

# Pregnant at work: time for prenatal care providers to act



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## Work accommodations are often critical for pregnancy health and family economic security

The United States' working population looks very different today than it did 50 years ago, with significantly more women and mothers now in the workforce.<sup>1</sup> Women's incomes have become crucial to the economic security of most families. As of 2012, a record 40.9% of mothers were sole or primary breadwinners, bringing in at least one-half of their families' earnings. Another 1 in 4 (22.4%) were co-breadwinners, bringing home between 25% and 49% of earnings.<sup>2</sup> As a result, a woman's ability to continue earning an income when she is pregnant is often critical to her growing family's economic well-being. This is especially true of low-income women, who are more likely to be their family's primary breadwinner or to be a single mother.<sup>2</sup>

Today most women hold a job before giving birth and are working later into their pregnancies than ever before, for reasons that range from financial necessity to career investment.<sup>1</sup> Women may also find it necessary to work as long as possible into their pregnancies to save their leave for use when their children are born.<sup>1</sup>

Although many women are able to safely continue working during pregnancy and wish to do so, some employers illegally discriminate against them by terminating them, forcing them out on unpaid leave, demoting them, or taking other adverse action upon learning about the pregnancy.<sup>3,4</sup> Adverse treatment of an employee because she is pregnant is illegal under the Pregnancy Discrimination Act of 1978. Treating a pregnant woman worse because she is pregnant is against the law, even when it is motivated by a concern for the health of the pregnant woman or her fetus. It is the choice of a pregnant woman alone (not her employer) whether to continue working while pregnant, even if doing so poses a risk.<sup>5</sup>

A related, but different, issue faced by pregnant women is the inability to obtain workplace accommodations that are necessary to continue working safely.<sup>3,6</sup> Some employers are willing to allow pregnant women to continue working, but only so long as they continue working exactly as they did before the pregnancy. Although many pregnant women are

able to continue working without any accommodation, many others require temporary modifications to their jobs, which involves changes in how, when, or where the work is performed or changes to the duties that must be performed.<sup>7</sup> Some examples of accommodations that are typically helpful to pregnant women are listed in Table 1.<sup>3,7</sup>

Although the laws that require employers to accommodate pregnant women have improved in recent years, not all pregnant women who need accommodations receive them, for a variety of reasons. One significant barrier is that federal and state workplace pregnancy laws do not apply in all cases and are remarkably unclear about what they require. For this reason, many employers remain uneducated about what the law demands. Although most employers grant pregnancy accommodation requests, one-quarter million women are denied their requests each year, which threatens the health of those women and their pregnancies.<sup>7</sup> Additionally, some women do not receive accommodations because they never ask, perhaps out of fear of repercussions or uncertainty about their rights.<sup>7</sup>

Finally, sometimes women do not receive the accommodations that they need because the health care providers who are asked to write work notes requesting the accommodations have not been trained to do so in an effective and legally appropriate manner.<sup>8</sup> Improperly written work notes may cause the employer to deny the requested accommodation. When an accommodation request is denied, a woman is left to choose between her job and the health of her pregnancy.

The Family and Medical Leave Act (FMLA), which provides up to 12 weeks of leave for serious health conditions, does not address this situation adequately. Two in every 5 women of childbearing age are not entitled to job-protected FMLA leave because of the law's eligibility requirements.<sup>9</sup> For those who are eligible, the FMLA provides only unpaid leave, which is unaffordable for many.<sup>10</sup> Further, if a woman goes out on leave early in her pregnancy, her leave may expire before or immediately after she gives birth. Exhausting all of her leave before she is able to return to work can cause the pregnant woman to lose her employer-provided health insurance and her job.<sup>8</sup>

## The prenatal provider's role and a call to action

Prenatal care providers can play a vital role in increasing protections for pregnant women at work through changes in their daily patient care practices and through research, education, and advocacy efforts.

## Patient care solutions

Providers who regularly treat pregnant women should become knowledgeable about what workplace protections their patients have in the state where they practice or at least

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become familiar with legal organizations that can provide advice to their patients. The laws that require employers to accommodate pregnant women vary from state to state. In some states, pregnant women have a clear right to receive accommodations for pregnancy, childbirth, and related medical conditions. In other states, pregnant women must rely on a patchwork of federal laws that require accommodation in many, but not all, circumstances. Providers should also be aware of legal protections that are related to taking leave for childbirth, baby bonding, and lactation rights for nursing mothers. The Affordable Care Act gives most hourly employees the right to take breaks from work to express breast milk in a private place (other than a bathroom) throughout the first year of a child's life,<sup>11</sup> and several states provide a similar right.

Because the laws do vary from state to state, providers should reference [www.Babygate.ABetterBalance.org](http://www.Babygate.ABetterBalance.org) for an overview of the employment laws that protect pregnant women and new mothers in the specific state where they practice. Providers may also refer their patients to the Center for WorkLife Law's free national legal hotline at (415) 703-8276 or [hotline@worklifelaw.org](mailto:hotline@worklifelaw.org) for advice concerning pregnancy accommodation, leave, and expressing breast milk in the workplace. Prenatal care providers are situated uniquely to advise their patients that they may have a right to continue working throughout pregnancy or a right to an accommodation, because providers already engage in conversations with their patients about work duties.

Prenatal care providers can also assist their patients by writing better work accommodation notes and training medical school students and residents on best practices for note writing.<sup>8</sup> Notes that are vague (eg, "light duty") or are overly broad ("no stress") or fail to provide the legally required information may unintentionally cause hardship for pregnant patients.<sup>8</sup> Similarly, recommending accommodations that are not medically indicated, such as bed rest, actually can harm pregnant women at work. If no accommodation is available, she may be sent out on unpaid leave or even lose her job.<sup>8</sup>

Understanding what language to use, what recommendations to make, and what level of detail to provide can be tricky. Table 2 provides a summary of guidelines practitioners should follow in all states. Because the laws and requirements vary from state to state, an important resource is the Center for WorkLife Law's resource center ([www.pregnantatwork.org/healthcare-professionals](http://www.pregnantatwork.org/healthcare-professionals)), which provides state-specific tools that health care professionals can use to prepare notes that increase the likelihood that their patients will receive the accommodation that they need. Pregnant@Work provides state-specific sample notes, an interactive tool that generates the text of an effective work note, and step-by-step note writing guidelines for each state.

### Research solutions

In all states, the provider's goal should be to communicate to the pregnant patient (and her employer) that she is able to

TABLE 1

### Examples of work accommodations for pregnant women

Sit instead of stand.

Stay hydrated.

Take more frequent breaks for using the restroom, resting, or eating snacks.

Telecommute (ie, working from home).

Modify the work schedule to reduce work hours, to shift start or end time, or to take time off for prenatal appointments.

Refrain from potentially hazardous activities, such as climbing.

For accommodations that may be appropriate for typical pregnancy-related conditions, visit <https://www.pregnantatwork.org/accommodation-ideas/>.

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continue performing as many of her normal work duties as are still safe. When a provider restricts a patient from engaging in a work activity that is integral to her job, the employer may force the pregnant woman out on unpaid leave or even terminate her employment. For this reason, providers should avoid making recommendations that are not indicated medically. To that end, more research is needed into what job activities are truly harmful to pregnant women and in what situations and what job activities are acceptable.

Recent research has rendered bed rest and other previously popular recommendations outdated because of a lack of benefit, even in "high-risk" conditions (such as short cervix or hypertensive disorders), and potential harm.<sup>12,13</sup> Obstetric care providers actually may be contributing to unintended harm and hardship by recommending nonefficacious work restrictions on pregnant and postpartum women.<sup>14</sup> New studies will be helpful in distinguishing what accommodations are medically indicated and which women will truly benefit from and require accommodations at work. In addition, studies that assess the economic and social cost of unnecessarily limiting women's work during and after pregnancy might also be helpful in changing provider and employer actions.

### Policy solutions

On the legislative front, there are 2 agendas that women's health care providers should pursue to address this issue. First, change must happen within the financial structure of the prenatal visit itself. Although this issue is important to patients, in our experience, providers often report time limitations as 1 of the most common reasons that workplace needs are not addressed adequately. The lack of coding or billing for this aspect of care presents an obstacle to the comprehensive evaluation of patients' work needs within a routine prenatal visit. As with many other public health issues, making this evaluation reimbursable would create both

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