



the work and family legal center

80 Maiden Lane, Suite 606, New York, NY 10038 | t: 212.430.5982 | f: 212.430.5983 | info@abetterbalance.org | abetterbalance.org

Testimony Supporting SB 488

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Submitted by Dina Bakst & Elizabeth Gedmark,

A Better Balance: The Work & Family Legal Center

A Better Balance is a non-profit legal organization that advocates for workers across the economic spectrum so they can care for their families without sacrificing their financial security. We have heard from dozens of women across the country whose employers refused to make reasonable job adjustments while they were pregnant or nursing, even while sometimes accommodating workers with limitations arising out of disability or injury. This failure to accommodate often results in devastating economic and health consequences for working women and their families.

A Better Balance is recognized as a national leading expert on the issue of discrimination against pregnant women in need of reasonable accommodations, which SB 488, the New Hampshire pregnant workers fairness act (NH PWFA) addresses. “Pregnant and Pushed Out of A Job,” an Op-Ed by Dina Bakst, Co-Founder & Co-President of A Better Balance, appeared in the *New York Times* in 2012 and inspired the introduction of the federal Pregnant Workers Fairness Act (PWFA).ⁱ We have assisted municipal, state, and federal lawmakers in drafting related legislation and have led campaigns and assisted others to pass such legislation in various



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localities. Last fall we published a report, “Pregnant and Jobless: 37 Years After Pregnancy Discrimination Act, Pregnant Women Still Choose Between A Paycheck and A Healthy Pregnancy.”ⁱⁱ The report garnered national media attention and shined a spotlight on this particular problem.

We thank Sen. Fuller Clark for sponsoring this bipartisan bill, which takes an essential step toward promoting fairness and equality for New Hampshire’s women, while also strengthening the State’s economy.

Working families rely on pregnant women and mother’s salaries now more than ever.

Women now make up almost half of the workforceⁱⁱⁱ and mothers bring home at least some income in 70 percent of all married couples with children living at home.^{iv} In fact, a recent Pew Research study found that women are the primary or sole breadwinner in 40% of American families.^v

All too often pregnant workers, especially low-wage workers or those in physically demanding jobs, are placed on unpaid leave or fired when they seek workplace modifications to stay healthy, such as relief from heavy lifting or a stool to sit on. These women lose not only much-needed income but also benefits, like health insurance, which has long-term financial and health consequences for them and their families.



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This bipartisan bill, SB 488, would ensure that New Hampshire law protects pregnant women from all forms of employment discrimination. Because New Hampshire law does not explicitly ensure that pregnant women cannot be pushed out of their jobs when they need a modest change at work, employers are confused about their obligations. Pregnant women cannot afford to wait crucial weeks or months for much needed relief. The NH PWFA ensures that, where a minor job modification would allow a woman to continue working, an employer must provide it unless doing so would pose an undue hardship. This bill is necessary to ensure equal treatment under the law.

NH PWFA would save the State money by decreasing litigation costs.

The proposed bill would save taxpayers money in the form of unemployment insurance and other public benefits incurred when women are forced out of their jobs. We have found that pregnancy accommodations laws have the positive fiscal impact of reducing the number of pregnancy discrimination complaints, thus decreasing litigation and costs associated with pregnancy discrimination complaints.^{vi} For example, after a large state passed similar legislation, litigation of pregnancy discrimination cases actually decreased, even as the number of pregnancy discrimination cases around the country was increasing.^{vii} In Tennessee, the state estimated that a similar bill would have no significant fiscal impact on the state.^{viii} Because of these findings, the state does not need to fear increased cost or litigation post-enactment of the NH PWFA.

The NH PWFA will benefit working women, their families, businesses, and the public.

Women should not be forced to risk their health when a simple modification would allow them



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to stay healthy and on the job. Unfortunately, it is estimated that *more than one quarter million* pregnant workers are denied requests for accommodations each year, and many more do not even request changes at work, likely because they fear retaliation.^{ix} The NH PWFA would promote family economic security by ensuring that women can continue to work safely while pregnant.

Businesses will benefit from this legislation because it will clarify their obligations under the law. We can attest, from first-hand experience enforcing similar legislation in another jurisdiction, that such clarity helps immeasurably to resolve potential disputes before they fester and cause employers to incur significant legal fees. Employers would also benefit from reduced turnover and increased productivity by retaining trained employees.^x

Many states and localities already provide stronger pregnancy discrimination protections.

Alaska, California, Connecticut, Delaware, Hawaii, Illinois, Louisiana, Maryland, Minnesota, Nebraska, New Jersey, New York, North Dakota, Rhode Island, Texas, West Virginia, New York City, NY, Philadelphia, PA, Providence, RI and Central Falls, RI, and Washington, DC all have strong legal protections explicitly requiring certain employers to provide some reasonable accommodations to pregnant employees. Fifteen of these laws were enacted in just the past three years, the majority passed with bipartisan support and unanimously. Similar bills are being considered in other states, such as Massachusetts, Utah, Kentucky, Texas, and Tennessee. Additionally, the proposed federal PWFA^{xi} has garnered bipartisan support in both houses of Congress, with over 140 cosponsors and almost 150 organizations supporting the bill.^{xii} Senator



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Jeanne Shaheen (D) and Senator Kelly Ayotte (R) are cosponsors of the bill in the U.S. Senate.

This growing momentum demonstrates how much this issue resonates with legislators and the public nationwide.

CONCLUSION

New Hampshire should strengthen its pregnancy discrimination laws by passing the NH PWFA, which would provide critical protections for women and their families. Thank you for your consideration.

ⁱ Dina Bakst, *Pregnant, and Pushed Out of a Job*, New York Times, (Jan. 30, 2012).

ⁱⁱ “Pregnant and Jobless: 37 Years After Pregnancy Discrimination Act, Pregnant Women Still Choose Between A Paycheck and A Healthy Pregnancy” (2014), available at:

<http://abetterbalance.org/web/images/stories/Documents/fairness/reports/PregnantandJobless.pdf>.

ⁱⁱⁱ Catalyst, *Statistical Overview of Women in the Workplace*, (Dec. 2011),

<http://www.catalyst.org/publication/219/statistical-overview-of-women-in-the-workplace>.

^{iv} Sarah Jane Glynn, *Breadwinning Mothers, Then and Now*, (June 2014) <https://cdn.americanprogress.org/wp-content/uploads/2014/06/Glynn-Breadwinners-report-FINAL.pdf>.

^v Wendy Wang, Kim Parker, & Paul Taylor, *Breadwinner Moms: Mothers Are the Sole or Primary Provider in Four-in-Ten Households with Children; Public Conflicted about the Growing Trend*, (May 2013),

http://www.pewsocialtrends.org/files/2013/05/Breadwinner_moms_final.pdf.

^{vi} A Better Balance, *Pregnant and Jobless: Thirty-Seven Years After Pregnancy Discrimination Act, Pregnant Women Still Choose Between A Paycheck and A Healthy Pregnancy* 14-16 (Oct. 2015),

<http://abetterbalance.org/web/images/stories/Documents/fairness/reports/PregnantandJobless.pdf>.

^{vii} Equal Rights Advocates, *Expecting A Baby, Not A Lay-Off*, pg. 25, *Expecting a Baby, Not A Lay-Off*, pg. 25, <http://www.equalrights.org/wp-content/uploads/2013/02/Expecting-A-Baby-Not-A-Lay-Off-Why-Federal-Law-Should-Require-the-Reasonable-Accommodation-of-Pregnant-Workers.pdf>.

^{viii} A Better Balance, *Pregnant and Jobless: Thirty-Seven Years After Pregnancy Discrimination Act, Pregnant Women Still Choose Between A Paycheck and A Healthy Pregnancy* 16 (Oct. 2015),

<http://abetterbalance.org/web/images/stories/Documents/fairness/reports/PregnantandJobless.pdf> (“[A] proposed Tennessee Pregnant Workers Fairness Act was found to have no significant fiscal impact on the state because the Tennessee Human Rights Commission (the enforcing agency) anticipated that any increase in workload could be accommodated with the use of existing resources.”).

^{ix} Bryce Covert, “Why Are Workplaces Still Not Ready for Pregnant Workers?,” January 31, 2014, available at: <http://thinkprogress.org/economy/2014/01/31/3235471/pregnant-workers-survey/>.

^x Brief amici curiae of U.S. Women’s Chamber of Commerce, et al., *Young v. UPS*, (Sept. 2014), available at:

[http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/BriefsV4/12-](http://www.americanbar.org/content/dam/aba/publications/supreme_court_preview/BriefsV4/12-1226_pet_amcu_uswcoc-et.al.authcheckdam.pdf)

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^{xi} S.1512/HR 2654.



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^{xii} Pregnant Workers Fairness Act Letter of Support (July 15, 2015). <http://www.nationalpartnership.org/research-library/workplace-fairness/pregnancy-discrimination/pregnant-workers-fairness-act-coalition-letter.pdf>.