



July 25, 2016

Women’s Bar Association
27 School Street, Suite 500
Boston, MA 02108
Ph: 617.973.6666
Fax: 617.973.6663
www.womensbar.org

President
Kristin W. Shirahama

President-Elect
Michele Liu Baillie

**Vice President,
Membership
& Statewide Outreach**
Bronwyn Roberts

Vice President, Operations
Marie Chafe

Secretary
Nicole Forbes

Board of Directors
Meredith Ainbinder
Stefanie Balandis
Margaret Caulfield
Marie Chafe
Nancy Cremins
Kara DelTufo
Kimberly Dougherty
Stesha Emmanuel
Sandra Lundy
Julie Lynch
Krina Patel
Michelle Peirce
Rebecca Pontikes
Camala Richardson
Jamie Sabino
Victoria Spetter
Brianna Sullivan
Donna Truex
Raquel Webster

Executive Director
Patricia Comfort

Deputy Director
Rachel Biscardi

**Membership &
Information Technology
Manager**
Maura Bastarache

Administrative Assistant
Elizabeth Yows-Johnson

Senator Karen Spilka
State House, Room 112
Boston, MA 02133

Senator Vinny deMacedo
State House, Room 313-C
Boston, MA 02133

Representative Joseph Wagner
State House, Room 42
Boston, MA 02133

Senator Eileen Donoghue
State House, Room 212
Boston, MA 02133

Representative Brian Dempsey
State House, Room 243
Boston, MA 02133

Representative James Kelcourse
State House, Room 130
Boston, MA 02133

RE: WBA Urges Inclusion of Pregnancy Workers Fairness Act Language in Final Economic Development Bill

Dear Conferees:

The Women’s Bar Association (WBA) of Massachusetts is a professional association of women attorneys and judges, with over 1,500 members across the state. As an organization committed to advancing and protecting the interests of women and children throughout the Commonwealth, I urge you to pass the final Economic Development bill with the Pregnant Workers’ Fairness Act (PWFA) language (as included in SB 2435) intact.

The WBA supports the Pregnant Workers’ Fairness Act because it requires an employer to accommodate conditions related to pregnancy or childbirth, including the need to express breast milk for a nursing child, unless doing so would pose an undue hardship on the employer.

The PWFA language included in SB 2435 requires employers to make the accommodations for physical conditions women experience because of pregnancy, childbirth, and related medical conditions. The requirements of the bill are identical to the requirements that employers now have for accommodating a worker with a disability.

The Act is important because as the law currently stands, most conditions that lead pregnant women to seek modifications to their jobs would not trigger the employer’s duty to accommodate them because the conditions are not considered disabilities under the law. Current law defines a disability as having a physical or mental impairment that substantially limits one or more major life activities.

During normal pregnancy women can experience back pain, swollen ankles, shortness of breath, nausea, loosening of joints, urinary tract infections, or fatigue. But, under the law, the definition of a disability specifically excludes a normal pregnancy. Therefore, a pregnant woman has to do more than simply provide a doctor’s note saying she is pregnant with a recommendation that she refrain from lifting to trigger a duty to accommodate a woman on the job. A pregnant woman has to show that her particular symptoms, for example, back pain or shortness of breath, is a disability under the law, to trigger her employer’s duty to make an accommodation.

But proving that the most common physical conditions that a woman experiences during pregnancy -- for example back pain or shortness of breath or fatigue -- is a disability under the law is difficult to do. The condition must prohibit or significantly restrict a pregnant woman's ability to perform a major life activity as compared to the ability of the average person in the general population. Shortness of breath might make it hard for her to do some particular parts of her job, but it might not restrict her in most other parts of her life. She might still be able to walk up and down the stairs carrying a toddler, for example, but she cannot do repeated climbing up and down a ladder to get supplies from a stockroom. Or, she might only be able to climb the ladder once or twice a day or a week. In either of these examples, she would not be considered disabled under the law.

The irony is that pregnant women whose needs are less serious than many other disabled workers, and who need job modifications that are inexpensive, easy to implement, and temporary, are the most easily forced out from their jobs.

Because most of the conditions connected with a normal pregnancy do not rise to the sufficient level of seriousness to be considered a disability under the law, a pregnant woman's employer can refuse to accommodate her. In fact, because there is no duty to accommodate the majority of pregnancy-related conditions, an employer can simply fire a pregnant worker and tell her to come back when she is not pregnant. Even if her employer does not outright end her employment, her employer could force her to take leave earlier (and thus use her leave before the baby is born) by claiming she is unable to do the essential functions of her job.

The PWFA would close all these loopholes and would keep pregnant women, who are just as able to work as those who have conditions that are legally considered disabilities, on the job. It would require, and would presume the reasonableness of, many small, or low cost, changes to a job that pregnant women often need. For example, the bill would require an employer to give a pregnant woman:

- More frequent or longer breaks,
- Modified equipment,
- Seating,
- Temporary transfer to a less strenuous or hazardous position,
- Job restructuring,
- Light duty,
- Break time and private non-bathroom space for expressing breast milk,
- Assistance with manual labor, or
- Modified work schedules.

Workplace flexibility for pregnant women and new mothers who need to breastfeed is common sense and the right thing to do. Pregnant women and new mothers should not have to choose between suffering in silence or losing their jobs. By requiring small, low cost accommodations like these, the PWFA will keep pregnant women working and keep their families financially stable, helping the overall economy, including the businesses they work for.

On behalf of the WBA's 1,500 members, I urge you to include the PWFA language in the final Economic Development bill.

Sincerely,



Kristin W. Shirahama
President