

What's New in Work Hazards and Pregnancy / Reproductive Health

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Outline

- ★ Legal framework for pregnancy protection in the workplace
 - ★ Pregnancy Discrimination Act
 - ★ Court Decisions: Johnson Controls, Young v UPS
 - ★ ADA & ADAAA
 - ★ New EEOC Guidance - examples
- ★ Updates: Lifting and strenuous work
- ★ Updates: 'Newer' hazardous jobs
- ★ Workplace assessments: examples

Young v. UPS

US Supreme Court - 2015

Air Driver for UPS: Required 70 lb lifting/push pull, but rarely

- ★ July 2006- obtained LOA for IVF (successful)
- ★ Oct 2006- sought 20 lb lifting limit for work while pregnant
- ★ Refused: UPS offered light duty for workers with
 - on-the-job injuries,
 - those accommodated under the ADA, and
 - those who had lost DOT certification,
 - but not for pregnancy
- ★ had to go on extended, unpaid leave of absence, during which she lost her medical coverage

Pregnancy Discrimination Act (1978)

Amendment to Civil Rights Act of 1964

Covers employers with ≥ 15 workers

Pregnancy and Maternity Leave

1. May not single out pregnancy-related conditions for special procedures to determine an employee's ability to work.
2. May require worker to submit doctor's statement on inability to work before granting leave or paying sick benefits

Pregnancy Discrimination Act (1978)

Pregnancy and Maternity Leave

3. If employee is temporarily unable to perform her job because of her pregnancy, employer must treat her the same as any other temporarily disabled employee
 - modify tasks,
 - perform alternative assignments,
 - take disability leave or leave without pay
4. Pregnant employees must be permitted to work as long as they are able to perform their jobs
5. Employers must hold open a job for a pregnancy-related absence the same length of time jobs are held open for employees on sick or disability leave

Young v. UPS

- ✦ District Court ruled in favor of UPS
- ✦ Circuit Court upheld
 - ✦ Ruled that modified-light duty limited to those 3 categories = “pregnancy-blind” policy
- ✦ Young argues violation of the PDA
 - ✦ restricted to 20-lb lifting in pregnancy, she is “similar in her ability or inability to work” to these other categories

Young v. UPS – Supreme Court

Supreme Court ruled essentially in favor of Young:
Sent case back to lower court

☀ Young may argue to lower court that:

1. she asked to be accommodated in the workplace when she couldn't do normal job;
2. employer refused to do so, and
3. employer did provide accommodation for other worker just as unable to do their work temporarily ie that the policy was not 'pregnancy-blind'

Pregnant Workers Fairness Act (2023)

Covered employers (≥ 15 workers)

Employer must provide **reasonable accommodations** to a worker's known limitations related to pregnancy, childbirth, or related medical conditions

- unless the accommodation will cause the employer an **undue hardship**

Pregnant Workers Fairness Act (2023)

House Committee on Education and Labor Report on the PWFA examples of possible reasonable accommodations:

- ✱ ability to sit or drink water;
- ✱ receive closer parking;
- ✱ flexible hours;
- ✱ appropriately sized uniforms and safety apparel;
- ✱ additional break time to use the bathroom, eat, and rest;
- ✱ leave or time off to recover from childbirth;
- ✱ be excused from strenuous activities or activities that involve exposure to compounds not safe for pregnancy.

Pregnant Workers Fairness Act (2023)

Covered employers **cannot**:

- ✦ Require employee to accept an accommodation without a discussion between the worker and the employer;
- ✦ Deny a job or employment opportunities to a qualified employee or applicant based on the person's need for a reasonable accommodation;
- ✦ Require an employee to take leave if another reasonable accommodation can be provided that would let the employee keep working;
- ✦ Retaliate against an individual for reporting or opposing unlawful discrimination under the PWFA or participating in a PWFA proceeding (such as an investigation)

Before the company hires her...



you should
make sure she's
not pregnant.

You can do what many large corporations are doing. Make pregnancy testing a routine part of your pre-employment physical. And find the pregnant before your company gets involved in costly training programs as well as health and sick-pay coverage.

Routine pregnancy testing of all female applicants is now simple and practical with the PREGNOSTICON 2-Minute Slide Test. The most accurate slide test for pregnancy, PREGNOSTICON is economical, too. It comes in handy kits of 10 tests at 12.00 or 50 tests at 50.00. It's so simple to perform and interpret that no special training is required. Your aides can quickly become experts. You don't need to buy any special equipment to use PREGNOSTICON. You start with a urine sample. The kit supplies everything else.

So, save your company's money and save your applicants the eventual emotional stress of a surprise pregnancy by giving this reliable and simple test a trial. Send a signed, voided prescription blank to Organon, Inc., West Orange, New Jersey 07052. And we'll send an Organon representative to tell you about the PREGNOSTICON screening program.

PREGNOSTICON® SLIDE TEST
2-Minute Slide Test for Pregnancy



J Occup Med
ad, 1970

Occupational Exposures: The Challenge

- ★ Hard to quantify exposures accurately
 - ★ In addition, assessment of timing of exposure is critical
- ★ **Presence** does not equal **exposure**
- ★ Limited data on reproductive outcomes
- ★ Permissible Exposure Limits (PELs) and Threshold Limit Values (TLVs) are tailored to health effects in non-pregnant workers
- ★ Maternal and fetal physiology differs in significant ways that may increase toxicity
- ★ Many women do not realize that they are pregnant until well into 1st trimester

Pregnancy outcomes by occupation

Consistent body of work since mid-1980s

Pregnancy outcomes better in working than non-working mothers

- Benefits (financial stability, insurance)
- Social support and structure
- ? Healthy worker effect
- ? Work a marker for higher SES, other positive attributes

Current pregnancy risks:

- A changing landscape

- ★ Many 'traditional' riskier occupations better controlled:
 - ★ Anaesthetic gases, laboratory work
- ★ Current concerns: Small shops, less H&S oversight, increased demands
 - ★ Food service workers: physical demands
 - ★ Nursing personnel: physical demands, infections
 - ★ Beauty, nail salon industries: chemicals
- ★ Work and social risks likely additive
 - ★ low SES, underinsurance, neighborhoods

Low birth weight by occupational group: Connecticut, 2000 (Meyer et al, JOEM 2008)

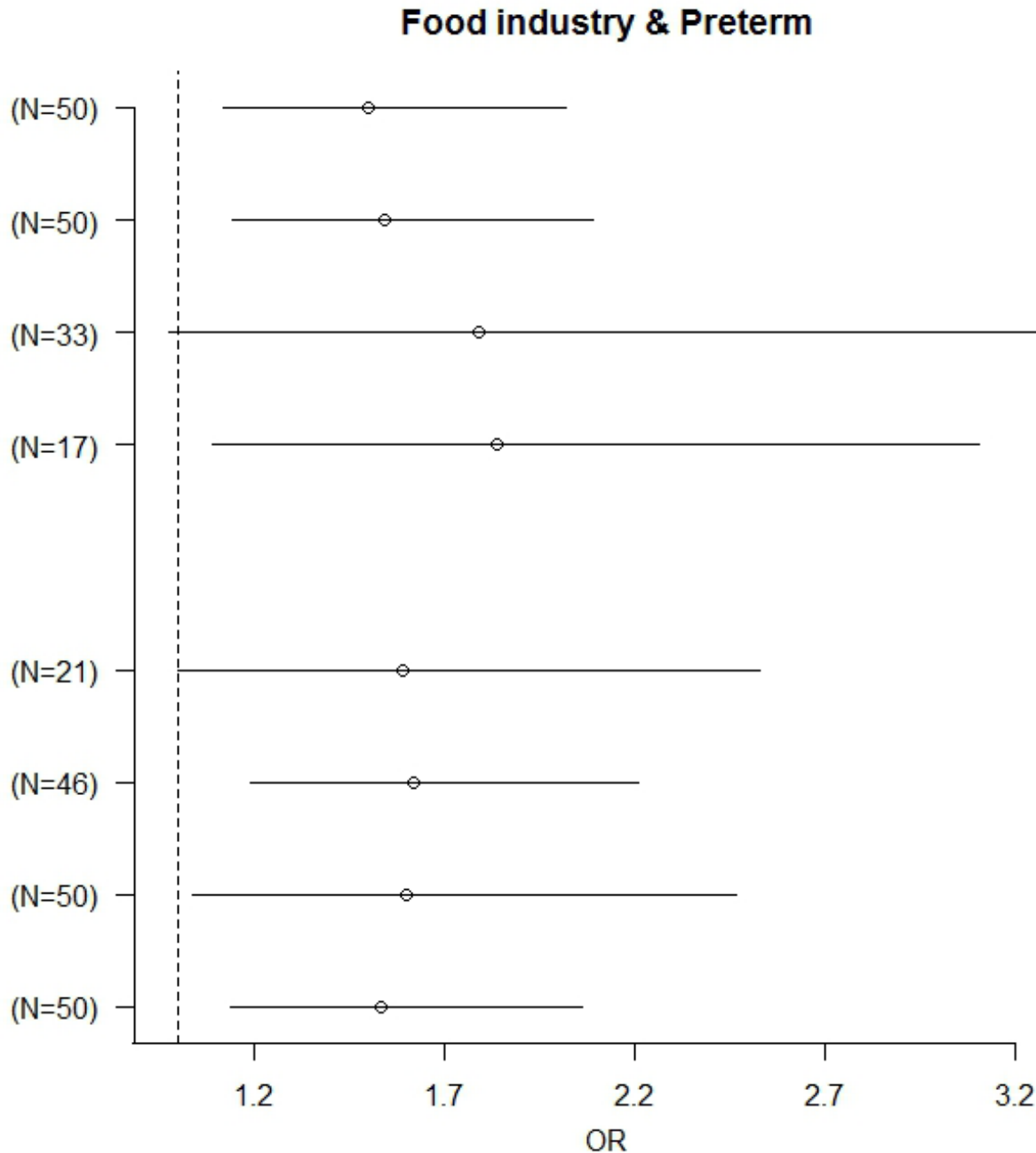
Occupation	Adjusted OR*	95% CI
Other food prep and serving workers	3.05	1.39 – 6.69
Material recording, distributing, handling	1.98	1.17 – 3.36
Personal appearance workers	1.94	1.23 - 3.07
Retail sales workers	1.71	1.17 – 2.51
Nursing & home health aides	1.69	1.13 - 2.51

LBW: <2500 g

Secretarial workers as referent group

* Adjusted for maternal age, race, smoking, initiation of prenatal care (trimester), parity, educational level

Preterm delivery: Increased risk in food industry



Casas M, Cordier S, Martínez D, Barros H, et al Maternal occupation during pregnancy, birth weight, and length of gestation: combined analysis of 13 European birth cohorts. *Scand J Work Environ Health* 2015; 41:384-396

Ergonomic Hazards

Physically demanding work (heavy &/or repetitive lifting or load carrying, manual labor, or high physical exertion) associated with:

- SGA: Odds ratio 1.37 (1.30 – 1.44)
- PTD: Odds ratio 1.22 (1.16 – 1.29)

PTD also associated with:

- Prolonged standing: OR 1.26
- Shift/night work: OR 1.24
- High cumulative work fatigue: OR 1.63
- No association with long work hours in absence of increased physical demands

Mozurkewich EL, Luke B, Avni M, Wolf FM. Working conditions and adverse pregnancy outcome: a meta-analysis. Obstet Gynecol. 2000 ;95(4):623-35.

Lifting: Increased risks in patient handling

Table 4. Small-for-gestational-age (SGA)^a according to occupational heavy lifting during pregnancy, stratified by person lifting. The Danish National Birth Cohort 1996–2002. Reference group=no lifting (N=49 169). N= 66 617. [OR=odds ratio; 95% CI=95% confidence interval]

	Lifting with person-lifting (N=6393)				Lifting with no personlifting (N=11 055)			
	N	OR _{crude}	OR _{adj} ^b	95% CI	N	OR _{crude}	OR _{adj} ^b	95% CI
Kilos lifted/day								
0–14 ^c								
15–100	3168	0.90	0.88	0.77–1.00	5987	1.07	1.04	0.95–1.15
101–200	1501	0.95	0.96	0.80–1.16	2038	1.18	1.16	1.00–1.34
201–500	1244	1.03	1.02	0.84–1.24	1943	1.04	1.02	0.87–1.20
501–1000	387	1.35	1.34	0.98–1.83	683	1.06	1.01	0.78–1.31
>1000	93	1.55	1.51	0.83–2.76	404	1.05	0.99	0.71–1.39

Juhl M, Larsen PS, Andersen PK, Svendsen SW, et al. Occupational lifting during pregnancy and child's birth size in a large cohort study. Scand J Work Environ Health 2014; 40:411-419

What to do?

Blanket advice to “Avoid all chemicals” is probably not helpful....

- ✦ Pay, benefits affected; “Mommy track”
- ✦ Pregnancy has not been considered a disability under ADA: lack of legal protection
 - ✦ Some states may have broader disability laws
- ✦ Overlooks proper guidance on exposures, thoughtful assessment and advice can reduce inadvertent exposures

Clinical assessment

Identification and control works best before conception

- Exposure control is best solution;
Maternal leave or transfers may be problematic before pregnancy
- Preventive strategies effective at this stage
 - Measure blood Pb and reduce exposure before conception.
 - Vaccines: Rubella, hepatitis B
- Biomarkers and other data to assess exposure, given current controls (Pb, urinary metabolites, film badges)

But...request for advice usually occurs after conception

- ★ Give best appraisal given limitations of data
- ★ Remember:
 - ★ rates of background frequency. and
 - ★ varied etiologies of reproductive problems
- ★ Place risk in perspective
 - ★ “Doubled” risk may be 2 / 1000
- ★ Careful exposure control in postnatal period and infancy may reduce or obviate effects of prenatal exposures (Pb, PCBs)
- ★ How do I make the workplace safer?
 - ★ Not just for this pregnancy, for all women/workers...

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PARENTING

Doctors' Notes for Pregnant Employees Can Backfire, Experts Warn

By CATHERINE SAINT LOUIS JULY 8, 2015 7:30 PM 131 Comments

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Women who seek accommodations from their employers during pregnancy are sometimes fired or forced into unpaid leave for a surprising reason: Their doctor's note was not carefully worded, experts warned on Wednesday.

Doctors routinely write employment notes for pregnant patients requesting a change to work duties for a health concern. But until now, few realized how those notes can backfire.

In a commentary published in *Obstetrics and Gynecology*, five doctors and a lawyer warned that unspecific or poorly timed notes could bring harsh responses from employers.

"We can do harm if we are not careful when writing these notes for patients," said Dr. Rebecca Jackson, the lead author and the chief of obstetrics and gynecology at San Francisco General Hospital.

In roughly 70 percent of pregnancy-related cases investigated by the [Equal Employment Opportunity Commission](#) over the last decade, a female employee was fired. Doctors' notes often play a pivotal role in employment conflicts, Dr. Jackson and her colleagues said.



Supporters stand outside the Supreme Court as it hears a case about the Pregnancy Discrimination Act. Stephen Crowley/The New York Times

Current Commentary

My Obstetrician Got Me Fired

How Work Notes Can Harm Pregnant Patients and What to Do About It

Rebecca A. Jackson, MD, Sigrid Gardner, MD, MPH, Leah N. Torres, MD, Megan J. Huchko, MD, Marya G. Zlatnik, MD, and Joan C. Williams, JD

Prenatal care providers are frequently asked to provide employment notes for their patients requesting medical leave or changes to work duties. Writing employment notes correctly can help patients negotiate for and obtain medically indicated workplace accommodations, allowing them to continue to work and earn an income. However, a poorly written or poorly timed note can jeopardize a patient's employment and salary. This commentary provides an overview of pregnancy-related employment laws and guidance in writing work accommodations letters that allow pregnant women to keep their jobs while maintaining a healthy pregnancy.

(*Obstet Gynecol* 2015;126:250-4)

DOI: 10.1097/AOG.0000000000000971

CASE VIGNETTE

Ms. Smith, a 28-year-old gravida 2 para 1 at 26 weeks of gestation, asks her prenatal care provider to write a letter to her employer to limit her lifting. She is not having any issues related to the lifting but is worried that it may cause problems in the future. As a stocker in a large retail store, lifting is a major part of her job.

From the Department of Obstetrics, Gynecology and Reproductive Sciences, University of California, San Francisco, San Francisco, California; the Department of Obstetrics & Gynecology, University of Utah School of Medicine, Salt Lake City, Utah; and the University of California Hastings College of the Law, San Francisco, California.

Her health care provider writes the note as requested and at her next visit, Ms. Smith asks that her medical leave papers be signed because her employer told her she must go out on leave because she can no longer lift. The rest of her pregnancy is uneventful and she has a cesarean delivery. She returns postpartum and informs her health care provider that she was terminated from her job because her 3 months of leave was consumed before she was ready to return to work. Is this legal? Could this have been avoided?

PREGNANT EMPLOYEES AND THE LAW: AN INCOMPLETE SAFETY NET

The majority of pregnant women in the United States continue to work while pregnant with more than half working full-time.¹ Prenatal care providers are commonly asked to write work restriction notes for their pregnant patients with little education about how to do so² and no recent guidelines from U.S. medical organizations.³ Most women can continue to perform their usual job duties without difficulty until delivery, and many employers readily provide workplace accommodations for pregnant employees who need them.¹ However, when work modifications are recommended for medical reasons and the employer declines to provide them, women can face untenable choices between their jobs and their health or the health of unborn babies.⁴

In a national survey of working pregnant

Pregnant women's job perceptions and reported provider responses

		All participants (414)	Report Job Harm Perception (104)	Felt Job Change Needed (133)	Requested Job Change (%) (105)
Did your provider?					
<i>Ask about current work</i>					
	Yes	41.5% (173)	39.4% (41)	43.6% (58)	47.6% (50)
	No	58.5% (244)	60.6% (63)	56.3% (75)	52.4% (55)
<i>Counsel on high-risk activities</i>					
	Yes	35.3% (147)	34.6%(36)	42.1% (56)	47.6% (50)
<i>Discuss safe work</i>					
	Yes	33.2% (138)	32.7% (34)	41.4% (55)	47.6% (50)
	No	66.8% (278)	67.3% (70)	58.6% (78)	52.4% (55)
<i>Give work restriction note</i>					
	Yes	12.5% (52)	24.3% (24)	23.5% (31)	29.8% (31)
	No	87.5% (363)	76.7% (79)	76.5% (101)	70.2% (73)
<i>Discuss job duty change</i>					
	Yes	8.9% (37)	21.2% (22)	21.8% (29)	24.0% (25)
	No	91.1% (379)	78.8% (82)	78.2% (104)	76.0% (79)
<i>Inform on risks of leaving job early</i>					
	Yes	5.8% (24)	4.8% (5)	7.6% (10)	7.8% (8)
	No	94.2% (390)	95.2% (99)	92.4% (122)	92.2% (95)
<i>Suggest accommodations</i>					
	Yes	11.1% (46)	17.3% (18)	19.5% (26)	26.0 % (27)
	No	88.9% (370)	82.7% (86)	80.5% (107)	74.0% (77)

Some illustrative cases....

Veterinarian:

- What are her exposures?
- What are her risks?





Vet: Hazards

Physical Hazards:

- X-Irradiation
- Lifting and strenuous work

Chemical Hazards

- Anaesthetic gases
- Sterilants
- ?Solvents, formaldehyde

Biological Hazards

- Toxoplasmosis
- Live-virus vaccines

What are potential solutions to above hazards?



Ziploc
Storage

Red folder

Stacks of white paper

CHAMPION
DI-CAV 45

CHAMPION
DI-CAV 45

CAVAMINE
CAVITY CHEMICAL

CAVAMINE
CAVITY CHEMICAL

CAVAMINE
CAVITY CHEMICAL

CAVAMINE
CAVITY CHEMICAL

Bottle

Bottle

Box

ERD
eel

Bottle

Bottle

CHAMPION
DI-CAV 45

CHAMPION
DI-CAV 45

Dodge
MYLAX
LOW FLAMING

Dodge
DIS-SPRAY

Dodge
DIS-SPRAY

White container with blue bags

Roll of paper

Bottle

Bottle

Hydrol
TISSUE BUILDER

DISPOSABLE
SYRINGE
KIT

HYDROL CHEMICAL COMPANY - PHILADELPHIA, PENNA.







Bottom Line: Balance

With pregnant worker: be clear about:

- ✿ what you know may be harmful, versus what is inconvenient
- ✿ uncertainty and the limits of knowledge of most hazards
- ✿ risk in perspective
- ✿ what you can, and can't do for them
- ✿ employer's options and the potential downsides to the worker

Bottom Line: Balance:

With workplace/employer: be clear about:

- ✿ what you know may be harmful versus inconvenient
- ✿ what you know to be the hazards
- ✿ how hazards might be controlled for ***all workers***
- ✿ how they can keep worker both safe and employed

Be prepared to advocate, beyond a note or letter, if you are concerned