

**Testimony of Iris Wilbur
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**Subcommittee on Civil Rights and Human Services
Committee on Education and Labor
U.S. House of Representatives**

“Long Over Due: Exploring the Pregnant Workers’ Fairness Act (H.R. 2694)”

October 22, 2019

My name is Iris Wilbur and I am representing Greater Louisville Inc. (GLI), the Louisville, Kentucky Metro Chamber of Commerce. Thank you to Chair Bonamici, Ranking Member Comer, and the Members of the Education & Labor Subcommittee on Civil Rights and Human Services for allowing me the opportunity to provide my testimony today. On behalf of our regional chamber of commerce, I am here to share why GLI **strongly supports H.R. 2694, The Pregnant Workers’ Fairness Act.**

Greater Louisville Inc. (GLI) is focused on growing the regional economy. As the region’s largest convener of business leadership, with over 1,700 small, medium, and large-sized employer investors, GLI leads economic and global outreach strategies focused on business attraction, nurtures the entrepreneurial eco-system, and champions the development of the community’s talent base. As the voice of Greater Louisville’s business community, GLI advocates for a pro-business environment and facilitates businesses engagement on issues that impact regional competitiveness. GLI is the 2019 national Chamber of the Year and is one of only three percent of chambers nationally certified with 5-star accreditation status by the U.S. Chamber of Commerce, based on GLI’s dedicated policy efforts, effective operations, beneficial programs, and overall positive community impact.

Over the last year, GLI aided in passing state legislation in Kentucky, called the Pregnant Workers Act (PWA), a law designed to help combat discrimination and promote women’s labor force participation. The PWA parallels the proposed federal Pregnant Workers’ Fairness Act (PWFA) in that it applies to employers with 15 or more employees and how to provide reasonable accommodations for pregnant workers, unless it would constitute an undue hardship for the employer. The PWA **clearly defines what constitutes “reasonable accommodations” in the pregnancy context and when an employer is and is not obligated to provide them.** Like the PWFA, Kentucky’s law explicitly prohibits requiring an employee to take leave if another reasonable accommodation can be provided. Additionally, the Kentucky PWA and PWFA both include specific provisions about the interactive process that employers and employees utilize to reach agreement on a workable reasonable accommodation.

These efforts were made possible after GLI worked with our region’s business community and the Kentucky General Assembly once our membership found the proposal to be a strong, pro-business bill that will have a positive impact on Kentucky’s economy.

Today, we live in a world where businesses need every person who can work participating in the labor force. As employers, we must do what is necessary to attract and retain employees, and sometimes that means working around their personal situations, particularly pregnancies.

Federal laws like the Family and Medical Leave Act, the Pregnancy Discrimination Act, and the Americans with Disabilities Act have long been on the books but provide little or mixed guidance on what is allowed or required

in the workplace in situations where a pregnant worker needs accommodations to stay healthy. This is particularly true for the 58 percent of women in Kentucky’s labor force who are of childbearing age.¹

What we discovered among our chamber membership was that most large company HR departments long ago enacted policies to retain their valuable female employees through their pregnancies, but many small-to-midsize Kentucky businesses were forced to navigate complex circumstances like pregnancy, childbirth, and related medical conditions without the aid of a robust HR department or in-house counsel. On behalf of our region’s business community, we saw an opportunity to search for a solution to address this uncertainty and help **prevent** problems before they start.

This pro-business, pro-workforce bill not only earned the endorsement from various community non-profits, labor, health, and faith-based organizations throughout Kentucky but also **passed with overwhelming bipartisan support** (25-7 Senate, 87-5 House) in the Kentucky General Assembly, and was then signed by our Governor. The bill was championed by a Republican sponsor, Kentucky State Senator Alice Forgy Kerr.

Now that we have successfully secured the passage of this important law in the Commonwealth, we urge Congress to take action to provide **clarity and uniformity** on this issue. As a bi-state chamber of commerce, we support legislative efforts that bring regional alignment, especially related to labor laws. Greater Louisville is home to many multi-state businesses and corporate headquarters, so the ability to have uniformity related to pregnant worker accommodations throughout our region and entire country is important. Therefore, GLI urges Congress to advance the PWFA at the federal level.

The PWFA also gives much-needed clarity because it explicitly provides “reasonable accommodations” for pregnant and new mothers, in addition to the proper procedures for providing them, **thereby increasing the potential to resolve requests for accommodations quickly and informally (as employers have done for decades for workers with disabilities) and reducing the potential for costly litigation.** We believe that the Act will lead to a reduction, not an increase, in litigation for precisely this reason. At least two states with pregnant worker accommodation laws have reported a reduction in litigation since the laws went into effect.² Before Kentucky’s law was enacted this summer, our employers were forced to navigate a complex web of federal laws and court decisions to figure out what their obligations are when it comes to appropriately accommodating pregnant workers and new mothers. **Clearly defining what constitutes “reasonable accommodations” and when an employer is and is not obligated to provide them will establish important guidance for businesses, especially the smaller and mid-size companies we represent who cannot afford expensive legal advisors.**

You may ask, doesn’t federal law cover pregnant workers? The Americans with Disabilities Act does not require accommodations for pregnancies that do not qualify as disabilities under the Act, like a worker with a healthy pregnancy who seeks to prevent medical problems before they start. Regarding the federal Pregnancy Discrimination Act, it contains no explicit right to reasonable accommodations since it only requires employers to accommodate a pregnant worker if they do so for others under a complex and inconsistently applied legal standard.

Second, the **Act would help boost our country’s workforce participation rate among women.** In states like Kentucky, which ranks 44th in the nation for female labor force participation,³ we know one contributor to this abysmal statistic is a mother or soon-to-be mother who is forced out or quits a job due to a lack of reasonable

¹ U.S. Census Bureau, *Sex by Age by Employment Status for the Population 16 Years and Over*, (2017), https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_17_1YR_B23001&prodType=table.

² Bakst, Dina, Gedmark, Elizabeth, and Brafman, Sarah, *Long Overdue* (New York, NY: A Better Balance, 2019), p. 27 n. 149.

³ Institute for Women’s Policy Research, “Status of Women in the States: The Economic Status of Women in Kentucky,” March 2018, <https://statusofwomendata.org/wp-content/themes/witsfull/factsheets/economics/factsheet-kentucky.pdf>.

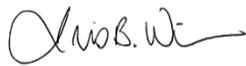
workplace accommodations. We can help prevent such situations by clearly laying the groundwork for an informed dialogue between employers and employees on how these employees can continue working safely and productively throughout the course of a pregnancy and afterwards. In today's historically tight labor market, we need to make sure that anyone who wants to work is able to work and participate in the workforce.

Third, the **Act could result in important health and safety benefits and could cut down on hiring and re-training costs for employers.** Survey data shows that these sorts of policies have led to increased talent attraction and retention, improved productivity, and reduced absenteeism.⁴

Finally, it is important to note that the **Act includes pro-business safeguards** to ensure the obligation to provide reasonable accommodations will not cause financial harm to a business or significantly interfere with a business's day-to-day operations. Some examples of workplace adjustments to address medical conditions related to pregnancies are a stool to sit on, access to water to stay hydrated, or temporary relief from heavy lifting. An employer is obligated to provide an accommodation only so long as it does not constitute an "undue hardship" on the business, and **the provisions of the Act only apply to businesses with 15 or more employees.** Our members appreciate that the PWFA borrows the familiar ADA framework that they have decades of experience successfully implementing.

There's a clear bottom line here: **the Act is pro-business and pro-workforce.** Now that we have made gains in Kentucky and join 26 other states, we urge Congress to pass H.R. 2694, the bipartisan Pregnant Workers' Fairness Act, without delay. The business community and elected leaders must work together to ensure that working women can participate fully and equally in the workplace.

Sincerely,



Iris Wilbur
Vice President of Government Affairs & Public Policy

⁴ Job Accommodation Network, "Accommodation and Compliance: Low Cost, High Impact," (accessed October 16, 2019), <https://askjan.org/topics/costs.cfm>.