

# Lawmakers consider bill requiring accommodations for pregnant workers



The Joint Committee on Labor and Workforce Development heard testimony on the Pregnant Workers Fairness Act on April 4, 2017. (SHIRA SCHOENBERG / THE REPUBLICAN)



By **Shira Schoenberg** | [sschoenberg@repub.com](mailto:sschoenberg@repub.com)

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BOSTON -- When Lisa Newman of Northampton got pregnant, she had been working in information technology at a Western Massachusetts college for five months.

After she told her supervisor she was pregnant, she began getting negative performance feedback -- for example, a complaint that she arrived five minutes late to a meeting due to a pregnancy-related issue. She continued to face harassment and retaliation. After Newman miscarried a second pregnancy and needed medical leave, her boss asked her how many children she planned to have "because my pregnancies were a burden and a hardship to her projects," Newman told the Joint Committee on Labor and Workforce Development on Tuesday.

The Massachusetts Legislature will consider the Pregnant Workers Fairness Act this session. The legislation would forbid employers from firing or discriminating against workers because of pregnancy or nursing -- the same way employers cannot discriminate based on religion, gender, race or other protected classes. It would also require employers to make reasonable

accommodations for pregnant women.

Current disability protections do not cover women with healthy pregnancies. The bill would apply the same standards that already apply to disability to pregnancy: requiring employers to make reasonable accommodations upon request unless doing so would impose undue hardship on the business. An employer would not be able to fire, deny a job to or demote a worker because of pregnancy-related accommodations. The employer could not force the worker to accept a particular accommodation or take a leave, as long as the employee was able to perform the essential functions of her job.

Reasonable accommodations include things like more frequent breaks to eat, drink or use the bathroom, time off to recover from childbirth, modification of equipment, seating, a temporary transfer to an easier role, limits on lifting heavy objects, a private space for nursing or a modified work schedule.

Rebecca Pontikes of the Massachusetts Employment Lawyers' Association said many of the modifications are "low cost, often very easy, very temporary."

"This is a workplace equality issue," Pontikes said.

An employer who wants to deny an accommodation would have to prove "undue hardship" based on factors like the size of the company, the cost of the accommodation and its effect on the business. Businesses can require documentation from a medical professional before making certain accommodations.

Linda Matys O'Connell, executive director of the Hadley-based MotherWoman, which has advocated for the bill, said more than half of all pregnant women or new mothers are in the workforce, some in physically strenuous jobs.

"Today in Massachusetts, women may be forced to choose between their jobs and a healthy pregnancy," Matys O'Connell said. "Losing a job because you're pregnant is unfair. It can create a financial or career crisis that's very difficult to recover from."

Advocates told stories of women who lost their jobs and ended up on public assistance because an employer was insensitive to their pregnancy needs.

Danielle Beitz told the committee in written testimony that she was working at a Westfield gas station when she became pregnant. She had to fill refrigerator coolers with heavy milk cartons and was asked to shovel snow. Her manager refused to accommodate her request for light duty. She gave birth to her son early, and he has a sensory processing disorder.

"If I had the concrete legal protection that this bill would offer, I would have received the accommodations I needed, which would have led to a less hostile/stressful work environment and could have led to a healthier pregnancy," Beitz said.

A version of the bill came up in the last legislative session, but never passed the Legislature. This year, however, it has a far better chance.



## Bill would require Massachusetts employers to accommodate needs of pregnant women

House Speaker Robert DeLeo, D-Winthrop, said the House will take it up. Support from House leadership greatly improves its chances of becoming law. The bill also has some bipartisan support.

"Under this law, pregnant women will be protected from discrimination when it comes to commonsense accommodations like nursing needs and food, water and restroom breaks," DeLeo recently told the Greater Boston Chamber of Commerce. "And businesses will engage in a collaborative process with their employees to determine effective and reasonable accommodations."



## Speaker Robert DeLeo: Marijuana revenue could pay for new opioid addiction fund

The latest version of the legislation was the result of collaboration between women's rights groups and Associated Industries of Massachusetts, which represents businesses. AIM expressed concern about the language of the bill last year, but is supporting it this session.

Some of the changes that were made relate to requiring the employer and employee to work together in a "timely, good-faith and interactive process" to come up with an accommodation, aligning state and federal accommodation laws, providing flexibility on the type of accommodation to be offered, letting employers ask for documentation and allowing for breaks to be paid or unpaid.

If a company were to violate the law, an employee could hire a lawyer to work out a settlement or go to court or could complain to the Massachusetts Commission Against Discrimination.

MCAD also supports the legislation. Commissioners wrote in a letter to the legislative committee that it "increases the likelihood that women will be able to stay on the job throughout their pregnancy and return to work, resulting in a more productive workforce with less employee turnover."

The bill, **H.1038/S.1023**, is sponsored by state Rep. David Rogers, D-Cambridge, and state Sen. Joan Lovely, D-Salem. It has 167 co-sponsors in the House and Senate.

Eighteen states already require employers to provide reasonable accommodations to pregnant employees, and similar bills are being considered in several other states.

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