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21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
22 **COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

23 ENDANICHA BRAGG, TRACY PLUMMER,
24 MARISOL ROMERO, KAIAUNNA SMITH,
25 MEGAN RUSSO-KAHN, and CLARISSA
26 HERNANDO AVILA, as individuals, on behalf
27 of themselves, and all others similarly situated,

28 Plaintiffs,

vs.

PACIFIC MARITIME ASSOCIATION,
INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION, and
INTERNATIONAL LONGSHORE AND
WAREHOUSE UNION LOCAL 13,

Defendants.

Case No.: 19STCV35714

MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PLAINTIFFS’ MOTION FOR CLASS CERTIFICATION

Hearing Date: April 11, 2025
Hearing Time: 9:30 am
Judge: Hon. Upinder S. Kalra
Dept.: 51

Complaint Filed: October 7, 2019
Trial Date: None

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1 Legal Aid at Work, Equal Rights Advocates, The Center for WorkLife Law, and A Better
2 Balance respectfully move for leave to file an *amicus curiae* brief in support of Plaintiffs’
3 Motion for Class Certification and Appointment of Class Counsel. A copy of the proposed
4 *amicus curiae* brief is attached. Plaintiffs consent to this motion; Defendants object to this
5 motion.

6 California’s Superior Courts do not maintain a rule governing *amicus curiae* briefs. In
7 California’s Courts of Appeal and Supreme Court, *amicus curiae* briefs are governed by
8 California Rule of Court 8.200, which requires courts to consider (1) the filer’s interest in the
9 matter and (2) whether the brief would assist the Court in rendering a decision on the matter.
10 CAL. R. CT. 8.200(c)(2).

11 Because the proposed *Amici Curiae* have a strong interest in the rights at stake in this
12 litigation, and because the proposed brief would add valuable context to the factual and legal
13 issues raised by Plaintiffs’ motion, the Court should grant leave for *Amici Curiae* to file their
14 proposed brief.

15 **I. Proposed Amici Curiae are nonprofit organizations and an academic research**
16 **center dedicated to advancing women’s workplace rights.**

17 a. *Counsel for proposed Amici Curiae*

18 Counsel for proposed *Amici Curiae* have a deep interest in robust private enforcement of
19 California’s pregnancy accommodation and lactation laws. Our organizations fight to expand
20 the rights of pregnant and lactating workers through research, legislative and policy advocacy,
21 worker education, and litigation. The four counsel organizations below co-authored the
22 proposed brief.

23 **A Better Balance** is a national nonprofit legal services organization dedicated to work-
24 family justice. A Better Balance was instrumental in drafting and championing the passage of
25 pregnancy accommodation laws in 30 states and five municipalities across the country, as well as
26 federal protections for pregnant and lactating workers. In addition to its legislative advocacy on
27 behalf of working people, A Better Balance provides free legal services to low-wage workers
28

1 who have been denied reasonable accommodations related to pregnancy, childbirth, and
2 lactation.

3 **The Center for WorkLife Law at the University of California College of the Law,**
4 **San Francisco** (WorkLife Law) is a national advocacy and research organization that advances
5 gender and racial equity by strengthening legal rights for pregnant people and family caregivers.
6 WorkLife Law seeks to ensure all people have the freedom to build and maintain economic
7 security through employment and educational opportunities, without sacrificing their health or
8 their loved ones' care. WorkLife Law collaborates with employees, employers, attorneys, and
9 health care providers to identify and implement workable solutions to meet the health needs of
10 pregnant and lactating workers. Additionally, each year WorkLife Law's legal helpline directly
11 serves hundreds of pregnant and lactating workers who are seeking workplace accommodations.

12 **Equal Rights Advocates** (ERA) is a national civil rights organization dedicated to
13 protecting and expanding economic and educational access and opportunities for women, girls,
14 and people of all marginalized gender identities. Since its founding in 1974, ERA has litigated
15 high-impact sex and gender discrimination cases, engaged in policy reform and legislative
16 advocacy campaigns, and provided free legal assistance to individuals experiencing unfair
17 treatment at work and in school through its Advice & Counseling program. ERA has led efforts
18 to pass state and federal legislation strengthening legal protections for pregnant, parenting,
19 and/or lactating workers and litigates class actions and other high-impact cases involving
20 allegations of gender discrimination related to pregnancy. The organization has also participated
21 as amicus curiae in scores of cases involving the interpretation of Title VII and state anti-
22 discrimination laws as applied to pregnant, parenting, and/or lactating workers.

23 **Legal Aid at Work** (formerly known as the Legal Aid Society – Employment Law
24 Center) is a non-profit public interest law firm founded in 1916 whose mission is to help people
25 understand and assert their workplace rights and to advocate for employment laws and systems
26 that empower low-paid workers and marginalized communities. Legal Aid at Work frequently
27 appears in state and federal courts to promote justice for workers and their families. An expert in
28 workplace rights impacting women and families, Legal Aid at Work has advocated for the

1 passage and equitable implementation of every major piece of work-family legislation in
2 California for decades. Legal Aid at Work has a strong interest in ensuring that California's
3 pregnancy accommodation laws are understood and followed across the state, so that women and
4 families are given a true chance to achieve economic stability, be healthy, and thrive.

5 b. *Proposed Amici Curiae*

6 Proposed *Amici Curiae* share the counsel organizations' dedication to advancing the
7 workplace rights of pregnant and lactating women.

8 **The American Association of University Women of California** (AAUW California) is
9 an affiliate of AAUW, a nationwide organization that has been empowering women as
10 individuals and as a community since 1881. For more than 130 years, we have worked as a
11 national grassroots organization to improve the lives of millions of women and their families.
12 AAUW's mission is to advance gender equity for women and girls through research, education,
13 and advocacy. AAUW California is the State's most active and diverse organization for women,
14 with over 9,000 members in 116 branches, plus almost 2,000 members-at-large. Equity in the
15 workplace and enforcement of workplace anti-discrimination statutes are key tenets of AAUW
16 California. California law protects women in the workplace when they are pregnant, when they
17 have given birth, and when they return to the workplace. Enforcement of these laws, many of
18 which AAUW California has actively advocated for, is vital to safeguarding the health and well-
19 being of pregnant and parenting employees, and ensuring equitable opportunities for women in
20 the workplace.

21 **The California Work & Family Coalition** (CAWFC) is a statewide alliance of
22 organizations that led the campaign to pass the nation's first paid family leave law in California
23 in 2002. CAWFC was one of the original state coalitions to form the Family Values @ Work
24 Network. Coalition members have worked tirelessly for more than 20 years to protect and
25 improve our state Paid Family Leave and State Disability Insurance programs as well as other
26 protections for working parents, people with serious health conditions and family caregivers.
27 Coalition members include advocates for families with young children, older Californians,
28 parents and caregivers, survivors of domestic violence, small business owners, health and racial

1 equity groups and worker and community advocacy organizations. Coalition leaders and
2 members are deeply familiar with the experiences of countless Californians who rely on paid
3 family and medical leave during some of the most important times in their lives. Coalition
4 members see how crucial these rights and benefits are to the health, well-being, and economic
5 security of families across the state.

6 **The Institute for Women’s Policy Research (IWPR)** is a leading national economic and
7 public policy think tank founded in 1987 that builds evidence to shape policies that grow
8 women’s power and influence, close inequality gaps, and improve the economic well-being of
9 families. The gender wage gap is a major contributing factor to poverty and inequality. IWPR’s
10 research documents the role of gender and racial/ethnic discrimination in women’s lower
11 earnings, including the role of discrimination in keeping women out of good paying jobs in male-
12 dominated fields. IWPR’s estimates of pay trends show that at the current rate of change, it will
13 take over four decades for all women full-time workers to reach pay equity with men.

14 **Legal Momentum, the Women’s Legal Defense and Education Fund (Legal**
15 **Momentum)** is a leading national non-profit civil rights organization that for over 50 years has
16 used the power of the law to define, defend and advance the rights of girls and women. Legal
17 Momentum has worked for decades to ensure that all employees are treated fairly in the
18 workplace, regardless of their gender or sexual orientation. Legal Momentum has litigated
19 cutting-edge gender-based employment discrimination cases, including *Faragher v. City of Boca*
20 *Raton*, 524 U.S. 775 (1998), and has participated as *amicus curiae* on leading cases in this area,
21 including *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998), *Oncale v. Sundowner*
22 *Offshore Services, Inc.*, 523 U.S. 75 (1998), and *Harris v. Forklift Systems, Inc.*, 510 U.S. 17
23 (1993).

24 **MomsRising** is an organization of more than one million moms across the country,
25 including 116,685 members in California, who are working to build a nation where our families
26 and the economy can thrive. We continue to hear from MomsRising members the importance of
27 laws that allow pregnant and postpartum workers the opportunity to work and support their
28 families without risking their personal health or the health of their pregnancies. These policies

1 keep moms in the workforce and benefit the nearly 85% of women who will become parents at
2 some point in their working lives. MomsRising strongly asserts the importance of ensuring that
3 all Californians have uniform access to the protections provided under California’s pregnancy
4 accommodation law.

5 **The National Black Worker Center** (NBWC) provides insight into the discrimination
6 that Black workers – employed, underemployed, and unemployed – face and the solutions sought
7 to end anti-Blackness in the workplace. NBWC launched in response to the two-dimensional job
8 crisis that Black workers face: the crisis of unemployment, and the crisis of low-wage and low-
9 quality work. NBWC promotes workplace equity, fair wages, and improved working conditions
10 for Black people and, as outlined in our Black Worker Bill of Rights, believes that all workers
11 are entitled to the right to career advancement opportunities and health, healing, and rest.

12 **The National Organization for Women Foundation** (NOW) is a 501(c)(3) entity of the
13 National Organization for Women and is dedicated to advocating for women’s equal rights
14 through education and litigation. NOW is the nation’s oldest and largest grassroots feminist
15 activist membership organization, with thousands of members in California and all other states
16 and the District of Columbia. NOW Foundation focuses on a range of issues, including
17 economic justice, pay equity, freedom from sex-based discrimination in employment and other
18 concerns. We recognize that sex-based discrimination in its various forms most often affects
19 broad classes of women. NOW Foundation for decades has been involved with class action
20 litigation to advance women’s health and socio-economic well-being. NOW Foundation is
21 supportive of the intent of laws and policies that aid pregnant and lactating workers by requiring
22 reasonable accommodation from their employers. Women workers of reproductive age would
23 certainly constitute a similarly situated class subject to disadvantage or injury in a workplace that
24 does not provide reasonable accommodation.

25 **The National Women’s Law Center** (NWLC) is a non-profit legal advocacy
26 organization that fights for gender justice – in the courts, in public policy, and in our society –
27 working across the issues that are central to the lives of women and girls – especially women of
28 color, LGBTQ people, and low-income women and families. Since its founding in 1972, NWLC

1 has worked to advance workplace justice, educational opportunities, health and reproductive
2 rights, and income security. NWLC has participated as counsel or amicus curiae in a range of
3 cases to secure equal treatment and opportunity in all aspects of society, including numerous
4 cases addressing pregnancy discrimination in the workplace. NWLC has a strong interest in
5 enforcing laws prohibiting sex discrimination and in ending the adverse health and economic
6 consequences caused by employers' systemic failure to accommodate pregnancy, childbirth, and
7 related medical conditions.

8 **Ujima, The National Center on Violence Against Women in the Black Community**
9 (Ujima) was founded in 2015. Our mission is to mobilize the community to respond to and end
10 violence against women in the Black community. We actualize this mission through research,
11 public awareness and community engagement, technical assistance, and resource development.
12 Ujima is vested in assuring that our human right to be free from harm is recognized and
13 protected. The Universal Declaration of Human Rights codifies various fundamental human
14 rights, including the right to life, the right to non-discrimination, the right to freedom from
15 torture and cruel, inhuman or degrading treatment, and the right to judicial remedies.

16 **Women Employed's** mission is to improve the economic status of women and remove
17 barriers to economic equity. Since 1973, the organization has advocated for the rights of
18 thousands of working women with problems of discrimination and harassment, monitored the
19 performance of equal opportunity enforcement agencies, and developed specific, detailed
20 proposals for improving enforcement efforts. Women Employed is committed to protecting fair
21 treatment of all working women, including workers who are pregnant or breastfeeding, and has
22 championed laws that ensure workplaces are fair and inclusive. In cases where there is a policy
23 and practice of discrimination, class treatment is warranted given the systematic denials of these
24 workers' rights.

25 Founded in 1974, **Women's Law Project** (WLP) is a nonprofit public interest legal
26 organization working to defend and advance the rights of women, girls, and LGBTQ+ people in
27 Pennsylvania and beyond. WLP leverages impact litigation, policy advocacy, public education,
28 and direct assistance and representation to dismantle discriminatory laws, policies, and practices

1 and eradicate institutional biases and unfair treatment based on sex or gender. WLP has
2 developed groundbreaking legal practices addressing reproductive rights, gender-based violence,
3 and educational and economic opportunity. WLP uses an intersectional analysis to prioritize
4 work on behalf of people facing multiple forms of oppression based on sex, gender, race,
5 ethnicity, class, disability, incarceration, pregnancy, and immigration status. WLP advocates for
6 the rights of pregnant and breastfeeding workers—recognizing the denial of reasonable
7 workplace accommodations during pregnancy and lactation perpetrates workplace inequality and
8 constitutes sex discrimination.

9 **Worksafe** is a non-profit organization that advocates for protective worker health and
10 safety laws and effective remedies for injured workers through the legislature and courts. We
11 engage in California state-wide policy advocacy as well as advocacy on a national level to ensure
12 protective laws for workers. Worksafe has an interest in the outcome of this case because we
13 advocate for the workplace health and safety rights, and workplace accommodations are an
14 essential right so workers stay safe in the workplace.

15 **II. The proposed brief would assist the Court in rendering a decision on Plaintiffs’**
16 **Motion for Class Certification.**

17 Proposed *Amici Curiae* offer a wealth of expertise regarding California’s pregnancy and
18 lactation accommodation laws. Our organizations advise workers regarding their rights under
19 these laws and litigate claims involving these laws on both an individual and class-action basis.
20 We also contributed to the drafting and passage of these and similar laws around the country.
21 Animating this work is our organizations’ dedication to understanding the needs of pregnant and
22 lactating workers, and advancing those needs through research, advocacy, legislation, and
23 litigation.

24 As a result of our work, we can offer the Court our deep knowledge of the health and
25 economic implications for workers who are denied pregnancy and lactation accommodations.
26 We also offer our expertise regarding statutory and regulatory interpretations of California’s
27 pregnancy accommodation and lactation laws. Finally, we bring the experience of class action
28 practitioners to inform the Court’s decision regarding class certification in this matter.

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Case No.: 19STCV35714

AMICUS CURIAE BRIEF IN SUPPORT OF
PLAINTIFFS’ MOTION FOR CLASS
CERTIFICATION

Hearing Date: April 11, 2025
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Trial Date: None

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1 **SUMMARY OF ARGUMENT**

2 California has long stood at the vanguard of women’s workplace rights, as reflected by its
3 expansive pregnancy and lactation accommodation laws. Plaintiffs here similarly form the
4 vanguard in their own workplace, continuing women workers’ decades-long fight to secure and
5 maintain lucrative jobs as longshore workers at the Los Angeles and Long Beach Ports.
6 Defendants have historically kept these jobs closed to women, in part by refusing to comply with
7 laws that ensure pregnant and postpartum women have access to the accommodations they need
8 to perform their jobs and maintain their health. Plaintiffs allege systematic denial of their rights
9 to pregnancy and lactation accommodations, and now seek class certification of their claims
10 under California law.

11 *Amici* argue that class treatment of plaintiffs’ claims is necessary and appropriate given
12 the rights at stake in this case. First, *Amici* explain why class actions have always been an
13 essential tool to ensure gender equality in the workplace. Second, *Amici* describe how
14 reasonable accommodations for pregnancy, childbirth, and lactation are a public health
15 imperative. Third, *Amici* outline how violations of women’s workplace rights, particularly those
16 at issue in this case, systematically exclude women from high-paying jobs in the trades. Finally,
17 *Amici* address how unique features of California’s pregnancy and lactation accommodation laws
18 make plaintiffs’ claims particularly amenable to class adjudication.

19 **ARGUMENT**

20 **I. Class treatment is an essential tool to achieve gender equality in the workplace,**
21 **especially where plaintiffs are challenging policies in a workplace with long-**
22 **entrenched discriminatory practices.**

23 Class action litigation is a powerful means to advance gender equality in the workplace.¹
24 From manufacturing workers to law enforcement officers, women have, for decades, used class
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28 ¹ See Brooke D. Coleman & Elizabeth G. Porter, *Reinvigorating Commonality: Gender and Class Actions*, 92
N.Y.U. L. Rev. 895, 905-14 (2017) (explaining class action lawsuits’ critical contributions to establishing women’s
workplace rights).

1 actions to transform their workplaces by challenging the established practices that disadvantaged
2 them because of their sex.²

3 Class actions are particularly effective at creating workplace-wide change.³ This is
4 because class actions target systemic problems, bringing forward affected workers and providing
5 an efficient method for courts to address both their individual claims and the root causes of their
6 harm.⁴ In turn, the effectiveness of the class action mechanism creates a significant deterrent
7 effect for entire industries to modify, or avoid, discriminatory policies and practices.⁵ Workers
8 rely on class actions both to obtain individual justice and to transform their workplaces' policies
9 for the benefit of all.

10 The class action mechanism is essential where, as here, workers are challenging long-
11 entrenched, workplace-wide discriminatory practices. Women seeking to join the highly-paid
12 workforce at the Ports of Los Angeles and Long Beach have endured decades of exclusionary
13 workplace practices.⁶ These practices flout the very laws intended to ensure workplace equality,
14 including California's well-established pregnancy and lactation accommodations laws, which
15 have been in effect for over two decades.⁷ Notably, women workers at the Ports of Los Angeles
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17 ² *E.g.*, *Bouman v. Block*, 940 F.2d 1211, 1232-33 (9th Cir. 1991), *cert. denied*, 502 U.S. 1005 (1991) (affirming
18 order for sheriff's office to develop and implement non-discriminatory promotional practices in response to class
19 action suit by female employees); *Automobile Workers v. Johnson Controls, Inc.*, 935 F.2d 272 (7th Cir. 1991)
20 (noting that defendant manufacturer voluntarily abandoned a sex-specific workplace policy after a class of women
21 employees won a Supreme Court ruling holding the policy discriminatory); *see also* Michael Selmi, *Sex*
Discrimination in the Nineties, Seventies Style: Case Studies in the Preservation of Male Workplace Norms, 9 Emp.
Rts. & Emp. Pol'y J. 1, 3 (2005) (charting the significance of class actions in addressing structural sex discrimination
in male-dominated industries).

22 ³ *See* Anita Hill, *How to Disrupt Silicon Valley Sexism*, N.Y. Times, Aug. 9, 2017, at A19 ("Class action lawsuits
can force industry-wide change, even in the most entrenched, male-dominated industries.").

23 ⁴ *See* Roger W. Reinsch & Sonia Goltz, *You Can't Get There from Here: Implications of the Walmart v. Dukes*
Decision for Addressing Second-Generation Discrimination, 9 Nw. J. L. & Soc. Pol'y 264, 267 (2014) ("Class
24 action discrimination suits provide multiple benefits: they provide an individual opportunity for justice, make the
court system more efficient, and bolster society's ability to enforce laws.").

25 ⁵ *See* Minna J. Kotkin, *Public Remedies for Private Wrongs: Rethinking the Title VII Back Pay Remedy*, 41 Hastings
L.J. 1301, 1337 (1990) ("An aggregate class-based recovery can have substantial economic repercussions, and the
26 threat of affirmative relief serves as a substantial incentive to cure disparities.").

27 ⁶ *See* Bill Sharpsteen, *The Last Stand*, L.A. Times, Jan. 24, 1999, [https://www.latimes.com/archives/la-xpm-1999-
jan-24-tm-1003-story.html](https://www.latimes.com/archives/la-xpm-1999-
jan-24-tm-1003-story.html) (describing harassment and exclusion of women workers at the Ports of Los Angeles and
28 Long Beach throughout the 1990s); Sheryl Stolberg, *Heavy Duty Abuse Part of Dock Life for Women*, L.A. Times,
Mar. 24, 1990, <https://www.latimes.com/archives/la-xpm-1990-03-24-me-542-story.html> (same for the 1980s and
1970s).

⁷ A.B. 1670, 1999 Leg., Reg. Sess. (Cal. 1999) (pregnancy accommodations); A.B. 1025, 2001 Leg., Reg. Sess.
(Cal. 2001) (lactation accommodations).

1 and Long Beach continue to fight for these rights despite Congress’s bipartisan enactment of two
2 new federal laws – the Pregnant Workers Fairness Act and the PUMP for Nursing Mothers Act –
3 that came into effect over a year ago and require employers to provide precisely the
4 accommodations plaintiffs here are still seeking.⁸ Class action treatment of plaintiffs’ claims is
5 therefore necessary not only to ensure individual relief for those who have stepped forward, but
6 also to address this workplace’s longstanding systemic exclusion of women.

7 **II. California’s pregnancy and lactation accommodation laws are critical for maternal**
8 **and child health, especially for women in physically demanding jobs.**

9 **A. Accommodations for pregnancy and childbirth**

10 Three-quarters of women in the American workforce will be pregnant and working at
11 some point in their career.⁹ Many will need a workplace accommodation to safeguard their
12 health, like extra bathroom breaks, limits on lifting, or modified job duties.¹⁰ Yet a 2021 report
13 found that at least 250,000 women in the United States were denied pregnancy accommodations
14 each year.¹¹

15 When workers in physically demanding roles are denied necessary accommodations for
16 their pregnancies, they typically have no choice but to either stop working and lose vital income,
17 or stick it out at work, sometimes with devastating health consequences. The risk of miscarriage
18 and stillbirth increases, for example, with the frequency and weight of lifting,¹² exposure to
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22 ⁸ Pregnant Workers Fairness Act, 42 U.S.C. § 2000gg (2023); PUMP for Nursing Mothers Act, Pub. L. 117–328,
23 136 Stat. 6093 (2022) (codified in scattered sections of 29 U.S.C. § 201 *et seq.*).

24 ⁹ Melissa Alpert & Alexandra Cawthorne, Ctr. For Am. Progress, *Labor Pains: Improving Employment & Income*
25 *Security For Pregnant Women & New Mothers* 2 (2009), [https://cdn.americanprogress.org/wp-](https://cdn.americanprogress.org/wp-content/uploads/issues/2009/08/pdf/labor_pains.pdf)
26 [content/uploads/issues/2009/08/pdf/labor_pains.pdf](https://cdn.americanprogress.org/wp-content/uploads/issues/2009/08/pdf/labor_pains.pdf).

27 ¹⁰ Carly McCann & Donald Tomaskovic-Devey, Center for Employment Equity, University of Massachusetts,
28 Amherst, *Pregnancy Discrimination at Work* 8, 16-17 (2021),
<https://www.umass.edu/employmentequity/pregnancy-discrimination-workplace-1>.

¹¹ *Id.* at 8-9.

¹² See Mette Juhl et al., *Occupational Lifting During Pregnancy & Risk of Fetal Death in a Large National Cohort*
28 *Study*, 39(4) *Scand. J. Work Environ. Health* 335 (Dec. 3, 2012), <https://pubmed.ncbi.nlm.nih.gov/23207454/>; see also
Jessica Silver-Greenberg & Natalie Kitroeff, *Miscarrying at Work: The Physical Toll of Pregnancy Discrimination*,
N.Y. Times (Oct. 21, 2018), [https://www.nytimes.com/interactive/2018/10/21/business/pregnancy-discrimination-](https://www.nytimes.com/interactive/2018/10/21/business/pregnancy-discrimination-miscarriages.html)
[miscarriages.html](https://www.nytimes.com/interactive/2018/10/21/business/pregnancy-discrimination-miscarriages.html).

1 chemicals,¹³ irregular or long work hours,¹⁴ and night shifts.¹⁵ Indeed, the failure to provide
2 pregnant employees with accommodations is also linked to a range of other potential adverse
3 health impacts, including preterm birth, low birth weight, pregnancy-induced hypertension,
4 placental separation, uterine rupture, fetal malformation, and postpartum depression.¹⁶ These
5 health consequences often have long-lasting impacts.¹⁷

6 Laws like California’s pregnancy accommodations law prevent these negative outcomes
7 by giving millions of workers the rights they need to safeguard their health and their pregnancies.

8 **B. Lactation accommodations**

9 It is well established that breastfeeding is important for maternal and infant health; it is
10 the best source of infant nutrition and immunologic protection for most babies, is associated with
11 reduced risk of diabetes and leukemia in children, and provides remarkable health benefits to
12 mothers such as reduced cancer risks.¹⁸ Accordingly, every relevant professional medical
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14

15 ¹³ Frincy Francis et al., *Ergonomic Stressors Among Pregnant Healthcare Workers*, 21(2) Sultan Qaboos Univ.
16 Med. J. 172, 174 (June 21, 2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8219330/> (documenting “a
17 significant increase in the rate of spontaneous miscarriage [among pregnant nurses] after handling cytotoxic drugs”).

¹⁴ *Id.* at 174.

¹⁵ Am. C. Obstetricians & Gynecologists, *ACOG Committee Opinion 733: Employment Considerations During
18 Pregnancy & the Postpartum Period*, 131 *Obstetrics & Gynecology* 115, 119 (Apr. 2018),
19 [https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2018/04/employment-considerations-
during-pregnancy-and-the-postpartum-period](https://www.acog.org/clinical/clinical-guidance/committee-opinion/articles/2018/04/employment-considerations-during-pregnancy-and-the-postpartum-period).

¹⁶ See, e.g., Francis et al., *supra* note 14, at 174-75, 177 (describing common pregnancy-related accommodations
20 that reduce the risk of preterm birth, low birth weight, hypertension during pregnancy, placental separation, uterine
21 rupture, and fetal malformation); Yuko Kachi et al., *The Effects of Pregnancy Discrimination on Postpartum
22 Depressive Symptoms*, 22 *BMC Pregnancy & Childbirth* 1, 4 (Nov. 8, 2022),
23 <https://link.springer.com/article/10.1186/s12884-022-05148-2> (“[P]regnancy discrimination was significantly
24 associated with postpartum depressive symptoms.”); Kaylee J. Hackney et al., *Examining the Effects of Perceived
25 Pregnancy Discrimination on Mother and Baby Health*, 106(5) *J. Applied Psych.* 774, 781 (July 2, 2020),
26 [https://faculty.fiu.edu/~aeaton/wp-content/uploads/2020/07/Hackney-et-al.-2020-Examining-the-Effects-of-
Perceived-Pregnancy-Discrimination.pdf](https://faculty.fiu.edu/~aeaton/wp-content/uploads/2020/07/Hackney-et-al.-2020-Examining-the-Effects-of-Perceived-Pregnancy-Discrimination.pdf) (demonstrating that “perceived pregnancy discrimination . . . leads to
27 increased postpartum depressive symptoms for mothers, decreased birth weight and gestational age, and increased
28 doctors’ visits for their babies”).

¹⁷ See, e.g., March of Dimes, *Long-Term Health Effects of Preterm Birth* (Feb. 2024),
29 <https://www.marchofdimes.org/find-support/topics/birth/long-term-health-effects-preterm-birth> (noting that preterm
30 birth can lead to long-term impacts on a child’s brain, lungs, teeth, eyes, ears, intestines, and immune system);
31 Cynthia E. Rogers et al., *Late Preterm Birth, Maternal Depression, and Risk of Preschool Psychiatric Disorders*,
32 52(3) *J. Am. Acad. Child & Adolescent Psych.* 309 (Feb. 4, 2013), <https://pubmed.ncbi.nlm.nih.gov/23452687>
33 (finding preterm birth is associated with diagnoses of anxiety, depression, and attention deficit hyperactivity
34 disorder later in life).

¹⁸ Office of the Surgeon Gen., Ctr. for Disease Control and Prevention, and Office on Women’s Health, *The Surgeon
35 General’s Call to Action to Support Breastfeeding* (2011), <https://www.ncbi.nlm.nih.gov/books/NBK52683/>.

1 association recommends breastfeeding and has adopted policy statements in support.¹⁹ These
2 medical recommendations, however, are unfortunately in tension with the reality of the lives of
3 many women who choose to breastfeed. Although the overall breastfeeding initiation rate is
4 83.2% according to the latest available statistics, the number drops significantly in the months
5 following birth, to 55.8% at six months and 35.9% at one year.²⁰

6 The U.S. Surgeon General has identified employment barriers as one of seven key
7 barriers to breastfeeding, noting that “women face inflexibility in their work hours and locations
8 and a lack of privacy for breastfeeding or expressing milk, have no place to store expressed
9 breast milk . . . face fears over job insecurity, and have limited maternity leave benefits.”²¹

10 Unsurprisingly, the absence of adequate workplace lactation accommodations is associated with
11 early weaning.²²

12 Conflict between the demands of returning to work and continuation of breastfeeding can
13 be effectively addressed by providing lactation break time, private pumping space, and other
14 reasonable accommodations to nursing employees. Breastfeeding women who are away from
15 their babies need to express milk from their breasts (typically by using a breast pump) on roughly
16 the same schedule as their baby’s feeding schedule, typically every two to three hours for babies
17 under six months old. Failure to express breast milk on schedule can lead to painful
18 engorgement,²³ fever, and infection, as well as a lasting reduction in the amount of breast milk

19
20 ¹⁹ Am. Acad. of Pediatrics, Policy Statement: Breastfeeding and the Use of Human Milk, 150 Pediatrics (1)
21 e2022057988 (2022), [https://publications.aap.org/pediatrics/article/150/1/e2022057988/188347/Policy-Statement-](https://publications.aap.org/pediatrics/article/150/1/e2022057988/188347/Policy-Statement-Breastfeeding-and-the-Use-of)
22 [Breastfeeding-and-the-Use-of](https://publications.aap.org/pediatrics/article/150/1/e2022057988/188347/Policy-Statement-Breastfeeding-and-the-Use-of) (recommending exclusive breastfeeding for six months, and continuation of
23 breastfeeding supplemented by complementary foods thereafter); *see also* Am. Academy of Family Physicians,
24 *Breastfeeding Policy Statement* (2023), <https://www.aafp.org/about/policies/all/breastfeeding-policy-statement.html>
25 (same); Am. Pub. Health Ass’n, *An Update to a Call to Action to Support Breastfeeding: A Fundamental Public*
26 *Health Issue* (2015), [https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-](https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/09/15/26/an-update-to-a-call-to-action-to-support-breastfeeding-a-fundamental-public-health-issue)
27 [database/2014/07/09/15/26/an-update-to-a-call-to-action-to-support-breastfeeding-a-fundamental-public-health-](https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/09/15/26/an-update-to-a-call-to-action-to-support-breastfeeding-a-fundamental-public-health-issue)
28 [issue](https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2014/07/09/15/26/an-update-to-a-call-to-action-to-support-breastfeeding-a-fundamental-public-health-issue) (“A growing body of research highlights significant effects of breastfeeding on maternal health. Evidence also
continues to accumulate on the impact of breastfeeding (particularly exclusive breastfeeding) on the health of
children.”).

²⁰ Ctr. for Disease Control and Prevention, *Breastfeeding Report Card* (2022),
<https://www.cdc.gov/breastfeeding/data/reportcard.htm>.

²¹ Office of the Surgeon Gen., *Call to Action to Support Breastfeeding* (2011),
<https://www.ncbi.nlm.nih.gov/books/NBK52683/>.

²² Katy B. Kozhimannil et al., *Access to Workplace Accommodations to Support Breastfeeding after Passage of the*
Affordable Care Act, 26 Women’s Health Issues 6, 9 (2016).

²³ *See* Office of Legal Counsel, U.S. Equal Emp’t Opportunity Comm’n, *Enforcement Guidance: Pregnancy*
Discrimination and Related Issues I.A.4.b., 2015 WL 4162723 (2015) (“To continue producing an adequate milk

1 the woman is able to produce for her child.²⁴ Workplace accommodations for breastfeeding are
2 thus imperative for effectuating the important public health goal of improving breastfeeding
3 continuation rates while also enabling new mothers to return to work.

4 **III. Failure to comply with California’s pregnancy and lactation laws perpetuates the**
5 **historical exclusion of women from prosperous employment in the trades.**

6 Women have historically been significantly underrepresented and unwelcome in skilled
7 trades occupations such as a dockworker, construction worker, and electrician.²⁵ Today,
8 although some women work in these male-dominated fields, they continue to face an enduring
9 legacy of hostility and discrimination.²⁶ As one woman dockworker explained, “None of the
10 challenges I’ve faced on the waterfront have had anything to do with my ability to get any job
11 done, but rather with resistance [I have faced] for doing it.”²⁷

12 Within male-dominated fields, pregnancy and childbirth often serve as flashpoints for
13 discrimination, as they draw attention to a woman’s gender and typically require some form of
14 accommodation and leave. One survey found that seventy-one (71%) of women reported
15 needing additional breaks during pregnancy; sixty-one percent (61%) needed a change in
16 schedule or time off for prenatal visits; and over half (53%) needed a change in their job duties,
17 such as less lifting or more sitting.²⁸ Notably, those with high school degrees or less needed

18
19 supply and to avoid painful complications associated with delays in expressing milk, a nursing mother will typically
20 need to breastfeed or express breast milk using a pump two or three times over the duration of an eight-hour
21 workday.”); Office on Women’s Health, U.S. Dep’t of Health & Hum. Servs., *Breastfeeding and Going Back to*
22 *Work* (2021), [https://www.womenshealth.gov/breastfeeding/breastfeeding-home-work-and-public/breastfeeding-](https://www.womenshealth.gov/breastfeeding/breastfeeding-home-work-and-public/breastfeeding-and-going-back-work)
23 [and-going-back-work](https://www.womenshealth.gov/breastfeeding/breastfeeding-home-work-and-public/breastfeeding-and-going-back-work) (“At work, you will need to pump during the times you would feed your baby if you were at
24 home. As a general rule, in the first few months of life, babies need to breastfeed eight to 12 times in 24 hours. As
25 the baby gets older, the number of feedings may go down.”).

24 *EEOC Enforcement Guidance, supra*, at I.A.4.b; Lisa H. Amir & Acad. of Breastfeeding Med. Protocol Comm.,
25 *ABM Clinical Protocol #4: Mastitis* 239 (2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4048576/>

26 Stolberg, *supra* note 6 (“During the 1980s, of the 510 total longshore workers in Seattle, for example, about a
27 dozen were women. In Savannah, Georgia, out of 600 longshore workers there was one woman. In Norfolk,
28 Virginia, it was estimated that only 5% of the 2,000 dockworkers were women and this included clerks. In the same
29 period, at the Port of New York and New Jersey, the 6,000 longshore workers only included 16 women.”).

30 ²⁶ Ariane Hegewisch & Eve Mefferd, *A Future Worth Building: What Tradeswomen Say about the Change They*
31 *Need in the Construction Industry*, Institute for Women’s Policy Research (IWPR), 12-14 (November 16, 2021),
32 <https://iwpr.org/a-future-worth-building-report/>.

33 ²⁷ Vivian Malauulu, Local 13 Benefits Officer, *ILWU women speak out*, International Longshore & Warehouse
34 Union (Apr. 7, 2020), <https://www.ilwu.org/ilwu-women-speak-out/>.

35 ²⁸ National Partnership for Women & Families, *Listening to Mothers: The Experience of Expecting and New*
36 *Mothers in the Workplace*, Childbirth Connection, 2 (Jan. 2014), [https://nationalpartnership.org/wp-](https://nationalpartnership.org/wp-content/uploads/2023/02/listening-to-mothers-experiences-of-expecting-and-new-mothers.pdf)
37 [content/uploads/2023/02/listening-to-mothers-experiences-of-expecting-and-new-mothers.pdf](https://nationalpartnership.org/wp-content/uploads/2023/02/listening-to-mothers-experiences-of-expecting-and-new-mothers.pdf).

1 accommodations at higher rates than college graduates, likely because of the more physically
2 demanding nature of their jobs.²⁹ Likewise, following childbirth, breastfeeding women typically
3 require accommodation and continue to face severe penalties in male-dominated fields, such as
4 adverse employment action for requesting accommodations to pump milk, or physical pain or
5 discomfort because they were unable to do so after their requested accommodation was denied.³⁰
6 One study found that first responders, law enforcement, and women in other male-dominated
7 industries made up only 16% of women workers but accounted for nearly half (43%) of
8 breastfeeding discrimination claims.³¹

9 Despite the unjust and sometimes dangerous treatment women face in the trades, they are
10 increasingly seeking work in these fields³² because of the lucrative compensation they offer,³³ as
11 well as the job security and benefits that come with union membership.³⁴ Indeed, Defendant
12 Pacific Maritime Association boasts of paying “world-class wages” amounting to roughly “three
13 times the U.S. median household income.”³⁵ Full-time registered longshore workers earn an
14 average salary of almost \$233,000 per year.³⁶ Such positions can provide women, particularly
15 lower-income women without college degrees, a chance to achieve economic security for
16 themselves and their families.³⁷

17 When these women are denied reasonable accommodations for pregnancy, childbirth, or
18 lactation, they are forced to jeopardize either their health, the health of their pregnancy or their
19 child, or their economic security – during one of the most economically vulnerable times of their
20

21 ²⁹ *Id.* at 3.

22 ³⁰ Liz Morris, Jessica Lee, Joan C. Williams, Exposed: Discrimination Against Breastfeeding Workers, Center for
23 Worklife Law, 4, <https://www.pregnantatwork.org/wp-content/uploads/WLL-Breastfeeding-Discrimination-Report.pdf>.

24 ³¹ *Id.*

25 ³² Hegewisch & Mefferd, *supra* note 28, at 1 (“In 2020, over 300,000 women—the largest number ever—worked in
26 construction occupations, reflecting growth even during the COVID-19 pandemic.”).

27 ³³ *Propelling West Coast Ports Forward*, Pacific Maritime Association, <https://www.pmanet.org/west-coast-ports/#>.

28 ³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Breadwinner Moms*, Pew Research Center (May 29, 2013), <https://www.pewresearch.org/social-trends/2013/05/29/breadwinner-moms/> (women are the primary or sole breadwinners in nearly 40% of families with children); *see also* Shengwei Sun, *National Snapshot: Poverty Among Women & Families*, National Women’s Law Center (Jan. 2023), https://nwlc.org/wp-content/uploads/2023/02/2023_nwlc_PovertySnapshot-converted.pdf (women comprise 47.9% of workers in living in poverty).

1 lives.³⁸ Denying pregnancy and lactation accommodations can effectively deny a woman the
2 opportunity to work at all.³⁹ See, e.g., *Legg v. Ulster County*, 820 F.3d 67, 71 (2d Cir. 2016)
3 (denying light-duty work to a pregnant corrections officer forced her to choose between taking
4 leave until after the birth of her baby or risking physical harm in the inmate pods to remain
5 employed); *Hicks v. City of Tuscaloosa, Alabama*, 870 F.3d 1253, 1260 (11th Cir. 2017)
6 (refusing to provide police officer with breastfeeding accommodations, thereby forcing her to
7 choose between breastfeeding and her job, was so intolerable that it constituted a constructive
8 discharge). When employers push pregnant workers out of their jobs, they deny them economic
9 independence and curtail their ability to access other benefits of paid employment, like the
10 chance to accumulate hours needed for union membership. Recognizing this, California was a
11 national leader in passing meaningful legislation to ensure workers are not forced to choose
12 between their pregnancies and their paychecks.

13 **IV. Defendants’ uniform practice of failing to provide employees with legally-mandated**
14 **notice of their rights and the opportunity to engage in the interactive process**
15 **fundamentally undermines all pregnant employees’ rights under California’s**
16 **pregnancy accommodation law.**

17 California led the country in 1999 by recognizing that pregnancy accommodations are a
18 necessary part of ensuring that women are able to earn incomes, live independently, and
19 participate in the economy.⁴⁰ California was one of the first states to go beyond the requirements
20 of the federal Pregnancy Discrimination Act to not only prohibit discrimination, but to take into

21 ³⁸ *Exploring the Relationship Between Paid Family Leave and the Well-being of Low-Income Families: Lessons*
22 *from California*, U.S. Department of Health and Human Services, 3 (January 2017) (“The birth of a child is a time
23 of particular vulnerability for low-income families, putting them at risk of falling into poverty for reasons including
24 job loss and increased expenses.”); see also *Pregnant Workers’ Rights: Hearing Before the Subcomm. on House*
25 *Education and Labor, HR 2694 (2019)* (Statement of Rep. Suzanne Bonamici) (“Women are increasingly either the
26 primary, or co-breadwinners of households and, as a result, more pregnant women work later into their
27 pregnancies. . . . [W]hen pregnant workers don’t have access to the reasonable accommodations they need, they are
28 often forced to choose between their financial security and their pregnancy. The consequences can be devastating to
their health and security.”).

³⁹ *Long Overdue: The Pregnant Workers Fairness Act is a Critical Measure to Remove Barriers to Women’s*
Workplace Participation and Promote Healthy Pregnancies, A Better Balance, 6 (June 2021),
<https://www.abetterbalance.org/wp-content/uploads/2021/06/Long-Overdue-June-2021-Update-Final-1.pdf> (women,
especially low-income women and women holding physically strenuous jobs, who were not protected by the
Pregnant Workers Fairness Act were found to have suffered extreme economic losses when pushed out of work or
terminated for needing accommodations).

⁴⁰ A.B. 1670, 1999 Leg., Reg. Sess. (Cal. 1999).

1 account the very real physiological and safety needs of those who are pregnant and give birth by
2 providing a strong right to pregnancy accommodations, transfer, and leave.

3 California’s pregnancy accommodation law, called “Pregnancy Disability Leave” (PDL)
4 – part of the state’s Fair Employment and Housing Act – requires employers to provide
5 reasonable accommodations for pregnancy, childbirth, and related medical conditions that enable
6 workers to perform the essential functions of their jobs. This right is available without exception
7 for employer hardship, making the right to accommodations stronger than in a disability context,
8 and regardless of employee tenure.⁴¹ PDL was intended to allow pregnant employees to
9 continue working in their jobs safely for longer periods of time with less disruption.⁴²

10 One of the defining features of California’s pregnancy accommodation law is its robust,
11 uniform notice requirement that ensures employers notify employees of their rights and the
12 specific steps employees need to take to access them. Similarly, California’s mandatory
13 interactive process is designed to ensure employers communicate to pregnant employees
14 information they need to access their legal rights and to understand employer decision-making.⁴³
15 PDL’s mandatory notice and interactive process provisions reduce the imbalance of information
16 between employers and their employees and are thus central to effectuating the law’s purpose of
17 ensuring pregnant workers are able to continue working without jeopardizing their health or the
18 health of their pregnancy.

19 Under PDL, an employer has an obligation to give its employees detailed “reasonable
20 advance notice” of their rights regarding pregnancy, childbirth, and related medical conditions.⁴⁴
21 This notice must include a description of the employee’s right to reasonable accommodation or
22 transfer for pregnancy, any notice requirements the employer wishes to place on the employee,
23 and any medical certification requirements the employer maintains as a prerequisite to obtaining
24 accommodations or transfer.⁴⁵ Employers must post this notice for all employees and also are
25 “required to give an employee a copy of the appropriate notice as soon as practicable after the
26

27 ⁴¹ Cal. Code Regs., tit. 2, § 11037 (“No Eligibility Requirements.”); *see* Cal. Gov. Code § 12940(m)(1).
28 ⁴² A.B. 1670, 1999 Leg., Reg. Sess. (Cal. 1999).
⁴³ *See* Cal. Code Regs., tit 2, § 11050(a).
⁴⁴ Cal. Code Regs., tit. 2, §§ 11049(a), 11051.
⁴⁵ Cal. Code Regs. tit. 2, § 11049(b)(3).

1 employee tells the employer of her pregnancy or sooner if the employee inquires about
2 reasonable accommodation, transfer, or pregnancy disability leave.”⁴⁶

3 California courts have recognized and taken seriously the central statutory importance of
4 PDL’s notice requirements.⁴⁷ Courts have similarly found that engaging in the interactive
5 process is a critical part of providing accommodation, separate from and in addition to actually
6 making the job modifications that constitute the reasonable accommodation.⁴⁸ Indeed, California
7 has elevated the importance of the interactive process in its disability protections above its place
8 in the federal Americans with Disabilities Act by making the failure to engage in the interactive
9 process a separate violation of the law for employees with disabilities.⁴⁹

10 PDL’s notice requirements and mandatory interactive process are central to its
11 functioning in practicality and as explicitly stated in its regulations. This makes sense: while
12 employers may employ dozens, hundreds, or even thousands of pregnant women throughout the
13 life of their business, a pregnant worker typically spends only a small fraction of their career
14 pregnant or postpartum. Not surprisingly, many workers are unaware of their rights, and those
15 who are aware may be afraid to request more information or to assert their rights for fear of
16 being fired or placed on leave, endangering the income their family relies on.⁵⁰

17 Accordingly, PDL’s regulations make clear that the consequences for failing to educate
18 employees about their rights fall squarely on the employer.⁵¹ Indeed, an employer that deprives
19 its employees of the required notice cannot later defend its own failure to provide
20 accommodations on grounds that it did not know about the employees’ needs. PDL’s

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22 ⁴⁶ Cal. Code Regs., tit. 2, § 11049(d)(2).

23 ⁴⁷ See *id*; *Capili v. Finish Line, Inc.*, 2018 WL 2047614 (N.D. Cal. May 2, 2018) (denying employer’s motion for
summary judgment based on the argument that an FMLA notice satisfied the employer’s obligation to provide
notice under PDL).

24 ⁴⁸ See *Swanson v. Morongo Unified School Dist.*, 232 Cal.App.4th 954, 972 (Nov. 26, 2014) (recognizing, in the
disability accommodation context, that an employer could be liable for failing to participate in the interactive
process, even where it did provide the employee with a reasonable accommodation).

25 ⁴⁹ See Cal. Gov. Code § 12940(n). Notably, California’s Fair Employment and Housing Act, which contains
Pregnancy Disability Leave, is consistent in noting that it is intended to surpass federal laws in its protectiveness.
See Cal. Code Regs. tit. 2, § 11065(d)(8); see also Cal. Code Regs. tit. 2, § 11087.

26 ⁵⁰ See California Civil Rights Department, 2022 Annual Report, [https://calcivilrights.ca.gov/wp-](https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2024/06/CRD-2022-Annual-Report.pdf)
27 [content/uploads/sites/32/2024/06/CRD-2022-Annual-Report.pdf](https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2024/06/CRD-2022-Annual-Report.pdf) (27% of Employment Claims are based on
retaliation); EEOC Releases Fiscal Year 2020 Enforcement and Litigation Data (55.8% of all charges filed are based
28 on retaliation).

⁵¹ See Cal. Code Regs. tit. 2, §§ 11049, 11050.

1 implementing regulations preclude employers that fail to provide notice from “taking any
2 adverse action against the employee [who did not receive notice], including denying reasonable
3 accommodation, transfer or pregnancy disability leave, for failing to furnish the employer with
4 adequate advance notice of a need.”⁵² Likewise, for an employer to require medical certification,
5 it must provide employees with a certification form, and advise employees of the consequences
6 of failing to provide the certification.⁵³ In sum, PDL’s implementing regulations were designed
7 to prevent employers from hiding the ball and then punishing employees for not being legal
8 experts.

9 In a lawful setting, an employer posts information about requesting pregnancy
10 accommodations for *all* employees, and – in addition – as soon as it becomes aware of a
11 particular employee’s pregnancy, it provides the required information about her rights to her
12 specifically, along with any medical certifications she may need to fill out when seeking
13 accommodation. Because the employee would have received this information about pregnancy
14 accommodations, when, for example, her healthcare provider recommended that she not lift over
15 10 pounds for approximately 4 months during her pregnancy, she would be aware of her rights
16 and know to request an accommodation accompanied by any medical paperwork required by her
17 employer. At that point, the employer would either provide the requested accommodation or
18 engage in a good faith interactive process to identify another accommodation that would allow
19 the employee to continue working.⁵⁴ Forcing an employee to stop working when she could have
20 continued doing her job with a reasonable accommodation is explicitly prohibited.⁵⁵

21 With respect to the interactive process, in a lawful setting, the requirement under
22 California law that employers engage in an interactive process further ensures workers have the
23 information they need to access their rights by creating a workplace culture where, regardless of
24 how an employee expresses their needs or understands their rights, the employer is obligated to
25 respond by engaging with the worker to identify their limitations and suggesting adjustments or
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27 ⁵² Cal. Code Regs., tit. 2, § 11049(c)(2).

28 ⁵³ Cal. Code Regs. tit. 2, § 11050(b).

⁵⁴ See Cal. Code Regs., tit. 2, § 11040(a)(2)(B).

⁵⁵ Cal. Code Regs., tit. 2, § 11068(c).

1 modifications the employer can make to accommodate them.⁵⁶ When both the notice and
2 interactive process requirements are routinely disregarded, employees are left without the ability
3 to communicate their needs or identify accommodations that would otherwise have resulted from
4 the iterative nature of the interactive process.

5 Thus, failure to notify employees about their right to request and receive pregnancy
6 accommodations meaningfully violates PDL in connection with every pregnant employee or
7 employee who may become pregnant. The very real harm of such a failure falls on all workers
8 who may need accommodations and do not receive necessary information from their employer
9 describing their legal rights or how to access them, thus depriving them of the opportunity to
10 engage in an interactive process to pursue the accommodations they need for their health. Where
11 employees do not receive notice of their rights and any requirements to provide advance notice
12 of their needs or medical certifications, each employee suffers the same violation of her rights,
13 no matter whether, when, or how she requests accommodations. California’s PDL regulations
14 are designed to ensure that every workplace has a clear process through which employees can
15 learn about, request, and work with their employer to find accommodations.

16 **V. Defendants’ uniform practice of failing to provide pumping break time and legally-**
17 **compliant private space fundamentally undermines the rights of all employees who**
18 **are lactating or may be lactating in the future.**

19 California’s lactation break time and space provisions were adopted in 2001 with the
20 underlying goal of “encourag[ing] working women to continue the healthy practice of providing
21 breast milk to their infant children.”⁵⁷ Recognizing that, without universal accommodations,
22 breastfeeding employees were often forced to pump in bathroom stalls or “hide in supply
23 closets” while pumping breast milk, AB 1025 (Frommer, 2001) required employers to provide
24 reasonable break time for employees to express breastmilk at work, and a space to do so, other
25 than a bathroom.⁵⁸

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28 ⁵⁶ *Swanson*, 232 Cal.App.4th at 972 (in disability context, the interactive process between employer and employee
“makes available to the other information which is available, or more accessible, to one party”).

⁵⁷ Ca. Asm. Cmte. on Labor and Employment Analysis AB 1025, 2001.

⁵⁸ *Id.*

1 In 2019, California’s lactation break time and space provisions were strengthened by SB
2 142 (Weiner, 2019), which provided specifics about the lactation space employers must provide,
3 including that it must meet certain health and safety requirements.⁵⁹ The bill also eliminated any
4 undue hardship exceptions from the requirement that large employers provide adequate lactation
5 space and mandated the development of workplace policies to educate employees about their
6 rights, with clear requirements on when the policies must be shared. These protections were
7 intended to enable working mothers to continue pumping breast milk in line with medical advice
8 without losing their jobs.⁶⁰

9 The California Labor Code requires that “[e]very employer, including the state and any
10 political subdivision, shall *provide* a reasonable amount of break time to accommodate an
11 employee desiring to express breast milk for the employee’s infant child each time the employee
12 has need to express milk.”⁶¹ Employers must also “*provide* an employee with the use of a room
13 or other location for the employee to express milk in private.”⁶² The Labor Code enumerates
14 specific health and safety conditions for lactation space, each of which are solely or primarily
15 within the employer’s control.⁶³ These specific and detailed health and safety requirements for
16 pumping space highlight the active role employers must play in ensuring lactating workers have
17 reliable access to conditions suitable for expressing milk.

18 As the Labor Code’s lactation break time and space provisions were meant to apply
19 broadly, the law also outlines ways for employers to appropriately use different and varied
20 spaces, mandating compliance in a variety of work settings. For example, multi-tenant buildings
21 and/or multi-employer worksites “may comply with this section by providing a space shared
22 among multiple employers within the building or worksite if the employer cannot provide a
23 lactation location within the employer’s own workspace.”⁶⁴ The law also permits employers to
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25 ⁵⁹ SB 142, Weiner, Ca. Senate Floor Analysis SB 142, 2019.

26 ⁶⁰ *Id.*

27 ⁶¹ Cal. Lab. Code § 1030 (emphasis added).

28 ⁶² Cal. Lab. Code § 1031(a) (emphasis added).

⁶³ Specifically, statutorily-required space must: (1) Be safe, clean, and free of hazardous materials; (2) Contain a surface to place a breast pump and personal items; (3) Contain a place to sit; and (4) Have access to electricity or alternative devices, including, but not limited to, extension cords or charging stations, needed to operate an electric or battery-powered breast pump. See Cal. Labor Code § 1031 (a-d).

⁶⁴ Cal. Lab. Code § 1031(f)(1).

1 rely on multipurpose spaces to meet their obligations.⁶⁵ Employers with operational, financial,
2 or space limitations can achieve compliance by designating a temporary lactation location.⁶⁶

3 Federal guidance interpreting the PUMP for Nursing Mothers Act, which has similar time
4 and space requirements and is designed with the same purpose as California’s lactation
5 accommodations law, emphasizes that employers must provide a “functional space” for pumping
6 that is “not so far from the employee’s work area as to make it impractical for the employee to
7 take breaks to pump.”⁶⁷ Under both federal and California law, employers with more than 50
8 employees are granted *no exceptions* for providing use of a room or lactation space that aligns
9 with the promulgated criteria.⁶⁸

10 Finally, all California employers must comply with the law’s notice provisions by
11 developing, implementing, and distributing a lactation accommodation policy.⁶⁹ The policy must
12 include details about an employee’s right to request lactation accommodations, the employer’s
13 obligation to respond to the request, the process for requesting such accommodations, and where
14 to file a complaint.⁷⁰ The policy must be distributed to new employees upon hire and any time
15 an employee “makes an inquiry about or requests parental leave.”⁷¹

16 As discussed above, these provisions were enacted to apply broadly and without
17 exception for large employers to ensure that breastfeeding women who returned to work would
18 have a clear right to consistently reliable access to lactation accommodations, regardless of their
19 industry or worksite.⁷² Failure to do so relegates an employer’s obligation to establish adequate
20 time and space to pump to each individual worker, sometimes on a shift-by-shift basis if they

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22 ⁶⁵ Ca. Lab. Code § 1031(e).

23 ⁶⁶ Cal. Lab. Code § 1031(h).

24 ⁶⁷ U.S. Dept. of Labor, *Fact Sheet #73A: Space Requirements for Employees to Pump Breast Milk at Work under the*
25 *FLSA*; see also U.S. Dept. of Health and Human Services, *Office on Women’s Health, Lactation Break Time and*
26 *Space in All Industries* (2021) (providing guidance on lactation accommodations in various industries and
27 suggesting manufacturing jobs, factories, and warehouses “can accommodate a small lactation space by enclosing a
28 corner or other area with partitions or screens” and for outdoor job sites, “a main office that is located indoors might
have temporary or flexible space for lactation”).

⁶⁸ Cal. Labor Code § 1031(i); PUMP Act for Nursing Mothers, 29 U.S. Code § 218d.

⁶⁹ Cal. Lab. Code § 1034.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² See Cal. Lab. Code § 1031(e) (requiring that use for lactation take precedence over all other uses of any
multipurpose room that an employer designates as a lactation space).

1 work for multiple entities. This setup is unlawful, unrealistic, and contravenes the intent of
2 lactation accommodations legislation, which sought to ease the burdens of requesting
3 accommodations on newly postpartum mothers returning to work and to ensure their ability to
4 continue breastfeeding in line with existing health recommendations for infants and their nursing
5 parents.

6 Breastfeeding employees are often under tremendous pressure. Not only do they bear the
7 physical and psychological burdens of maintaining their milk supply, needing to express milk on
8 schedule during every shift in order to produce enough milk to feed their infants, and the many
9 other challenges of breastfeeding, but also the expectations of quickly and seamlessly
10 reintegrating into the workforce. Particularly in male-dominated industries, many are also
11 already facing hostility from coworkers and superiors for having taken leave in the first place
12 and needing to express milk.⁷³

13 For these reasons, requirements on employers are *affirmative*: to *affirmatively provide*
14 adequate time and suitable space to pump and *affirmatively provide* notice to all employees upon
15 hire and at relevant times related to birth and breastfeeding, so that breastfeeding workers don't
16 have to constantly negotiate and confront their employer over these accommodations. These
17 provisions were enacted so that breastfeeding employees can meet their time-sensitive health
18 needs to pump milk on the same schedule as their child nurses, and so they don't have to suffer
19 the health risks and personal privacy violations of inadequate pumping spaces. Employers who
20 do not comply with these provisions essentially return workers to a pre-2001 reality, where
21 lactation accommodations were piecemeal and unsafe, and often forced women to stop
22 breastfeeding (or working) altogether. Because the law requires employers to affirmatively
23 provide lactation accommodations, and because here, Casual workers uniformly lacked access to
24 them, classwide adjudication is necessary and appropriate.

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28 ⁷³ See Center for WorkLife Law, Exposed: Discrimination Against Breastfeeding Workers (2019) (documenting how women are often subjected to negative comments and treatment regarding the impact of their leave on employers, pressured not to take their full maternity leave, or retaliated against and demoted upon return to work).

1 **CONCLUSION**

2 For decades, California’s pregnancy accommodation and lactation laws have provided
3 critical protections for pregnant and postpartum women to maintain their health and income.
4 Plaintiffs here carry the load of often physically-demanding jobs that offer the promise of
5 economic security for themselves and their families. When, as alleged here, employers fail to
6 provide pregnant and postpartum employees with notice of their rights, access to
7 accommodations, or legally-mandated time and space to express milk, their employees are
8 uniformly deprived of these rights. Classwide adjudication of plaintiffs’ claims is therefore
9 necessary and appropriate, and the Court should grant plaintiffs’ motion for class certification.
10

11 Dated: October 8, 2024

Respectfully submitted,

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PROOF OF SERVICE

I am an employee for Legal Aid at Work, in San Francisco County. I am over the age of eighteen (18) years and not a party to this action; my business address is 180 Montgomery Street, Suite 600, San Francisco, CA 94104.


On October 8, 2024, following the ordinary business practices of Legal Aid at Work as set forth below, I served a true and correct copy of the foregoing document described **MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION** addressed as follows:

[SEE SERVICE LIST]

- BY MAIL:** I caused such envelope(s) to be deposited with the United States Postal Service, addressed to the addressee(s) designated, on that same day in the ordinary course of business.
- VIA FACSIMILE.** I caused said documents to be transmitted to the telephone number(s) of the addressee(s) designated.
- BY EMAIL OR ELECTRONIC TRANSMISSION:** I caused the document(s) to be sent to the persons at the e-mail addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- BY OVERNIGHT CORIER SERVICE:** I caused such envelope(s) to be delivered via overnight courier service to the addressee(s) designated.
- BY HAND DELIVERY:** I caused such envelope(s) to be delivered by hand to the addressee(s) designated. (COURTS ONLY)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: October 8, 2024



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