
The Pregnant Workers Fairness Act Leaves Agricultural Workers Behind

Prashasti Bhatnagar

Keywords: Pregnancy Discrimination, Law, Agricultural Workers, Immigrants, Health Justice

Abstract: The new federal Pregnant Workers Fairness Act advances important protections for pregnant workers, but leaves behind agricultural workers, who are overrepresented in hazardous occupational environments. This article highlights the connection between workplace pregnancy discrimination and health inequities. It concludes with a discussion of immigrant-led advocacy efforts to eliminate health inequities and advance health justice.

Introduction

After decades of organizing and advocacy efforts by diverse stakeholder groups, including pregnant workers and grassroots organizations, Congress passed the federal Pregnant Workers Fairness Act (PWFA) in December 2022. The historic law, which went into effect in June 2023, is modeled after the American with Disabilities Act (ADA) and mandates “covered employers” to grant “reasonable accommodations” to pregnant workers, unless providing such accommodations would pose an “undue hardship” to the employer.¹ Prior to PWFA, the Pregnancy Discrimination Act of 1978 entitled pregnant workers to temporary job modifications only if covered employers provided modifications to other workers “similar in

Prashasti Bhatnagar, J.D., M.P.H. is a Law/Public Health Postdoctoral Scholar at Kirwan Institute for the Study of Race and Ethnicity, The Ohio State University.

their ability or inability to work,” which often resulted in denial of workplace reasonable accommodations for pregnant workers.² Thus, PWFA is a major step towards addressing pregnancy discrimination in the workplace. However, there are still glaring gaps in the legislation.

In particular, PWFA — like the ADA — only applies to employers with 15 or more employees.³ Exclusion of small employers from the purview of PWFA leaves behind several pregnant workers, such as agricultural workers because their employers have less than 15 employees.⁴ Strikingly, pregnancy discrimination is also heightened in work devalued as low-wage, including agricultural work.⁵

These gaps in laws — in who is protected — are associated with health inequities, which disproportionately impact Latinx and immigrant women. Latinx and immigrant women are overrepresented in occupational environments that are strenuous, hazardous, and inflexible, such as in agricultural work.⁶ Yet, the connections between workplace conditions and pregnancy discrimination laws are often overlooked in discussions about reproductive health, sexual health, and health equity. Using agricultural workers as a case study, this article highlights the connection between workplace pregnancy discrimination and health outcomes, illustrating why it is also an immigrant justice issue. Advocates for workplace protections and immigrant justice must form partnerships with each other to eliminate pregnancy discrimination and advance health justice. In this context, I define health justice as a community-driven movement geared towards eliminating all forms of discrimination through structural supports and accommodations for directly impacted communities.

Workplace Conditions as a Determinant of Health: A Case Study of Pregnant Workers in the U.S. Agricultural Industry

Critical labor and health protections, including PWFA, are not often extended to the agricultural industry, particularly farm work, due to legacies of structural racism. Structural racism is “both the limitation of racial/ethnic-minority individuals’ employment opportunities and the way social and economic conditions are organized to advantage white individuals and disadvantage racial/ethnic-minority individuals.”⁷ The lack of meaningful labor and health protections in the agricultural sector has detrimental effects for workers, who have one of the highest rates of occupational injury in comparison to all industries in the United States.⁸ Moreover, immigrant workers —

increased risk for “certain cancers, neurological hazards, metabolic and thyroid disorders, DNA damage, lowered fertility, and hormone disruption.”¹⁴ Pesticide exposure is particularly harmful for pregnant workers, increasing the risk of miscarriages, premature births, and birth defects.¹⁵ Given the adverse health impacts of heat and pesticide exposure through occupational environments, the need for strong workplace protections is especially critical for pregnant agricultural workers.

The precarious working conditions within farm work require strong legal oversight in the form of expansive workplace protections to safeguard workers’ health and safety. Yet, critical laws like the NLRA and PWFA continue to exclude many agricultural workers because they are immigrants or through carve-outs

Critical laws like the NLRA and PWFA continue to exclude many agricultural workers because they are immigrants or through carve-outs for small employers, endangering pregnant workers’ health. Nonetheless, immigrant workers continue to lead the way to eliminate health inequities and advance health justice by advocating for workplace protections.

who are overrepresented in the agricultural industry — are excluded from government protections, like the National Labor Relations Act (NLRA), that protect workers fighting for higher wages and workplace protections.⁹ As a result, immigrant pregnant workers often lack access to basic and critical workplace protections, such as paid leave, reasonable accommodations, and health insurance, leaving pregnant farmworkers vulnerable to hazardous occupational environments.¹⁰

In particular, without reasonable accommodations (for e.g., work breaks, time to acclimate, and access to shade and clean water) and paid leave, pregnant farmworkers are expected to work under extreme weather and are also exposed to pesticides throughout their pregnancies — all of which are associated with adverse health outcomes.¹¹ Heat is a leading cause of U.S. weather-related deaths and a major health risk for pregnant people, especially outdoor workers like those who work on farms.¹² For pregnant people, extreme heat exposure is associated with increased hospitalization and adverse birth outcomes, including preterm birth, low birthweight, miscarriage, stillbirths, infant mortality, and birth defects.¹³ Similarly, research shows that pesticide exposure is associated with several acute and chronic illnesses, including an

for small employers, endangering pregnant workers’ health. Nonetheless, immigrant workers continue to lead the way to eliminate health inequities and advance health justice by advocating for workplace protections.

Connecting Workplace Pregnancy Discrimination Elimination and Immigrant Justice Efforts to Advance Health Justice

To advance health justice, governments should implement community-led structural supports and accommodations for directly impacted communities. Immigrant workers and immigrant-led grassroots organizations have been at the forefront of advancing health justice through advocacy efforts, such as reducing pregnant workers’ exposure to pesticides and heat. The use of pesticides like chlorpyrifos — “a potent neurotoxin that research shows can permanently and irreversibly harm the developing brains of children”¹⁶ — has been pervasive in the U.S. agricultural industry, with approximately five million to eight million pounds of chlorpyrifos being sprayed on crops every year.¹⁷ Facing heightened pesticide exposure on the fields, Latinx women farmworkers joined *Líderes Campesinas* — “a network of about 500 women and girls spread among 14 local chapters in California’s

biggest agricultural centers”¹⁸ — and successfully advocated for a state ban on chlorpyrifos in California using their personal experiences on how pesticide exposure harmed them and their families. Building on this success, Latinx women farmworkers also helped pass a nationwide ban on chlorpyrifos on food grown in, or imported to, the United States.¹⁹

Similarly, immigrant workers have been successfully fighting for better protections against the heat; “each policy came into law because workers and advocates spent years pushing that rock up a hill.”²⁰ For example, the passage of the first law protecting workers against heat exposure — in California — was a direct result of months-long advocacy efforts by grassroots organizations like United Farm Workers (UFW) that mobilized farmworkers to share their lived experiences on the fields with lawmakers.²¹ Notably, due to UFW’s long-term advocacy alongside farmworkers, the Biden administration called upon the Occupational Safety and Health Administration to create a federal heat standard in 2021. Since then, more states have passed standards protecting specific workers from the heat: Oregon (indoor and outdoor workers), Washington (outdoor workers), Minnesota (indoor workers), and Colorado (farmworkers).²² While no federal standard heat protection law has been enacted as of 2023, UFW remains steadfast in their commitment to advocate for stronger work protections for agricultural workers by introducing and co-sponsoring federal legislation on heat protection standards.²³

The examples above demonstrate the successful ways in which immigrant-led organizations have formed intersectional partnerships — focused on labor, immigration, and health — to protect workers’ health and safety. Pesticide advocacy spearheaded by immigrant-led organizations like Líderes Campesinas “is part of the group’s tradition of driving change to guarantee farmworkers’ basic needs and fundamental human rights.”²⁴ Similarly, UFW’s “advocacy agenda includes protections around sexual harassment, pesticides (which are hazardous for workers and can cause deformities in newborns), quality of water from pesticides, and strengthening rights to organize.”²⁵ Accordingly, governments should work in partnership with immigrant workers and grassroots organizations to implement community-led structural solutions and interventions that eliminate discrimination and fundamentally protect immigrants.

Conclusion

Employment conditions contribute to workers’ ability to be healthy, particularly for immigrant pregnant workers. This article highlights how laws like PWFA

often do not protect pregnant immigrant workers in the agricultural industry, resulting in health inequities. Advocacy efforts by immigrant workers and grassroots organizations have resulted in some protections, but there are still gaps. Therefore, future efforts geared towards eliminating pregnancy discrimination and the resulting health inequities must center the lived experiences of immigrant workers and understand workplace pregnancy discrimination as an immigrant justice issue. In order to achieve health justice, governments should engage with workers and grassroots organizations to build community power and create systems that invest in joy, well-being, safety, and liberation.

References

1. *The Women Who Inspired the Movement for the Pregnant Workers Fairness Act*, A Better Balance, available at <<https://www.abetterbalance.org/pregnant-worker-stories/>> (last visited Nov. 28, 2023); *The Pregnant Workers Fairness Act*, U.S. Equal Employment Opportunity Commission (EEOC), available at <<https://www.eeoc.gov/statutes/pregnant-workers-fairness-act>> (last visited Nov. 28, 2023).
2. See, e.g., G. Thomas and V. Leveille, *The Historic New Law Protecting Fairness for Pregnant Workers* (June 27, 2023), American Civil Liberties Union, available at <<https://www.aclu.org/news/womens-rights/the-historic-new-law-protecting-fairness-for-pregnant-workers>> (last visited February 18, 2024).
3. *What You Should Know About the Pregnant Workers Fairness Act*, U.S. Equal Employment Opportunity Commission (EEOC), available at <<https://www.eeoc.gov/wysk/what-you-should-know-about-pregnant-workers-fairness-act>> (last visited Nov. 28, 2023).
4. M.H. Zhang and A. Jones, *A New Law Can Help Some Pregnant Workers with Climate Crisis-Level Heat This Summer* (June 16, 2023), Pennsylvania Capital-Star, available at <<https://www.penncapital-star.com/government-politics/a-new-law-can-help-some-pregnant-workers-with-climate-crisis-level-heat-this-summer-opinion/>> (last visited February 18, 2024).
5. *Improving Maternal Health with the Pregnant Workers Fairness Act* (June 2022), National Partnership for Women & Families, available at <<https://nationalpartnership.org/wp-content/uploads/2023/02/improving-maternal-health-pwfa.pdf>> (last visited February 18, 2024); *2020 Letter of Support for the Pregnant Workers Fairness Act* (Sept. 17, 2019), A Better Balance, available at <<https://www.abetterbalance.org/resources/2020-letter-of-support-for-the-pregnant-workers-fairness-act-from-over-100-supporting-organizations/>> (last visited February 18, 2020).
6. *Accommodating Pregnancy On the Job: The Stakes for Women of Color and Immigrant Women* (May 2014), National Women’s Law Center, available at <https://nwlc.org/wp-content/uploads/2015/08/the_stakes_for_woc_final.pdf> ; A Better Balance, *supra* note 5.
7. R. Yearby et al., “Incorporating Structural Racism, Employment Discrimination, and Economic Inequities in the Social Determinants of Health Framework to Understand Agricultural Worker Health Inequities,” *American Journal of Public Health* 113 (2023): S65-S71; see also P. Bhatnagar, “Medical-Legal Partnerships and Legal Regimes: A Health Justice Perspective,” *Journal of Law, Medicine, and Ethics* (forthcoming 2024).
8. See S. Goldman et al., *Essential and In Crisis: A Review of the Public Health Threats Facing Farmworkers in the U.S.* (May

- 2021), John Hopkins Center for a Livable Future, *available at* <<https://clf.jhsph.edu/sites/default/files/2021-05/essential-and-in-crisis-a-review-of-the-public-health-threats-facing-farmworkers-in-the-us.pdf>> (last visited February 18, 2024).
9. R.E. Fabi and J. Ludmir, "Pregnancy, Pandemics, and Public Health Policy: The Disparate Impact of COVID-19 on Pregnant Immigrants," *Women's Health Issues* 31 (2021): 195–197; R. Yearby et al., *supra* note 7.
 10. *Facts About Agricultural Workers* (last updated Jan. 2022), National Center for Farmworker Health, *available at* <<http://www.ncfh.org/facts-about-agricultural-workers-fact-sheet.html>> (last visited February 18, 2024).
 11. See, e.g., S. Goldman et al., *supra* note 8; National Partnership for Women & Families, *supra* note 5; J. Krueger, *Legal Action Needed to Protect Workers from Extreme Heat* (November 16, 2023), Network for Public Health Law, *available at* <<https://www.networkforphl.org/news-insights/variability-in-state-and-local-laws-protecting-workers-from-extreme-heat-and-the-need-for-federal-action/>> (last visited February 18, 2024).
 12. *Heat Safety Tips and Resources*, National Weather Service, *available at* <<https://www.weather.gov/safety/heat>> (last visited Nov. 28, 2023); *Heat and Pregnant Women*, Centers for Disease Control and Prevention (CDC), *available at* <https://www.cdc.gov/disasters/extremeheat/heat_and_pregnant_women.html> (last visited Nov. 28, 2023); S. Goldman et al., *supra* note 8.
 13. M.H. Zhang and A. Jones, *supra* note 4.
 14. S. Goldman et al., *supra* note 8.
 15. National Partnership for Women & Families, *supra* note 5; S. Goldman et al., *supra* note 8.
 16. N. Greenfield, *The Chlorpyrifos Ban Is a Win for Science — and Children* (Sept. 17, 2021), National Resources Defense Council, *available at* <<https://www.nrdc.org/stories/chlorpyrifos-ban-win-science-and-children>> (last visited February 18, 2024).
 17. *Id.*
 18. N. Greenfield, *Latina Farmworkers Speak Out about the Hazards of Life in California's Fields* (Oct. 4, 2021), National Resources Defense Council, *available at* <<https://www.nrdc.org/stories/latina-farmworkers-speak-out-about-hazards-life-californias-fields>> (last visited February 18, 2024).
 19. *Id.*
 20. M. Babic, *As Blistering Heat Threatens Workers' Lives, States Step Up to Mandate Protections* (Sept. 8, 2022, Oxfam America), *available at* <https://politicsofpoverty.oxfamamerica.org/as-blistering-heat-threatens-workers-lives-states-step-up-to-mandate-protections/> (last visited February 18, 2024).
 21. *Id.*
 22. See J. Constible, *Occupational Heat Safety Standards in the United States* (January 24, 2024), National Resources Defense Council, *available at* <<https://www.nrdc.org/resources/occupational-heat-safety-standards-united-states>>, (last visited February 18, 2024).
 23. N. Foy, *After Farmworker's Death in Fresno-Area Heat, UFW and Sen. Padilla Say It's Time for Stronger Protections at Work* (Aug. 18, 2023), CalMatters, *available at* <<https://calmatters.org/california-divide/2023/08/after-farmworkers-death-in-fresno-area-heat-ufw-and-sen-padilla-say-its-time-for-stronger-protections-at-work/>> (last visited February 18, 2024).
 24. N. Greenfield, *supra* note 18.
 25. M. Babic, *supra* note 20.