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April 4, 2017

Joint Committee on Labor and Workforce Development Sen. Jason Lewis & Rep. Paul Brodeur, Chairs

TESTIMONY IN SUPPORT OF S.1023 & H.1038 PREGNANT WORKERS FAIRNESS ACT

The ACLU of Massachusetts strongly supports the Pregnant Workers Fairness Act, which would ensure that pregnant women in the workplace receive reasonable on-the-job accommodations.

Although federal law has prohibited discrimination on the basis of pregnancy since 1978, pregnant and breastfeeding women across the country have been denied employment, forced to go on unpaid leave, refused reasonable job modifications, or otherwise discriminated against solely because of their pregnancy or breastfeeding status. This conduct often endangers women's health, either by forcing them to work in unsafe conditions or by leading to the loss of health insurance at a time when women need it most. Women should not be in the untenable position of having to decide between following their doctor's advice or their employer's dictates.

These situations have arisen because, until recently, some courts had ruled that, under the federal pregnancy anti-discrimination law, firing a woman for simply being pregnant was illegal, but firing her because she needed a reasonable accommodation to work safely during her pregnancy was not illegal -- even when the employer had made similar accommodations available to injured employees or workers with disabilities. Such accommodations could include temporary light-duty assignments, added restroom breaks, permission to keep a water bottle handy, or other modifications often provided to other employees.

In 2015, the United States Supreme Court issued an important decision in *Young v. UPS*, 575 U.S. ___ (2015), interpreting the federal Pregnancy Discrimination Act. The Court held that a plaintiff may prove discrimination with evidence that she received disparate treatment from her employer, but it stopped short of requiring that employers provide reasonable accommodations to all pregnant workers. Although the *Young* decision resolved some important issues under federal law, it did <u>not</u> resolve many others. And it certainly did not reflect the needed statutory standard for Massachusetts.

Massachusetts law should make a clear statement: women cannot be penalized at work for making the choice to have a family. The Pregnant Workers Fairness Act would ensure that pregnant workers have a right to reasonable on-the-job accommodations that enable them to continue to work. It will also provide well-defined standards and guidance for employers and employees in the Commonwealth.

Because passage of this legislation will safeguard the rights of women, promote a healthy workforce and healthy families, and help employers and employees understand their rights and obligations, the ACLU urges the committee to give the Pregnant Workers Fairness Act a swift and favorable report. Thank you.