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Commentary

PUMP and PWFA Laws for Women in the USA: What Is It and Why Are Women Still Concerned? Commentary

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Abstract: Women bear the biological responsibilities of reproduction to ensure human population sustainability, yet women continue to face discriminatory treatments when they become either pregnant or nursing mothers. The question is, how do we legally reconcile women's natural child-bearing roles and support their professional endeavors? Against this backdrop, the Pregnant Workers Fairness Act (PWFA) and the Providing Urgent Maternal Protections (PUMP) were passed by the US government to address workplace biases and discrimination against women and help women during pregnancy and after childbirth. The paper is a commentary highlighting the strengths and weaknesses of these laws. We submit that while these laws mean a breakthrough for women in these categories, there are inherent flaws and areas for improvement. A limitation of the act is that the PWFA and PUMP laws do not protect pregnant women in an all-encompassing manner, with some pregnant women excluded. Pregnant and Nursing mothers should be protected by their employers regardless of the size of the organizations. We conclude that the PUMP and PWFA laws are not enough and there is a critical need for the government to address some of the critical barriers to the laws and provide an encompassing support for women.

Keywords: pregnant women; nursing mothers; workplace; discrimination; laws; act

1. Introduction

Women's reproductive role is vital to the longevity, sustenance, and long-term development of any society. In recent years, there have been concerns over the decline in reproduction in many high-income countries, including the US, and these population declines are keenly associated with economic decline. The general birth rate in the US has dropped by hitting, 55.8 per 1,000 women in 2020, which is a 20% drop in 13 years [1], and experts project that this is a major threat to the US labour force. Without doubt, reproduction is highly pivotal to US economy and sustenance. However, women's reproductive role has been unrecognized and women continue bare brutal consequences for motherhood. Beyond the rising costs of childcare services, pregnant women and lactating mothers continue to experience acute discrimination in the workplace. Pregnancy discrimination in the workplace is widespread throughout America. Current statistics reveal that in the last 10 years, more than 50,000 cases of pregnancy discrimination were filed cases with the Equal Employment Opportunity Commission and Fair Employment Practices Agencies [2]. However, the stark truth is that, the greater majority of women do not take up legal actions. Many women are often knocked off the professional ladder at the onset of pregnancy with many large and prestigious companies systematically sidelining pregnant women and lactating mother. Other forms of discrimination are subtle- stereotypical perceptions that pregnant women and mothers are less productive and therefore ripped off prestigious assignments. Beside the economic impact, pregnancy discrimination puts undue stress on women, which affects the health of the mother and child [3]. The penalty for motherhood does not end with pregnancy; lactating/nursing mothers receive little support for mothering and are often pressured to choose between their careers and the well-being of their

children. The lack of support for breastfeeding and flexible working conditions compound to make childcare and motherhood more difficult for women.

To address these pertinent public health, human right and economic challenges, the United State has recently passed two important laws- The Pregnant Workers Fairness Act (PWFA) and the Providing Urgent Maternal Protections (PUMP). These laws aim to address workplace biases and discrimination against women and provide support for women during pregnancy and after childbirth. The law comes as a major breakthrough for American women who for centuries had little or no legal grounds to demand for equality and justice for workplace discrimination. Although the law has received widespread non-partisan support from Congress, feminists and the general public as key to promoting gender equality, critical questions still persist. What do these laws mean for American women and why are women still concerned? In this commentary, we critically examine the PWFA and PUMP laws to answer these fundamental questions.

2.1. The Pregnant Workers Fairness Act (PWFA)

In simple terms, The Pregnant Workers Fairness Act (PWFA, 2022) states that beginning from June 27, 2023, it “requires covered employers to provide “reasonable accommodations” to a qualified worker’s known limitations related to pregnancy, childbirth, or related medical conditions, unless the accommodation will cause the employer an “undue hardship.” An undue hardship is defined as causing significant difficulty or expense [4]. The legislation obliges employers to make reasonable adjustments for employees who have known limits due to pregnancy, childbirth, or other medical conditions unless doing so would cause the company undue hardship. Under this law, full-time workers, temporary, and seasonal workers, including job applicants are protected. The U.S. Equal Employment Opportunity Commission (EEOC) enforces the PWFA Act, and it applies to covered employers, which include private and public sector firms with at least 15 employees, Congress, Federal agencies, employment agencies, and labour organizations.

The Act also makes it unlawful for employers to fail to provide a reasonable accommodation to a pregnant worker. Additionally, it is illegal to take adverse action in terms, conditions, or privileges of employment against a qualified employee requesting or using such reasonable accommodations [5]. This accommodation may include accessibility to water availability, sitting arrangement, closer car parking, flexible hours, availability of sized uniforms, extra break time, recovery leave, and exclusions from energetic and unsafe work activities, among others.

This Act also restrains covered employers from requiring an employee to accept an accommodation without discussion and denying job opportunities to qualified employees or applicants based on their need for accommodation. Other actions such as requiring leave when other reasonable alternatives are available and retaliating against individuals who report or oppose unlawful discrimination in violation of the PWFA are also restrained. However, while the PWFA doesn't have its separate sections, it incorporates and amends existing federal laws to provide these protections.

2.2. Providing Urgent Maternal Protections (PUMP) Act (PUMP Act)

The PUMP Act was signed into law on December 29, 2022, and it establishes crucial workplace protections and facilities for nursing mothers. The PUMP Act is an amendment to the Fair Labour Standards Act (FLSA) of 1938 (29 U.S.C. 201 et seq.). For one year after the child’s birth, covered employees may take reasonable break time, and this time be provided in a location, other than a bathroom at work, that provides privacy. The Act expands on these fundamental elements, emphasizing the significance of a supportive, inclusive, and hygienic work environment for nursing mothers.

The PUMP Act mandates Employers with 50 or more employees must give reasonable break time for all employees, including salaried employees, to express breast milk as needed. Employers cannot mandate the length of a pumping break, nor the number of breaks an employee takes.

If employees are working remotely, employers must allow them to take breaks to pump or turn off cameras during virtual meetings [6]. According to the Act, these breaks for expressing breast milk

are not required to be paid unless the employee is still actively working or "not completely relieved from duty" during these breaks. The Act also mandates employers who provide paid breaks to compensate lactating employees just as other employees are compensated for break time. The Acts also requires employers are to provide nursing parents with a private, hygienic area in which to express milk. This area must be kept apart from the restrooms, highlighting the necessity of clean, comfortable spaces for this vital activity. By the space must be "functional," the US Department of Labor implies that the space ideally has a surface that is near running water and has a refrigerator to store breast milk. PUMP has expanded the Previous federal legislation did not protect workers who were exempt from overtime under the FLSA; nevertheless, the PUMP Act now applies to a diverse range of employees such as teachers, registered nurses, farmworkers, among others. Additionally, the PUMP Act offers exclusions for some large transportation employers. The Act imposes fewer standards on rail and motor coach carriers, and air carriers are completely free from providing accommodations. This is due to specific safety and scheduling concerns that increase the difficulty and expenses of expressing breast milk during working hours

2.3. What does this mean for American women?

To the American woman, the provisions of the PWFA implies that if she works in an organization with about 15 employees, she is somewhat, to an extent, protected from unforeseen challenges caused by pregnancy, provided that it will not cause the employer undue hardship to make those accommodations. The law did not state what those known limitations caused by pregnancy are, but the US Employment Equal Opportunity Commission states that some of those limitations caused by childbirth include; being able to sit or drink water since pregnant women need to be hydrated, receiving closer parking, giving the discomfort of walking long distances, having flexible working hours, receiving appropriately sized, uniforms and safety apparel, receiving additional break time to, use the bathroom, eat and rest, taking leave or time off to recover from childbirth, being excused from strenuous activities and/or exposure to chemicals not safe for pregnancy [4]. Going forward, American women now have some level of protection in their offices; the burden of proof now lies on them to prove that their situation is a pregnancy-related inconvenience. In other words, in the case that a pregnant woman has a strong case to show her employer that she needs some accommodations from the employer because of pregnancy, her demands have the possibility of being met, if the employer fails on the covered category explained above.

Similar to the PWFA Act is the PUMP Act. According to PUMP Act SEC. 18D, an employer shall provide—

‘(1) a reasonable break time for an employee to express breast milk for such employee’s nursing child for 1 year after the child’s birth each time such employee has need to express the milk; and;

(2) a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk [7].

The PUMP Act means that American women will now be given privacy and a conducive environment for up to one year in their organizations to enable them to pump breast milk and refrigerate it. After the baby turns one year, such spaces should be provided if she requests for it. This makes the breastfeeding easier for nursing mothers, thereby promoting the health of women and infants. Studies have shown that breastfeeding increases children’s cognitive development and also prevents breast cancer and ovarian cancers [8,9]. These laws also mean that women in the US will be able to continue working and can earn more after retirement. Women receive only 70% of what men receive as retirement income due to less social security and pension contributions mainly caused by career breaks for pregnancy and childcare. This means that women can look up to a closed gender pay gap. There are also some positive economic gains for employers as these laws will minimize maternal absenteeism, increase employee morale and retain women, thereby increasing productivity and profits. Women currently make about 50% of America’s workforce, making their contribution germane to the country’s economy [10].

2.3. Challenges of these laws

A limitation of the PUMP Act is its interplay with State Laws and thus, State laws related to accommodations for nursing mothers may differ from federal laws and some States may offer fewer protections. The law is silent on the issues surrounding stillbirth or miscarriages. A report by Gregory et al. [11] states that a total of 20,854 fetal deaths at 20 weeks of gestation or more were reported in the United States in 2020, and these statistics does not include unreported deaths due to policies from some states or other personal concerns. Miscarriages below 20 gestation weeks are also not accounted for in the number stated. This implies that there are American women who have not carried their pregnancies to term, their issues should also be advocated for. Dealing with the trauma of childbirth is terrible enough, not to mention the government's ambiguousness in addressing accommodating their recovery process by their employees. Both the PWFA and the PUMP Act are not binding for all employers- if an organization has less than 50 employees, they are exempted from under the PUMP law while PWFA is 15 employees. Similarly, a good number of employers are exempted under the PUMP Act - rail and motor coach carriers, and air carriers. The PWFA law also fails to define what 'reasonable' accommodation is, creating difficulty for women to claim their rights. Again, the ambiguity in the law's definition of pregnancy-related medical issues, which could lead to disagreements and misinterpretations. The question of how the government supports employers to implement these laws still lingers. There is no explicit financial help or subsidy provided by the law to support employers cover accommodation costs. The legislation is vague when it comes to addressing this financial burden, which might leave employers burdened in the absence of clear regulations. More so, the law fails to establish other crucial provisions for to aid its full implementation. One aspect is the accessibility, proximity and cost of childcare. For most women, finding care spaces for their infants is a major challenge, also many day cares have a long waitlist. With difficult accessibility comes the challenge of proximity of child care centers to women's workplaces. Without a doubt, unfavorable proximity to the workplace creates stress for the mother, making breastfeeding also impossible. While this new act appears to encourage the pumping of breast, milk expression using machines might not be a preference for a nursing mother, who would prefer to feed her baby directly. Moreover, the cost of childcare services is steep and many American families are still unable to afford.

3. Conclusion

As of 2018, the American College of Obstetricians and Gynecologists' Committee on Obstetric Practice [12] states that there is still a need for a law guaranteeing the comprehensive protection of pregnant women. They also assert that the United States is the only developed country that does not have a national paid maternity or parental leave program, leaving pregnant women and their families without job protection. Therefore, passing such laws is a good place to start the agenda of protecting pregnant and nursing mothers, but it is high time that the US Government instituted a program that allows pregnant women to receive national paid maternity, or a nanny to support the new mother in the during the first few months after delivery. If actions are not taken to support women at this vulnerable and critical period in their life, in the future, the US may experience a more devastating population decline. This is because may not want to jeopardize their source of living in place of having a baby while navigating systemic challenges which adds to making childbearing stressful and unpleasant.

In addition, the PWFA and PUMP laws do not protect pregnant women in an all-encompassing manner. Pregnant and Nursing mothers should be protected by their employers regardless of the size of the organizations. The government can work with smaller organizations to help support the needs of pregnant women better. Moreover, smaller organizations can form coalitions to make provisions for pregnant and nursing mothers. These laws should be explicit on how employers can help employees with healing in the case of unfortunate events like stillbirth or miscarriage. Going forward, it would be ideal, for these laws to include punitive measures or penalties in case of non-compliant employees. It is also recommended that organizations to create rest spaces where pregnant and nursing mothers who suffer from sleepless nights can take in between naps, as well as create

safe, and conducive environments that support pregnant and nursing mothers holistically towards their healing, physically, mentally and emotionally. Furthermore, organizations should ask them what they want and work around it, as opposed to making assumptions or acting centrality to their needs. Conclusively, pregnant women should receive proper and free healthcare, to cater to their needs during and up till two years after the baby is born.

6. Patents

This section is not mandatory but may be added if there are patents resulting from the work reported in this manuscript.

Supplementary Materials: The following supporting information can be downloaded at the website of this paper posted on Preprints.org, Figure S1: title; Table S1: title; Video S1: title.

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