



## THE PREGNANCY DISCRIMINATION ACT 25 Years Later: Pregnancy Discrimination Persists

October 31<sup>st</sup>, 2003 marked the 25th anniversary of the Pregnancy Discrimination Act (PDA).<sup>1</sup> Enacted in 1978, the PDA amended Title VII of the Civil Rights Act of 1964 to clarify that the prohibition against sex discrimination in employment includes discrimination on the basis of pregnancy, childbirth, and related medical conditions.

**History.** Prior to passage of the PDA, it was not uncommon for employers to fire female employees who became pregnant, require that they take unpaid leave, or deny them benefits such as insurance coverage for pregnancy-related conditions.<sup>2</sup> In 1974, and again in 1976, the United States Supreme Court upheld state and private insurance plans that denied disability coverage to pregnant women.<sup>3</sup> Thus, many women put their benefits and their jobs at risk simply by becoming pregnant. In response to these discriminatory practices that were entrenched in the law, the National Partnership for Women & Families helped lead the Campaign to End Discrimination Against Pregnant Workers. Beginning in 1976, this coalition proposed the PDA and worked for its passage for two years, until it was enacted in 1978. With its passage, the law for the first time gave pregnant women and key federal enforcement agencies a powerful tool with which to discourage and combat pregnancy discrimination.

**Discrimination Persists Today.** Twenty-five years later, the PDA remains a critical tool for fighting pregnancy discrimination – but pregnancy discrimination persists. With more than 70 million women in the nation’s work force, including 72.9 percent of women who have children,<sup>4</sup> the EEOC has seen a 39 percent increase in the number of pregnancy discrimination charges filed since 1992,<sup>5</sup> even while the nation has seen a nine percent decrease in the birth rate.<sup>6</sup>

While there is no single explanation for the rise in pregnancy discrimination claims, today more women are working while they are pregnant, and they are working longer into their pregnancies.

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<sup>1</sup> 42 U.S.C. § 2000e (k).

<sup>2</sup> See, e.g., *General Electric Co. v. Gilbert*, 429 U.S. 125 (1976); *Geduldig v. Aiello*, 417 U.S. 484 (1974).; *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632 (1974).

<sup>3</sup> See, e.g., *General Electric Co. v. Gilbert*, 429 U.S. 125 (1976); *Geduldig v. Aiello*, 417 U.S. 484 (1974).

<sup>4</sup> U.S. Census Bureau, Census 2000 Summary File 3.

<sup>5</sup> “Pregnancy Discrimination Charges EEOC & FEPAs Combined: FY 1992- FY 2002,” Office of Research, Information, and Planning, EEOC, online at [www.eeoc.gov/stats/pregnanc.html](http://www.eeoc.gov/stats/pregnanc.html)

<sup>6</sup> “U.S. Birth Rate Reaches Record Low,” National Center for Health Statistics press release, June 25, 2003, available at <http://www.cdc.gov/nchs/releases/03news/lowbirth.htm>; “Revised Birth and Fertility Rates for the 1990s and New Rates for Hispanic Populations, 2000 and 2001: United States,” National Vital Statistics Reports vol. 51 no. 12, August 4, 2003.

Fifty-five percent of women who gave birth in 2000 also worked that year.<sup>7</sup> In the decade before the passage of the PDA, more than half of employed women quit their jobs when they became pregnant. By the early 1990s, that number had dropped to 26.9 percent of pregnant women.<sup>8</sup> At the same time, however, the number of pregnant women who were fired from their jobs rose from an all-time low of 2.3 percent in the late 1980s to 4.2 percent in the early 1990s, the first such increase since passage of the PDA.<sup>9</sup>

**Enforcement Efforts.** In 2002, the Equal Employment Opportunity Commission and state Fair Employment Practice Agencies received 4,714 charges alleging pregnancy discrimination, 39% more than the 3,385 charges filed in 1992.<sup>10</sup> As a result of filing charges with the EEOC, victims of pregnancy discrimination received \$10 million in settlements in 2002. Many claimants also filed lawsuits against their employers in court, but such law suits are extremely difficult for employees to win.<sup>11</sup> The growth in pregnancy discrimination claims demonstrates the continued need for both vigorous PDA enforcement, and public education about how the law works for both employees and employers. It is also important to look closely at the data that is available to learn more about the claims that are filed. Determining, for example, whether certain types of jobs generate more pregnancy discrimination claims than others, or whether different racial or ethnic groups experience such discrimination problems at different rates would help target enforcement efforts where they are needed the most.

### **Real Stories: Recent Cases and Settlements.**

#### ***Discrimination in Benefits***

- In 2002, the EEOC settled a class action pregnancy discrimination lawsuit against Verizon. The suit alleged that Verizon's predecessor companies, Bell Atlantic and NYNEX, had discriminated against women on maternity leave by denying them service credits for the time that they were on leave. This denial affected, among other benefits, the women's eligibility for early retirement. While the precise monetary amount of this settlement is still being determined as class members' individual situations are assessed, the EEOC estimates that this is one of the largest settlements of its kind. (Source: EEOC press release, February 26, 2002, "EEOC and Verizon Settle Pregnancy Bias Suit; Thousands of Women to Receive Benefits," available online at <http://www.eeoc.gov/press/2-26-02.html>)

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<sup>7</sup> Amar Bachu and Martin O'Connell, "Fertility of American Women: June 2000." Current Population Reports, P20-543RV, U.S. Census Bureau.

<sup>8</sup> Kristin Smith et al., "Maternity Leave and Employment Patterns: 1961-1995." Current Population Reports, P70-79. U.S. Census Bureau.

<sup>9</sup> Id.

<sup>10</sup> "Pregnancy Discrimination Charges EEOC & FEPAs Combined: FY 1992-FY 2002," available online at <http://www.eeoc.gov/stats/pregnanc.htm>. This number only includes charges of discrimination filed with the EEOC and state FEPAs under federal law. It does not include unreported discrimination or discrimination that was reported under state laws or was the basis of suits under state laws.

<sup>11</sup> See "Equal Treatment? Study shows a wide gap between worker, employer wins in job bias appeals," *American Bar Association*, November 1, 2001 (reporting that federal appellate courts reversed employees' victories in 44% of employment discrimination cases, but reversed employers' victories in only 6% of cases, a larger gap than in any other case category);

### ***Hiring Discrimination***

- The EEOC also negotiated a settlement last year for a woman who was pregnant when she applied for a position with Wal-Mart in 1991. She had worked for Wal-Mart earlier that year, before she went to college. When she learned that she was pregnant, she reapplied for a position with Wal-Mart, but she was told that she would not be hired while she was pregnant. She learned that this was illegal treatment from a magazine article about pregnancy discrimination. She filed a charge of discrimination with the EEOC, who sued Wal-Mart. A jury awarded her backpay, but after the Ninth Circuit Court of Appeals remanded the case for a fourth trial on punitive damages, Wal-Mart settled the case for \$220,000 and an agreement to engage in comprehensive employee education on the Pregnancy Discrimination Act. (Source: EEOC press release, December 23, 2002, “Wal-Mart to Pay \$220,000 for Rejecting Pregnant Applicant, in EEOC Settlement”; see also *E.E.O.C. v. Wal-Mart Stores, Inc.*, 35 Fed.Appx. 543 (9th Cir. 2002); *E.E.O.C. v. Wal-Mart Stores, Inc.* 156 F.3d 989 (9th Cir. 1998).
- During the sixth month of her pregnancy, the plaintiff in this case applied for a job as a sales or clerical assistant at a Dillard’s department store. She was offered a position, but the offer was rescinded after a supervisor determined that she would not yet be eligible for leave under the Family and Medical Leave Act when she gave birth. The plaintiff sued Dillard’s for pregnancy discrimination, and a jury awarded her \$41,720 in back pay. (Source: *Wagner v. Dillard Department Stores, Inc.*, 17 Fed. Appx. 141 (4th Cir. 2001)).
- In 2001, the Washington, D.C. Metropolitan Police Department and Fire and Emergency Medical Services Department stopped requiring new female employees to take a pregnancy test as a condition of employment, after at least four female medics revealed that they had been told to have abortions if they wanted to keep their jobs. (Source: “Mayor Eliminates Pregnancy Screening for Fire/EMS and MPD Applicants,” September 19, 2001, available online at <http://dc.gov/mayor/news/release.asp?id=239&mon=200109&archive=1>)

### ***Discrimination Involving Promotions and/or Discharges***

- In *EEOC v. Bean Lumber Co.*, an employer refused to promote a pregnant employee and then discharged her because of her pregnancy, under a company policy restricting employees who worked past their fourth month of pregnancy. The discharged employee received \$45,000 in 2002, and the company agreed to eliminate the restrictions on pregnant women continuing to work. (Source: EEOC Office of the General Counsel Annual Report Fiscal Year 2002, available online at <http://www.eeoc.gov/litigation/02annrpt.html>)
- A woman who was recruited by The Gap to manage a new Old Navy store learned that she was pregnant after she accepted the job but before it began in March 1999. She told her manager about the pregnancy on her first day of work. Once the store opened, the plaintiff worked 70-hour weeks and received monthly bonuses of more than \$1000; her store exceeded its sale quotas and won a nation-wide sales contest

within two months of opening. The plaintiff was fired after working for The Gap for less than five months, and she was replaced by a male employee. Suspecting that she had been fired for being pregnant, she sued The Gap and won a jury verdict of \$127,000 in back pay, \$57,000 in front pay, \$100,000 in mental anguish, and \$200,000 in punitive damages. (Source: *Laxton v. Gap, Inc.*, 333 F.3d 572 (5th Cir. 2003))

- In August, 2003, the EEOC filed a pregnancy discrimination lawsuit in New York against John Harvard's Brew House. The suit alleges that the Brew House told a pregnant manager-in-training to "consider her options," and when she told them that she intended to continue with her pregnancy, her management training was discontinued and she was then fired. The EEOC's suit on her behalf seeks monetary relief for the former employee, an order that the company implement anti-discrimination policies and procedures, and an injunction prohibiting further discrimination. (Source: "EEOC Sues John Harvard's Brew House For Pregnancy Discrimination," available online at <http://www.eeoc.gov/press/8-06-03.html>).

### **Conclusion**

Over twenty five years after its enactment, the Pregnancy Discrimination Act remains a critical source of protection for working women. Rejecting age-old stereotypes about the capabilities of pregnant workers, the PDA ensures that women are not shut out of job opportunities simply because they are, or might become, pregnant. These protections are even more important today, as women continue to move into the workforce in greater numbers, while also juggling their work and family responsibilities. Despite significant progress over more than two decades, many women continue to face discriminatory pregnancy-related practices that pose serious obstacles to their success and advancement in the workplace. Thus, vigorous enforcement of the law and comprehensive public education about the what the law requires are essential to ensure that the Pregnancy Discrimination Act continues to be a vital tool for creating workplaces free of discrimination.