



March 18, 2021

The Honorable Alma S. Adams
Chair, Subcommittee on Workforce
Protections
Committee on Education and Labor
United States House of Representatives

The Honorable Fred Keller
Ranking Member, Subcommittee on
Workforce Protections
Committee on Education and Labor
United States House of Representatives

The Honorable Suzanne Bonamici
Chair, Subcommittee on Civil Rights and
Human Services
Committee on Education and Labor
United States House of Representatives

The Honorable Russ Fulcher
Ranking Member, Subcommittee on Civil
Rights and Human Services
Committee on Education and Labor
United States House of Representatives

Dear Chairs Adams and Bonamici and Ranking Members Keller and Fulcher,

The National Partnership for Women & Families is a non-profit, non-partisan advocacy organization committed to improving the lives of women and families by achieving equity for all women. Since our creation as the Women's Legal Defense Fund in 1971, we have fought for every significant federal advance for equal opportunity in the workplace, including the Pregnancy Discrimination Act of 1978 and the Family and Medical Leave Act of 1993 (FMLA). **We write in strong support of H.R. 7, the Paycheck Fairness Act; H.R. 1065, the Pregnant Workers Fairness Act; the Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Act; and the Protecting Older Workers Against Discrimination Act (POWADA).** As we celebrate Women's History Month, these critical bills will help our nation build back an economy that works for everyone by ensuring that all women can work with equality, safety, health and dignity.

The impact of the coronavirus pandemic has fallen heavily on women of color particularly, and all women generally. Women are especially likely to be essential workers. Still, they are also bearing the brunt of job losses while shouldering increased caregiving responsibilities that have pushed millions of women out of the workforce entirely. These bills will help protect women's economic security at a time when they need it most.

Paycheck Fairness Act

Women and workers from communities of color continue to face significant pay disparities in the United States. On average, women working full time and year-round are paid only 82 cents for every dollar paid to men, and the wage gap is widest for women of color. Among women who hold full-time, year-round jobs in the United States, Black women are typically paid 63 cents, Native American women 60 cents and Latinas just 55 cents for every dollar

paid to white, non-Hispanic men. White, non-Hispanic women are paid 79 cents.¹ Asian American and Pacific Islander (AAPI) women who work full time, year-round are paid as little as 52 cents for every dollar paid to white, non-Hispanic men, as Burmese women are. Asian American women overall are paid just 87 cents for every dollar paid to white, non-Hispanic men.² The wage gap persists across different industries, occupations and education levels and exists in [nearly every congressional district](#).

These troubling statistics underscore the need to update our nation's equal pay laws. [The Paycheck Fairness Act](#) would make it safe for workers to discuss their wages with each other. Employers can currently mask compensation discrimination with pay secrecy policies that forbid employees from discussing pay and benefits. Secrecy and the threat of retaliation leave workers unable to learn about and challenge pay disparities. In a survey of private-sector workers, over 62 percent of women and 60 percent of men reported that their employers discourage or prohibit discussing wage and salary information. The Paycheck Fairness Act would make pay secrecy policies illegal.

The Paycheck Fairness Act would also prohibit employers from screening job applicants based on their salary history or requiring salary history during the interview process. Women are typically paid lower wages than men even in their first jobs. Salary disparities that begin early in a woman's career can follow her from job to job when employers are permitted to base a new hire's salary on her prior earnings. People should be paid fairly for the job they are being hired to do.

The bill would also make it more difficult for employers to justify pay discrimination. Workers in the same company who do the same job and have the same amount of experience, education and training should be paid the same. Currently, however, employers are able to explain away differences in pay too easily by relying on a catch-all defense in the Equal Pay Act. The Paycheck Fairness Act would close that loophole and require employers to prove that any differences in pay are not sex-based, are job-related concerning the position in question, and are consistent with business necessity and account for the entire difference in compensation. Employees claiming pay discrimination would also have new opportunities to prove that the employer's defense is the pretext.

In addition to these critical provisions, the Paycheck Fairness Act would also allow workers alleging pay discrimination within the same company to file class-action suits; would change the remedies of the Equal Pay Act to treat gender-based pay discrimination claims the same as other civil rights violations that result in unfair pay; would recognize companies that want to do better; and would improve fair pay enforcement, data collection and disclosure.

Closing the gender and racial wage gap is a crucial measure to take in response to COVID-19. Throughout the pandemic, women and people of color have disproportionately experienced the adverse effects of the public health and economic crisis. Women and people of color have been on the front lines working in our most essential occupations, but forces like wage inequality have kept them underpaid and undervalued. The Paycheck Fairness Act would ensure that workers are given the support needed to ensure pay equity during this time of crisis.

Pregnant Workers Fairness Act

More than 40 years ago, Congress passed the Pregnancy Discrimination Act of 1978, outlawing discrimination on the basis of pregnancy, childbirth or related medical conditions. Yet, pregnancy discrimination is still widespread and impacts pregnant workers across industry, race, ethnicity and jurisdiction. Nearly 31,000 pregnancy discrimination charges were filed with the U.S. Equal Employment Opportunity Commission (EEOC) and state-level fair employment practice agencies between 2010 and 2015,³ and the reality of pregnancy discrimination is likely much worse than illustrated by EEOC charges.⁴ As a result of this discrimination, too many pregnant workers must choose between their paychecks and a healthy pregnancy. That is not a choice anyone should have to make.

The Pregnant Workers Fairness Act would create a clear policy standard requiring employers to provide reasonable accommodations to pregnant workers. Support for a law like the Pregnant Workers Fairness Act is nearly universal and bipartisan. Eighty-nine percent of voters favor this bill, including 69 percent of voters who strongly favor it.⁵ Thirty-five leading private sector employers and employer associations have also endorsed the Pregnant Workers Fairness Act in [an open letter to Congress](#).

More than 85 percent of women will become mothers at some point in their working lives.⁶ And sometimes, an accommodation is needed in order for a pregnant worker to continue performing their job safely. These accommodations are often small changes to their work environment, such as additional bathroom breaks, a stool to sit on or the ability to have a water bottle at their work station. Although minor, these accommodations allow pregnant workers to stay in the workforce safely and continue to provide for themselves and their families. When pregnant workers are fired, demoted or forced into unpaid leave, they and their families lose critical income. They may struggle to re-enter a job market that is particularly harsh for people who are currently or were recently pregnant.

Pregnancy discrimination affects women across race and ethnicity, but women of color and immigrants are at particular risk. They are disproportionately likely to work in jobs and industries where accommodations during pregnancy are not often provided (such as working as home health aides, food service workers, package handlers and cleaners).⁷ Black women are much more likely than white women to file pregnancy discrimination charges;⁸ they are also at a higher risk for pregnancy-related complications like pre-term labor, preeclampsia and hypertensive disorders,⁹ making reasonable accommodations on the job even more important, and loss of wages and health insurance due to pregnancy discrimination especially challenging.

To date, thirty-one states, including the District of Columbia and four cities, have passed laws requiring employers to provide reasonable accommodations to pregnant workers.¹⁰ But the ability to maintain a healthy pregnancy and keep a job should not depend on where a pregnant person works. Women are a crucial part of the workforce, and their participation matters for the growth of our economy and the stability and wellbeing of families nationwide.

The COVID-19 pandemic has exacerbated the problematic working conditions of pregnant workers. Pregnant people are at a higher risk of falling ill from COVID-19 and experiencing

complications, and thus require increased protection against the virus. However, since the beginning of the pandemic, pregnant workers have experienced [increased workplace discrimination](#) by being denied accommodations and leave. The Pregnant Workers Fairness Act would ensure that pregnant workers have access to the accommodations they need in order to have a safe workplace experience.

PUMP for Nursing Mothers Act

Once pregnant workers return to the workplace after giving birth, many will need the ability to pump breastmilk during the workday. While the Affordable Care Act requires employers to provide reasonable break time and a private, non-bathroom space for certain breastfeeding employees to pump, persistent coverage gaps exist. Roughly one in four women of childbearing age are not covered by current law. Since breastfeeding is associated with a host of improved health outcomes,¹¹ expanding these protections to the 9 million workers currently excluded from the Break Time for Nursing Mothers law is essential to support mothers in the workplace. In addition to closing the coverage gap, the PUMP Act will also clarify for employers when pumping time must be paid and when it may be unpaid, and extend the remedies available for other violations of the Fair Labor Standards Act to nursing employees, ensuring that working parents' rights are protected.

Protecting Older Workers Against Discrimination Act (POWADA)

The American workforce is aging drastically. According to projections from the Bureau of Labor Statistics, 41 million workers will be age 55 or older in 2024.¹² As the workforce continues to skew older, age discrimination in the workforce will become a more significant issue, especially for older women workers, who are even more likely to experience discrimination than older men and who face a severe deficiency in retirement savings due to a lifetime of wage discrimination. In 2009, the Supreme Court weakened protections against age discrimination for older workers with a ruling that would force them to prove that age was a “decisive factor” in an employer’s disciplinary or dismissal decision, a much higher standard than previously required. A 2013 Supreme Court decision applied this same standard to other forms of discrimination under Title VII of the Civil Rights Act. POWADA is critical to restoring the earlier standard and protecting workers’ rights to challenge all forms of discrimination on the basis of age, sex, race, religion, national origin or disability.

Conclusion

All four of these bills – the Pregnant Workers Fairness Act, the Paycheck Fairness Act, the PUMP for Nursing Mothers Act, and the Protecting Older Workers Against Discrimination Act – would strengthen existing federal protections, ensure more equitable workplaces and allow women to remain in the workforce and maintain their economic stability at all phases of life. **It is time to clarify and strengthen existing federal protections for women in the workforce by passing the Pregnant Workers Fairness Act, the Paycheck Fairness Act, the PUMP for Nursing Mothers Act, and the Protecting Older Workers Against Discrimination Act.**

cc: The Honorable Robert C. “Bobby” Scott, Chair, Committee on Education & Labor
The Honorable Virginia Foxx, Ranking Member, Committee on Education & Labor

¹ National Partnership for Women & Families. (2020, September). *America’s Women and the Wage Gap*. Retrieved 12 March 2021, from <https://www.nationalpartnership.org/our-work/resources/economic-justice/fair-pay/americas-women-and-the-wage-gap.pdf>

² National Partnership for Women & Families. (2021, March). *Asian American and Pacific Islander Women and the Wage Gap*. Retrieved 12 March 2021, from <https://www.nationalpartnership.org/our-work/resources/economic-justice/fair-pay/asian-women-and-the-wage-gap.pdf>

³ National Partnership for Women & Families. (2016, October). *By the Numbers: Women Continue to Face Pregnancy Discrimination in the Workplace*. Retrieved 12 March 2021, from <http://www.nationalpartnership.org/our-work/resources/economic-justice/pregnancy-discrimination/by-the-numbers-women-continue-to-face-pregnancy-discrimination-in-the-workplace.pdf>

⁴ National Partnership for Women & Families. (2014, January). *Listening to Mothers: The Experiences of Expecting and New Mothers in the Workplace*. Retrieved 12 March 2021, from <http://www.nationalpartnership.org/our-work/resources/economic-justice/pregnancy-discrimination/listening-to-mothers-experiences-of-expecting-and-new-mothers.pdf>

⁵ The Tarrance Group. (2020, February). *Key findings from a national survey of voters* [Memo]. Retrieved 12 March 2021, from https://www.aclu.org/sites/default/files/field_document/pwfa_survey_memo_2-20-20_1_1_2.pdf

⁶ U.S. Census Bureau. (2017, May). *Fertility of Women in the United States: 2016, Table 6, Completed Fertility for Women age 40 to 50 Years Old – Selected Characteristics: June 2016*. Retrieved 12 March 2021, from https://www.census.gov/data/tables/2016/demo/fertility/women-fertility.html#par_list_62 (Unpublished calculation. The reported percentage of women who had become mothers by age 40 to 44 as of 2014 is 85.6 percent.)

⁷ National Latina Institute for Reproductive Health and National Women’s Law Center. (2014, May). *Accommodating Pregnancy On the Job: The Stakes for Women of Color and Immigrant Women*. Retrieved 12 March 2021, from https://www.nwlc.org/wp-content/uploads/2015/08/the_stakes_for_woc_final.pdf

⁸ See Note 3.

⁹ Creanga, A. A., Bateman, B. T., Kuklina, E. V., & Callaghan, W. M. (2014, May). Racial and ethnic disparities in severe maternal morbidity: a multistate analysis, 2008-2010. *American Journal of Obstetrics & Gynecology*, 210(5), 435.e1–435.e8. Retrieved 12 March 2021, from [http://www.ajog.org/article/S0002-9378\(13\)02153-4/fulltext](http://www.ajog.org/article/S0002-9378(13)02153-4/fulltext)

¹⁰ For a list, see: National Partnership for Women & Families. (2020, September). *Reasonable Accommodations for Pregnant Workers: State and Local Laws*. Retrieved 12 March 2021, from <http://www.nationalpartnership.org/our-work/resources/workplace/pregnancy-discrimination/reasonable-accommodations-for-pregnant-workers-state-laws.pdf>

¹¹ Office on Women’s Health (2019, March). *Making the decision to breastfeed*. Retrieved 10 March 2021, from <https://www.womenshealth.gov/breastfeeding/making-decision-breastfeed>

¹² Bureau of Labor Statistics, (2017, May). *Older workers: Labor force trends and career options*. Retrieved 10 March 2021, from <https://www.bls.gov/careeroutlook/2017/article/older-workers.htm>

The National Partnership for Women & Families is a nonprofit, nonpartisan advocacy group dedicated to promoting fairness in the workplace, reproductive health and rights, access to quality, affordable health care and policies that help all people meet the dual demands of work and family. More information is available at NationalPartnership.org.

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