gap are multiple and varied, one critical reason is that women are much more likely to take time off

¹ U.S. Census Bureau, Public Use Microdata Sample; American Community Survey 5 Year Data Release (2009-2013)

work, to work part-time, or to leave the workforce altogether when their family responsibilities – or their pregnancy – clash with their work responsibilities.² Many women feel that they have no choice when they leave work because of these clashes, and say that they would work more if they could resolve them.³ Simple workplace accommodations for healthy pregnancy such as more frequent bathroom breaks, the ability to sit down or in some cases to stand up and move, or flexibility with uniforms can make the difference between a woman’s ability to stay at work or not.

And whether women stay working or not is of vital importance to the health of Vermont’s economy. As we’ve noted in multiple reports through our initiative Change the Story VT, working women are essential to Vermont’s economy, and the economic well-being of Vermont women is critical to the well-being of Vermont families.

66% of Vermont women are in the labor force, which is 8 percentage points higher than the national average,⁴ and is very similar to Vermont men, 69% of whom are in the labor force.⁵ 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.⁶ 70% of pregnant women and women who’ve given birth in the last year in Vermont are working.⁷ Three-quarters of all women entering the workforce will be pregnant and working at the same time at some point in their lives.⁸

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.⁹ But women are struggling as it is – 57% of Vermont women don’t make enough to cover their basic expenses.¹⁰ Women can’t afford to lose any of their work time just because they’re pregnant when there are reasonable and temporary adjustments that will allow them to stay on the job.

CHALLENGE OF WORKING WHILE PREGNANT

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, collected by the Vermont Commission on Women staff with help from many of our partners. (Identifying information has been removed.)

² Thomas, Stephanie R. *The Gender Pay Gap: A Closer Look at the Underlying Causes*. Bloomberg Finance L.P., 2010

³ Shapiro, Mary. *Optioning In versus "Opting Out": Women Using Flexible Working Arrangements for Career Success*. Boston: Center for Gender in Organizations, 2007.

⁴ U.S. Census Current Population Survey (CPS) 5 Year Average (2011-2015)-Adult Civilian Persons.

⁵ Ibid.

⁶ Ibid.

⁷ 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.

⁸ A Cawthorne & M Alpert, Labor Pains: Improving Employment and Economic Security for Pregnant Women and New Mothers. (2009)

⁹ U.S. Census Bureau, Public Use Microdata Sample; American Community Survey 5 Year Data Release (2009-2013).

¹⁰ 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. U.S. Census Bureau, Public Use Microdata Sample; American Community Survey 5 Year Data Release (2009-2013)

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.

- A woman who had worked for a company for 3 years brought in a doctor's note toward the end of her pregnancy indicating she should not lift. In response, her employer cut her hours from full to part-time, against her wishes.
- From a health practitioner who works with pregnant women:
 - I recently had a mom who, during her pregnancy, was not allowed to sit at the register in a large, chain grocery store here in VT. She was told it looked "unprofessional".
 - I've also had several moms who were treated as though they were slacking when they needed bathroom breaks more frequently than other employees in the Newport area.
 - Scheduling work around OB appointments has been an issue several times, too.
- 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, or that I needed to 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 in a clean room environment. I was constantly having to remove my entire suit just to use the bathroom. 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.
- My teaching schedule was often back-to-back classes with no time embedded for consideration of breaks.
- An LNA at a nursing home was seven months pregnant and provided a doctor's note to her supervisor with orders not to lift. She had the next day off, and on the following day when she returned to work, she was told that her pay had been cut down to minimum wage.
- An employee of a major supermarket chain reported that women in general, and one pregnant woman in particular, couldn't get bathroom breaks during their shift unless it was their lunch break. Men, apparently, were able to use the bathroom outside of their lunch breaks because they were considered to be "faster."

As noted earlier, current state and federal laws prohibit discrimination on the basis of pregnancy or pregnancy-related medical conditions or disabilities. However, we have many stories from women who have faced such unlawful behavior in spite of existing protections. Many of these women are unaware of their rights, or find it is simply unrealistic to take legal action. It seems possible that requiring

reasonable accommodations for healthy pregnancy might have the effect of raising the level of awareness among both employers and employees, and we might hear fewer stories in the future like the ones below:

- A woman gave birth early and by C-section, with life-threatening complications. She communicated with her supervisor and was given a date to return to work, but is now being told she will not be – in the supervisor’s words - "hired" back.
- A woman called to say she was fired because of pregnancy. She was terribly sick and sent to the hospital several times from work. She submitted doctor’s notes, but the time out was counted against her and she was fired, losing her health insurance.
- A woman said she was pregnant and taking time off without pay. She was told she must return in to work in 2 weeks or lose her job, but she doesn't feel well enough to work.
- A woman emailed us. She worked full time, and was 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, she’s just pregnant.
- Husband calling. Wife holds the health insurance for the family through her job. Just found out she’s pregnant. She told employer. Employer cancelled her health insurance.
- One husband calling on behalf of his wife who got bronchitis while pregnant and was subsequently fired.
- 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.

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

- “I work...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. [My employer] supported my decision to work from home twice a week

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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 [my employer] has supported me in making those sometimes weekly appointments that are so necessary to maintaining a healthy pregnancy... 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.”

A clear requirement to accommodate pregnant workers would clarify expectations for both employees and employers, making compliance easier and avoiding the need for investigations and litigation. 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. Employers who do provide workplace accommodations report improved recruitment and retention of employees, as well as increased overall staff morale, increased employee productivity, and reduced absenteeism.¹¹

¹¹ Loy Beth, *Workplace Accommodations: Low Cost, High Impact* (2017)