
Pregnant Workers Fairness Act fills loopholes in state, federal law

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By Sarah Toy, Special to the Telegram & Gazette

BOSTON — Alejandra Duarte's former job at a Worcester industrial laundry facility wasn't easy. It involved a lot of heavy work — packing and transporting up to 600 pounds on a routine basis. When she became pregnant, she told her supervisor and asked for a lighter workload.

Instead, her supervisor increased her workload and hours. Duarte saw her number of 10-hour shifts increase from four to five and was given the additional responsibility of training new workers.

"She said I could accept the work as it was or stop working there," Duarte told the Legislature's Committee on Labor and Workforce Development during an April hearing, testifying in support of the Pregnant Workers Fairness Act.

The bill (H 1038/S 1023) would require employers to offer pregnant women reasonable accommodations as long as they do not pose undue hardship on the employer. The law would also protect workers from being denied opportunities based on the need for accommodation and from being required to take leave if reasonable accommodations could be made.

Duarte told lawmakers she continued to work the increased load because she didn't feel like she had other options; she was undocumented at the time and did not speak much English. She couldn't afford to lose her job with a baby on the way, she said.

One Sunday, after working a series of 10-hour shifts at the laundry facility, Duarte said she felt a sudden sharp pain in her abdomen. The next day, she found that she was bleeding and went to see her physician, who told her she would lose her baby.

Five days later, she gave birth to a stillborn boy.

“Walking through the hospital hallways empty-handed was one of the hardest things I have ever done,” she said, her voice breaking. She returned to work soon afterward, she said, because she could not afford to lose her wages.

“I am very hurt and angry by the way I was treated,” she said. “Women getting pregnant is a normal part of life, and workplaces should be prepared to help them work safely.”

Stories like Duarte’s are what make passing the Pregnant Workers Fairness Act so important, said Linda Matys O’Connell, the acting executive director of advocacy group MotherWoman.

As the law stands, only a worker with a disability has the right to seek changes to their job, but the legal definition of a disability specifically excludes a normal pregnancy, according to Rebecca G. Pontikes of the Massachusetts Employment Lawyers Association.

“This is where you get the loophole that pregnant women fall through,” said Pontikes.

During a normal pregnancy, a woman can experience back pain, swollen ankles and an increased need to urinate, according to Dr. Julia Johnson, the chair of the Department of Obstetrics and Gynecology at UMass Memorial Medical Center and a professor at UMass Medical School.

Issues like these may require certain accommodations, said Johnson. She tells her patients to be careful about lifting too much weight and to avoid rigorous activities that may affect their back and legs.

“If their job does involve strenuous activity, it’s important for them to talk about it with their employer,” she said. “In pregnancy, you do have to be careful with those things.”

In 2013, the National Institute for Occupational Safety and Health published clinical guidelines for occupational lifting in uncomplicated pregnancies, recommending certain weight limits based on different stages of pregnancy.

Johnson thinks it is important for employers to provide frequent or longer bathroom breaks for pregnant employees. She also thinks businesses should provide an area for expressing breast milk. Both accommodations are in the Pregnant Workers Fairness Act. Other accommodations in the bill include providing seating, lighter duty, assistance with manual labor and temporary transfer to less strenuous or less hazardous positions, if needed.

Christopher J. Crowley, executive vice president and treasurer of Worcester-based Polar Beverages, said work at their plant is mostly automated but inevitably involves heavy lifting, with cases of soda weighing between 22 and 40 pounds.

“When you’ve got a pregnant woman working for you, you won’t have her hurling cases around,” he said. “When someone’s pregnant and working 10 or 12 hours a day, take a break. Go sit down.”

Polar doesn’t have a company policy when it comes to accommodations for pregnant women, he said.

“You just have to use common sense and common decency,” he said. “I haven’t had a scenario when I’ve had to say no.”

He acknowledged that a large employer like Polar may find it easier to accommodate pregnant workers than smaller companies.

“We have many more options,” he said.

Rep. David M. Rogers, D-Cambridge, the lead sponsor of the House bill, said the commonwealth owed everyone an equal opportunity to be successful.

“There was evidence brought to me that pregnant women in the commonwealth were experiencing what is essentially discrimination,” he said. “It’s not good for women, but it’s not good for us as a society either.”

He said he was optimistic about the bill being passed this legislative session.

“This is the first one out of the gate that’s been endorsed by the Speaker of the House,” he said. Speaker Robert A. DeLeo has expressed support for the legislation and in early March said the House would take up the bill “as soon as possible.”

A similar bill ran into resistance last legislative session when the Associated Industries of Massachusetts took issue with it. MotherWoman then worked with AIM to develop the current draft, which AIM now supports.

Christopher P. Geehern, AIM's executive vice president of marketing and communications, said AIM had never objected to the issue of pregnancy accommodations. The problem was last session's bill itself.

"We're pleased to support the bill this year," he said.

O'Connell of MotherWoman said she was satisfied with what they came up with.

"Pregnant women are not asking for privilege," said O'Connell. "We are just asking for a level playing field."

Sarah Toy is a graduate student in the Boston University Statehouse Program. Material from the State House News Service was used in this report.