

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



Chavi Eve Karkowsky, MD; Liz Morris, JD

## 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

---

From Department of Obstetrics & Gynecology and Women's Health, Albert Einstein College of Medicine/Montefiore Medical Center, Bronx, NY (Dr Karkowsky), and Center for WorkLife Law/University of California, Hastings College of the Law, San Francisco, CA (Ms Morris).

Received March 30, 2016; revised May 20, 2016; accepted May 24, 2016.

The authors report no conflict of interest.

Corresponding author: Chavi Eve Karkowsky, MD. [ekarkows@montefiore.org](mailto:ekarkows@montefiore.org)

0002-9378/\$36.00 • © 2016 Elsevier Inc. All rights reserved.  
<http://dx.doi.org/10.1016/j.ajog.2016.05.036>

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/>.

*Karkowsky & Morris. Pregnant women need their doctors' help to keep working. Am J Obstet Gynecol 2016.*

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

TABLE 2

## Selected work accommodation note-writing guidelines

Guideline	Model note language	To avoid
State patient is pregnant and needs an accommodation.	“Patient is affected by pregnancy, childbirth, or lactation (whichever relevant) and requires an accommodation.”	It is the patient’s decision if she does not want to reveal her pregnancy, but she may be less likely to receive an accommodation.
Identify patient’s pregnancy-related medical conditions (eg, severe back pain, gestational diabetes, etc.), if any.	Depends on the state. In some states, disclosure of specific medical condition is not required. In some states, identifying specific condition and other medical details may be necessary to receive an accommodation. Visit <a href="http://www.PregnantAtWork.org/healthcare-professionals">www.PregnantAtWork.org/healthcare-professionals</a> for state-by-state guidelines.	If guidelines at <a href="http://www.PregnantAtWork.org/healthcare-professionals">www.PregnantAtWork.org/healthcare-professionals</a> say that the disclosure of medical condition is not necessary in your state, maintain your patient’s privacy.
Specifically and precisely identify work limitations that are recommended medically.	Patient “is unable to stand for more than 1 hour without 15 minutes of sitting,” “may not climb ladders,” or “must take 15 minute breaks every 3 hours to eat a snack.”	Avoid vague statements, such as “needs light duty” or “no physical activity.” Also avoid imposing restrictions that are not medically indicated, because the patient could be sent out on unpaid leave or terminated if accommodation is not possible.
Affirmatively state that the patient can continue working.	“Patient is able to continue working with a reasonable accommodation.”	This does not apply in situations in which the patient requires leave, for example to recover after cesarean delivery.
Recommend reasonable accommodations based on your knowledge of the workplace.	“I recommend that my patient be given a stool to sit on while checking out customers at the cash register.”	Avoid recommending specific accommodations without talking to your patient about what is possible in her workplace.
State expected duration of the accommodation.	“Patient’s medical limitation and need for accommodation began on [DATE]. I anticipate the patient will need an accommodation until [DATE].”	Do not fail to include end date just because end date is uncertain. It can be changed in the future if necessary.

Karkowsky & Morris. Pregnant women need their doctors’ help to keep working. *Am J Obstet Gynecol* 2016.

resources and incentives for providers to address patients’ work needs adequately. Physician advocacy groups should work with large insurers, both public and private, to create a billing structure that would allow doctors to evaluate and act on their pregnant patient’s work needs within their care relationship.

Prenatal care providers should also call for the passage of the federal Pregnant Workers’ Fairness Act, a bill that currently has bipartisan support in both chambers of Congress that would provide pregnant women nationwide a clear right to receive work accommodations based on the advice of their care providers. If signed into law, it would require employers to make reasonable accommodations to known limitations that are related to the pregnancy, childbirth, or related medical conditions of job applicants and employees, unless the accommodation would impose an undue hardship on the employer’s business operation. Similar state and local laws that are already in effect that provide a clear right to accommodation have proved effective. Women’s health advocacy organizations, which include the American College of Obstetricians & Gynecologists and the Society of Maternal Fetal Medicine that have endorsed this federal legislation, should actively lobby lawmakers to pass protective laws at both the state and federal levels.

A clear right to accommodation would ensure that pregnant workers can maintain healthy pregnancies, continue earning an essential income for their families, retain health insurance, and have a job to return to after their babies are born. ■

## REFERENCES

- Laughlin L. Maternity Leave and Employment Patterns of First Time Mothers: 1961–2008. U.S. Census Bureau website. 1-21. Available at: <https://www.census.gov/prod/2011pubs/p70-128.pdf>. October 2011. Accessed November 2, 2015.
- Glynn SJ. Breadwinning Mothers, Then and Now. Center for American Progress website. 1-18. Available at: <https://cdn.americanprogress.org/wp-content/uploads/2014/06/Glynn-Breadwinners-report-FINAL.pdf>. June 2014. Accessed November 2, 2015.
- Farrell N, Dolkas J, Munro M. Expecting a Baby, Not a Lay-Off: Why Federal Law Should Require the Reasonable Accommodation of Pregnant Workers. Equal Rights Advocates website. 1-37. Available at: <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>. 2012. Accessed November 2, 2015.
- National Women’s Law Center. Pregnant Workers Make Up a Small Share of the Workforce and Can Be Readily Accommodated: A State-By-State Analysis. Available at: [http://www.nwlc.org/sites/default/files/pdfs/state\\_by\\_state\\_analysis.pdf](http://www.nwlc.org/sites/default/files/pdfs/state_by_state_analysis.pdf). March 2013. Accessed November 2, 2015.

5. Equal Employment Opportunity Commission (US). Enforcement Guidance: Pregnancy Discrimination and Related Issues. Available at: [http://www.eeoc.gov/laws/guidance/pregnancy\\_guidance.cfm](http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm). June 25, 2015. Accessed November 2, 2015.
6. National Women's Law Center. The Pregnant Workers Fairness Act: Making Room for Pregnancy on the Job. Available at: [http://www.nwlc.org/sites/default/files/pdfs/pwfa\\_making\\_room\\_for\\_pregnancy\\_on\\_the\\_job\\_june\\_2015.pdf](http://www.nwlc.org/sites/default/files/pdfs/pwfa_making_room_for_pregnancy_on_the_job_june_2015.pdf). June 2015. Accessed November 2, 2015.
7. Childbirth Connection (US). Listening to Mothers: The Experience of Expecting and New Mothers in the Workplace. National Partnership for Women & Families website. Available at: <http://www.nationalpartnership.org/research-library/workplace-fairness/pregnancy-discrimination/listening-to-mothers-experiences-of-expecting-and-new-mothers.pdf>. January 2014. Accessed November 2, 2015.
8. Jackson RA, Gardner S, Torres LN, Huchko MJ, Zlatnik MG, Williams JC. My obstetrician got me fired: how work notes can harm pregnant patients and what to do about it. *Obstet Gynecol* 2015;126:250-4.
9. Jorgensen H, Appelbaum E. Expanding Federal Family and Medical Leave Coverage: Who Benefits from Changes in Eligibility Requirements? Center for Economic and Policy Research website. Available at: <http://www.cepr.net/documents/fmla-eligibility-2014-01.pdf>. February 2014. Accessed November 2, 2015.
10. Boushey H, Farrell J, Schmitt J. Job Protection Isn't Enough: Why America Needs Paid Parental Leave. Center for American Progress Internet. Available at: <https://www.americanprogress.org/wp-content/uploads/2013/12/ParentalLeave-report-INTRO.pdf>. December 2013. Accessed November 2, 2015.
11. Section 7(r)(1) of the Fair Labor Standards Act- Break Time for Nursing Mothers Provision (US). United States Department of Labor, Wage and Hour Division website. Available at: [http://www.dol.gov/whd/nursingmothers/Sec7rFLSA\\_btnm.htm](http://www.dol.gov/whd/nursingmothers/Sec7rFLSA_btnm.htm). 2010. Accessed November 2, 2015.
12. McCall CA, Grimes DA, Lyerly AD. "Therapeutic" bed rest in pregnancy: unethical and unsupported by data. *Obstet Gynecol* 2013;121:1305-8.
13. Meher S, Duley L. Rest during pregnancy for preventing pre-eclampsia and its complications in women with normal blood pressure. *Cochrane Database Syst Rev* 2006;2:CD005939.
14. Minig L, Trimble EL, Sarsotti C, Sebastiani MM, Spong CY. Building the evidence base for postoperative and postpartum advice. *Obstet Gynecol* 2009;114:892-900.

## ABSTRACT

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

Fifty years ago, when a woman became pregnant, she was expected to stop working. Today, however, most women who work are the primary, sole, or co-breadwinner for their families, and their earnings during pregnancy are often essential to their families' economic well-being. Medical data about working during pregnancy are sparse but generally show that both low-risk and high-risk women can tolerate work-related duties well, although some work accommodations (eg, providing a chair for sitting, allowing snacks, or modifying the work schedule) may be necessary. However, some employers refuse to accommodate pregnant women who need adjustments. This can

result in a woman being forced to make the choice between working without accommodations and losing her income and health insurance or even her job. Prenatal care providers can play an important role by implementing changes in their own practice, shaping public policy, and conducting research to increase protections for pregnant women and to ensure that they receive medically recommended accommodations while continuing to earn income for their growing families.

**Key words:** advocacy, childbirth, lactation, leave, legislation, pregnancy accommodation, public policy, work duty, workplace