

# **The Pregnancy Discrimination Act**

Where We Stand 30 Years Later

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## I. INTRODUCTION

Pregnancy discrimination complaints are on the rise – and have been for a very long time. Data collected by the Equal Employment Opportunity Commission (EEOC) reveal that charges filed by individuals alleging pregnancy discrimination increased by 65% from FY1992<sup>1</sup> to FY2007.<sup>2</sup> The Pregnancy Discrimination Act<sup>3</sup> (PDA) was enacted thirty years ago to prevent pregnancy from being used as a barrier to job opportunity. The PDA was a critical step forward – it amended Title VII of the Civil Rights Act of 1964 to make clear that Title VII’s prohibition against sex discrimination in employment included discrimination on the basis of pregnancy, childbirth, or related medical conditions. In doing so, it reaffirmed that women should not be denied job opportunities simply because they are, or might become, pregnant. Yet today, three decades later, record numbers of women still face pregnancy discrimination in the workplace. The question is why. The National Partnership for Women & Families (National Partnership) decided to take a closer look at the available data to begin to answer that question and to identify strategies to reverse this trend.

**Methodology.** The National Partnership undertook a comprehensive research project to gain a better understanding of recent pregnancy discrimination trends, and identify ways to reduce discriminatory practices and strengthen enforcement efforts. We analyzed the most recent data on pregnancy discrimination complaints,<sup>4</sup> looking at the time period from FY1992-2007. In addition, we requested detailed data on pregnancy discrimination complaints from the EEOC broken down by different factors and focused on a ten-year period – FY1996-FY2005 – for in-depth analysis. We also reviewed recent demographic data on women’s labor force participation and childbearing trends, and research about stereotypes and attitudes confronting pregnant women on the job. This report details the results of our analysis.

## II. SUMMARY OF KEY FINDINGS AND RECOMMENDATIONS

The National Partnership’s research analysis found there are multiple factors driving up the number of pregnancy discrimination claims. All of these factors – particularly the importance of employers providing workplaces free of discrimination as more women enter the workforce – demand concrete action steps. Among our key findings:

- **No single cause for the rise in pregnancy discrimination claims.** None of the available data suggest one single cause for the sharp increase in pregnancy discrimination claims. Rather, several different factors – some visible and some operating beneath the radar screen – collectively seem to be pushing claims upward.
- **Race and ethnicity matter.** Racial and ethnic differences appear to be playing a role in the rise of pregnancy discrimination claims. EEOC pregnancy discrimination charge data taken from a discrete ten-year time period revealed that much of the increase in pregnancy discrimination charges was fueled by a sharp jump in claims filed by women of color. From FY1996 to FY2005, pregnancy discrimination claims filed by women of color jumped 76% while pregnancy discrimination claims overall increased 25% during the same time period. This potential clue about the rise in pregnancy discrimination charges largely has been overlooked because the data on pregnancy discrimination complaints regularly published by EEOC are not broken down by race and ethnicity. EEOC should incorporate more refined data analysis – including breakdowns by race and ethnicity – into future agency enforcement

efforts to obtain a complete picture of discrimination issues and promptly identify trends and shifts in discriminatory practices.

- **The presence of large numbers of women workers in an industry does not guarantee greater sensitivity to or compliance with pregnancy discrimination laws.** More than half of the pregnancy discrimination claims received by the EEOC during the FY1996-FY2005 time period – 53% – were filed in the industries where women work the most – service, retail trade, and the financial services, insurance, and real estate industries. An estimated 70% of women workers work in these three industries. The fact that industries where large numbers of women work also produce high numbers of pregnancy discrimination charges suggests there is no guarantee that employers with large female workforces are more aware of – or vigilant against – pregnancy and other forms of sex discrimination. Indeed, the data implies that industries with more women workers, while perhaps providing women greater job opportunities, also may put greater numbers of women at risk of facing discrimination. EEOC should use the best data at its disposal to target industries and occupations with the highest percentages of charges for close scrutiny and special enforcement and outreach.
- **Nationwide problem demands nationwide solution.** The increase in pregnancy discrimination charges has touched every corner of the country. Looking at the FY1996-FY2005 time period, almost 75% of the states – 38 – recorded an increase in charges, with 14 states recording increases of more than 50%. The geographical breadth of pregnancy discrimination charges shows why a broad, nationwide enforcement campaign by EEOC to increase awareness of and enforce the law is necessary. Such a campaign also must have the flexibility to target different regions and take into account racial and ethnic differences – the state or region where African American women filed their highest number of pregnancy discrimination claims was Georgia, but for Hispanic women it was Puerto Rico, for Asian and Pacific Islander women it was Hawaii, for American Indian and Alaska Native women it was Oklahoma, and for White women it was New York.
- **Entrenched, harmful stereotypes remain a powerful barrier to women’s job opportunities.** Despite the enormous progress of women in the workplace, negative stereotypes about the abilities of pregnant women persist. Recent cases filed by the EEOC show that pregnant women are denied jobs because of discriminatory attitudes about their work ethic, skills, productivity, or overall commitment. Research studies have drawn similar conclusions, suggesting that pregnant women are judged more harshly or negatively than other workers by those making hiring and/or promotion decisions. The sharp jump in pregnancy discrimination claims makes clear aggressive action is needed to counteract and reduce such stereotypes and negative attitudes.
- **Pregnancy discrimination complaints have risen at a faster rate than the steady, consistent influx of women into the workplace.** There have been significant demographic and labor force participation changes involving women in the workplace, with more and more women entering the workforce over the last several years. None of these factors, however, can justify or explain the rise in pregnancy discrimination complaints. As a statistical matter, factors such as the number of women working, the number of working women having children, how long women work while pregnant, and when women return to work after pregnancy have grown at a slower pace than the growth of pregnancy discrimination complaints. More importantly, the influx of more women into the workplace is not an open invitation to discriminate, and it is essential to ensure that demographic and labor force changes prompt greater awareness of and compliance with the law.

- **Comprehensive enforcement campaign needed.** The EEOC has taken important steps forward to increase its litigation of pregnancy discrimination cases – in FY1997, 1.3% of the cases filed by EEOC included an allegation of pregnancy discrimination, in FY2006, 8.6% of EEOC’s cases included a pregnancy discrimination allegation. Nonetheless, pregnancy discrimination charges have continued to rise at a rapid pace, suggesting the need for a more comprehensive set of targeted strategies to reverse this growth trend.

In light of these findings, we recommend the agency take several concrete steps and pursue initiatives to combat the rise in pregnancy discrimination charges.

- Undertake a nationwide campaign to strengthen federal enforcement and public education efforts, including:
  - a convening of experts by the EEOC to explore effective litigation and investigation strategies;
  - an emphasis on maximizing the impact of agency enforcement efforts, for example, through more systemic or other high-profile cases, or increasing capacity to pursue more cases;
  - extensive outreach to employers and employees to educate them on what the law requires;
  - wide dissemination of materials informing workers about protections against pregnancy discrimination, and model antidiscrimination policies for employers; and
  - improving the clarity of the agency’s charge filing forms and other materials to ensure potential claimants understand they can file charges alleging pregnancy discrimination.
- Target selected industries or occupations for enforcement and outreach.
- Publish comprehensive and regular break downs and analyses of all pregnancy discrimination charge data by race, ethnicity, industry, occupation, and any other relevant factors to identify unique trends.
- Explore new investigation and research strategies to help identify discriminatory practices and trends.
- Work with states to develop statewide enforcement initiatives that include educating the public about the law, particularly state laws that provide stronger protections against pregnancy discrimination.

We believe these steps are essential components of a broad-based, comprehensive effort by the EEOC, employers, and employees alike to confront the increase in pregnancy discrimination charges head on and begin to reverse their upward trend.

### **III. THE WHAT, WHY, & WHERE: RECENT TRENDS IN PREGNANCY DISCRIMINATION**

**An Overview.** EEOC charge statistics reveal a sharp increase in the overall number of pregnancy discrimination complaints over the last fifteen years. Between FY1992 and FY2007, pregnancy discrimination charge receipts increased by almost 65%.<sup>5</sup> On a year-to-year basis, these charge numbers have fluctuated, typically going up and down without a precise pattern. But the overall trend has been a gradual yet steady increase in the number of charges over time. It is this upward trend that is the most troubling because it reveals the persistence and resilience of pregnancy discrimination. It also makes clear that more work is needed to identify and implement concrete, affirmative education and enforcement strategies to reverse this trend in the coming years.

**The Main Question – Why are Pregnancy Discrimination Charges Increasing?** The main question prompted by the upward growth in pregnancy discrimination charges is “Why are pregnancy discrimination claims on the rise?” Unfortunately, there is no single answer to the question – the best available research and data suggest there are multiple factors that, together, may be influencing the increase in pregnancy discrimination charges. We examine several of these factors in greater depth and conclude that persistent biases – around race, gender, and ethnicity – and longstanding stereotypes and attitudes appear to be among the key reasons for the rising numbers. The fact that race or gender or other forms of bias remain potent forces in the workplace is troubling and unacceptable. Our goal is to use this analysis to isolate specific problems and generate concrete solutions for reducing pregnancy discrimination by strengthening overall enforcement efforts.

### **A TEN-YEAR SNAPSHOT – FY1996-2005**

The National Partnership examined detailed EEOC pregnancy discrimination charge data from a ten-year fiscal period, from FY1996 to FY2005,<sup>6</sup> to gain a better understanding of recent pregnancy discrimination charge trends. The EEOC data<sup>7</sup> was broken down by several factors including race, ethnicity, industry, and state to allow for more in-depth analysis. Breaking down the data into different categories enabled us to look beneath the overall yearly numbers to uncover unique trends and nuances that otherwise might be hidden.

#### **Main Findings from EEOC Pregnancy Discrimination Charge Data – FY1996-2005**

- **The growth in pregnancy discrimination claims during the time period was fueled largely by charges filed by women of color.**<sup>8</sup> From FY1996-2005, claims filed by women of color jumped by 76% – charges filed by Black women increased 45%, charges filed by Hispanic women increased 135%, charges filed by Asian/Pacific Islander women increased 90%, and charges filed by American Indian/Alaska Native women increased 109%.<sup>9</sup> Pregnancy discrimination charges filed by White women declined by almost 16%, but this decrease coincided with a sizable increase in complaints filed by women for whom there is no racial or ethnic information. It is unclear whether a percentage of these claims actually may be claims filed by White women.
- **The industries employing the highest percentage of women also reported the highest number of claims.** Thus, female-dominated industries may be no less likely to have discriminatory practices than industries with women in non-traditional jobs.
  - Pregnancy discrimination claims increased in 3 of the 9 industry categories tracked by the EEOC – the service industry, retail trade, and the finance, insurance, and real estate industry.<sup>10</sup> These industries employ<sup>11</sup> the highest percentage of women workers,<sup>12</sup> and represent 3 of the 4 industries with the highest actual number of pregnancy discrimination claims.<sup>13</sup>
- **Pregnancy discrimination charge filings increased in almost three-quarters of the states, with 38 states recording an increase in charges.**<sup>14</sup> More than one-quarter of the states – 14 – saw claims increase by more than 50%. These higher increases occurred across the country in states with both large and small populations.
  - More than one-fifth of all pregnancy discrimination charges filed during the period

were filed in three states – Texas, New York, and Florida – three of the four most populous states.<sup>15</sup>

- Rounding out the top ten states with the highest number of pregnancy discrimination charges over that same time period were Illinois, Pennsylvania, Ohio, Georgia, Indiana, Puerto Rico, and California.<sup>16</sup>

- **There were racial and ethnic differences in pregnancy discrimination charge filings by state, suggesting the need to tackle head on racial or ethnic biases in different communities.** For example:

- African American women filed their highest number of claims in Georgia,
- Hispanic women filed their highest number of claims in Puerto Rico,
- Asian/Pacific Islander women filed their highest number of claims in Hawaii,
- American Indian/Alaska Native women filed their highest number of claims in Oklahoma, and
- White women filed their highest number of claims in New York.

- **Key factors – such as race and ethnicity, or industry affiliation – are becoming harder to track:**

- Pregnancy discrimination charges *without* racial, ethnic, or industry identifiers grew rapidly during the time period. In FY1996, for example, 20% of the pregnancy discrimination charges received by EEOC were filed by claimants categorized as “other,” meaning that they either did not provide racial or ethnic affiliation, or fell into a racial or ethnic category other than those provided.<sup>17</sup> By FY2005, the number of pregnancy discrimination claims categorized as “other” had increased by 72%, constituting almost 30% of all charges received that fiscal year. Without such data, it soon will become almost impossible to determine how much race or ethnicity may be affecting the growth in pregnancy discrimination charges.
- Pregnancy discrimination charge data broken down by industry also show a growing number of charges are being lumped together in one large “other” industry category, rather than in the nine industry categories tracked by EEOC. Over the ten-year period, claims listed in the “other” industry category more than doubled, increasing by just over 161%.<sup>18</sup> Such data may indicate more and more women are working in non-traditional industries that do not fit easily in the traditional industry structure, and may present future challenges when trying to target future enforcement activities. Thus, it is crucial for EEOC to collect more precise industry data to have as good an understanding as possible of where pregnancy discrimination complaints are arising.

**What we learned.** This ten-year snapshot makes clear that a breakdown of pregnancy discrimination complaint data by key factors is essential to analyze thoroughly the growth in pregnancy discrimination charges. The factors we reviewed – race/ethnicity, industry, and state differences – each provide important pieces of information that together suggest concrete steps for future enforcement efforts and reversing the upward trend in complaints.

**a. Racial and Ethnic Differences in Pregnancy Discrimination Charges.** The pregnancy discrimination charge data broken down by race and ethnicity for the FY1996-2005 time period revealed a 76% increase in pregnancy discrimination claims filed by women of color.

This increase cuts across multiple groups – African American, Hispanic, Asian American/Pacific Islander, and American Indian/Alaska Native women – all of whom experienced significant growth in pregnancy discrimination complaints. The large jump in complaints filed by women of color appears to be one of the key reasons for the overall growth in pregnancy discrimination complaints, and it suggests the need for three concrete action steps.

- It is particularly important for EEOC to undertake a comprehensive analysis of its available data to learn more about the reasons behind these racial and ethnic differences and identify steps that can be taken to reduce the growth of complaints. This includes exploring how the combined effects of race and gender bias or ethnic and gender bias, sometimes called double discrimination,<sup>19</sup> may be playing a role in the rise of pregnancy discrimination claims. Such analysis could help pinpoint whether women from certain racial or ethnic groups are more likely to be targeted for pregnancy discrimination, work in jobs with higher rates of discrimination, or confront other discriminatory practices that limit women’s job options.
- Pregnancy discrimination charge data broken down by race, ethnicity, and other factors should be published on a regular basis. Currently, any racial or ethnic differences in the growth of charges are almost completely hidden from view because racial and ethnic breakdowns of the data are not publicly reported. Publication of such data could raise awareness about discrimination problems and provide direction on where best to target agency resources in future enforcement efforts.
- It is also essential for EEOC to take steps to ensure that the data on pregnancy discrimination complaints are as precise, accurate, and detailed as possible. One problem that has emerged with the current data is that it is becoming harder to break down the data by race and ethnicity. Pregnancy discrimination complaints that have no racial or ethnic identifiers have increased significantly, by 72% from FY1996-2005. Although it is unclear, this development may be having the most impact on White women, whose complaint filings decreased by 16% over the time period. It is unknown whether women are affirmatively choosing not to provide their racial or ethnic affiliation, whether women believe they do not fit in the categories, or whether there are data entry or other problems causing the decline in such data. But it is important to determine why the decline is occurring and make clear to complainants and investigators alike that such data may be useful in the analysis and resolution of pregnancy discrimination complaints.

**b. Industry Differences in Pregnancy Discrimination Charges.** During the FY1996-2005 time period, the majority of pregnancy discrimination charges originated in industries where women work the most. Individuals indicate in which industry their job fits when they file their charges, selecting from nine major industry categories tracked by EEOC – (1) Agriculture, Forestry, and Fishing, (2) Mining, (3) Construction, (4) Manufacturing-Durable/Non-durable, (5) Transportation and Public Utilities, (6) Wholesale Trade, (7) Retail Trade, (8) Finance, Insurance, and Real Estate (“FIRE”), and (9) Services. In addition to these categories, an individual also can select a generic “other” category if the job at issue does not fit into any of the other nine categories. Three industries – services, retail trade, and finance, insurance, and real estate – experienced an increase in pregnancy discrimination charges.

The highest number of pregnancy discrimination charges were filed in the service industry – one-third, 33%, of all pregnancy discrimination charges filed over the ten-year time period involved service industry jobs. This high number undoubtedly reflects, in part, the fact that women disproportionately work in the service industry.<sup>20</sup> Data reported by the Bureau of Labor Statistics in 2005, for example, estimated that nearly 48.2% of all women workers were



employed in service industry jobs, and that 65.7% of service industry employees are women.<sup>21</sup> After the service industry, the retail (and wholesale) trade industries employ the most women – 14.5% of all women workers.<sup>22</sup> Overall, 53.0% of pregnancy discrimination claims arose from the services, retail trade, and finance, insurance, and real estate industries in FY2005.<sup>23</sup> Over 70% of women work in these three industries.<sup>24</sup> While we did not have access to occupational data, women appear to work at every level within each of these industries, suggesting that women at all levels experience pregnancy discrimination. All other industries – agriculture, wholesale trade, mining, construction, manufacturing, and transportation and utilities – show a decline in the number of pregnancy discrimination charges over the FY1996-FY2005 time period.<sup>25</sup> This breakdown of pregnancy discrimination charges by industry suggests three concrete strategies that could help slow the increase in such discrimination.

- EEOC should use the industry data to target industries with high numbers of pregnancy discrimination charges. It should consider industry-wide initiatives to concentrate on education, outreach, and enforcement efforts in the areas where the most claims arise. Racial and ethnic breakdowns of the industry data also should be used to provide further information on where to target EEOC's limited resources.
- It is also important for EEOC to explore ways to break down pregnancy discrimination charges by occupation and earnings. The fact that many women of color disproportionately work in lower-wage jobs, for example, may be a significant factor influencing the number of pregnancy discrimination charges, thus having such a breakdown of the charge data is crucial and could help hone in on specific problems.
- EEOC should examine whether the current categories used to collect industry data should be enhanced to ensure the most accurate analysis of where pregnancy discrimination charges are being filed. A review of charge data from the FY1996-2005 time period revealed a growing number of pregnancy discrimination charges with no industry affiliation, reflected in a generic "other" industry category.<sup>26</sup> Indeed, after the service industry, it is this "other" industry category that had the highest number of pregnancy discrimination charges – 35.4%. This "other" category also saw the greatest expansion in the number of pregnancy discrimination charges over the FY1996-2005 time period – an increase of 161.2%.<sup>27</sup> The increase in pregnancy discrimination claims within the "other" industry category could be an indication that the EEOC's industry categories have not kept pace with changes in the labor market. It also could reflect lack of knowledge on the part of claimants about where their jobs fit, or simply a recording error. But whatever the reason, to the extent pregnancy discrimination charges increasingly are lumped into an undefined "other" category, it becomes harder to identify broader trends and focus on specific industries, or occupations, where problems may exist. Thus, EEOC should make sure that claimants are asked to provide complete industry data, and should evaluate whether there are additional industry categories claimants can use to ensure there is good information about where problems are occurring and to remedy discriminatory practices.

**c. Pregnancy Discrimination Charge Filings by State.** The state-by-state breakdown<sup>28</sup> of the EEOC's pregnancy discrimination charges offers a more precise picture of where pregnancy discrimination charges have grown and declined in recent years. When broken down by state, the EEOC's pregnancy discrimination data shows an increase in charge filings in 38 states during the FY1996-FY2005 time period.<sup>29</sup> These 38 states include states with the largest and smallest populations, and states from every region of the country. Claims jumped by more than 50% in 14 states – Arkansas, Iowa, Montana, Nevada, New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, Puerto Rico, Texas, Vermont, and Washington.<sup>30</sup>

These numbers make clear that the growth in pregnancy discrimination charges has touched every corner of the country. For more than a decade, three states – Texas, Florida, and New York – consistently have had the highest number of pregnancy discrimination charges filed.<sup>31</sup> Between FY1996 and FY2005, for example, pregnancy discrimination charges filed in these three states constituted more than one-fifth of all pregnancy discrimination charges filed at the federal level. These numbers are similar, but not identical, to the state-by-state population statistics in the US.

When evaluating this state-by-state data, it is important to understand that the data received by the EEOC and analyzed in this report only includes charges that are filed under the federal pregnancy discrimination law – the PDA – and charges filed jointly under the federal PDA and state/local pregnancy discrimination law. It does *not* include pregnancy discrimination charges filed *solely* under state or local pregnancy discrimination laws. As a result, in many states, there may be other pregnancy discrimination claims filed under state/local law that are not captured in the EEOC’s data. In some cases, the lack of such data may make a significant difference in understanding fully the incidence of pregnancy discrimination in a particular state. For example, in California, the most populous state in the nation, the EEOC reports that 124 pregnancy discrimination charges were filed in FY2005.<sup>32</sup> By contrast, more than 7 times as many pregnancy discrimination charges – 903 – were filed with the California state fair employment practices agency between July 1, 2004 and June 30, 2005.<sup>33</sup> The high number of pregnancy discrimination charges filed under state law in California could indicate a preference for the different options provided under the state law but not the federal law.<sup>34</sup> Unfortunately, there is no uniform way to gather data on all state/local pregnancy discrimination claims – each state tracks such claims differently. Therefore, we do not have information to assess how many state law claims also could be contributing to the incidence of pregnancy discrimination in different states. The California example, however, suggests that information on state law claims might result in a sizable increase in the overall numbers of pregnancy discrimination complaints.

The breakdown of pregnancy discrimination charges by state suggests several steps that may be useful for EEOC’s investigation and resolution pregnancy discrimination claims.

- Because the rise in pregnancy discrimination claims has touched every corner of the country, EEOC should pursue a broad-based initiative aimed at educating workers and employers about protections against pregnancy discrimination.
- State-wide initiatives targeting pregnancy discrimination also can play an important role. Several states consistently have recorded high numbers of pregnancy discrimination claims. These states – in collaboration with EEOC where appropriate – should be pursuing targeted education efforts, and coordinating with federal and state officials to identify potential problem areas and enforcement strategies. Further, breaking down state-by-state pregnancy discrimination charge data by race and ethnicity is essential. The data for the FY1996-FY2005 time period revealed that the state with the highest number of pregnancy discrimination charges differed for each reported racial and ethnic category. This means that there may be different factors fueling the rise in pregnancy discrimination claims for both women of color and White women in different states. Thus, agency enforcement efforts targeted at specific states or communities where there appear to be a disproportionate incidence of pregnancy discrimination claims for certain groups of women is crucial.
- Presently, there is no uniform way to determine the number of state law pregnancy discrimination charges filed each year. Such information may help provide a more accurate picture of pregnancy discrimination problems in a particular state. EEOC and its

state affiliates should explore the feasibility of collecting this type of data in a form that allows for state-by-state comparison, and coordinating federal-state enforcement efforts based on the results of the relevant data analysis.

## THE IMPACT OF STEREOTYPES AND CHANGING DEMOGRAPHICS

The rapid growth in pregnancy discrimination complaints raises numerous questions about the underlying causes fueling this increase. It is essential to understand and address these root causes to ensure there is meaningful progress on minimizing the incidence of pregnancy discrimination.

**Discriminatory attitudes about pregnant women alive and well.** The increase in pregnancy discrimination charges over the last fifteen years makes clear that discriminatory attitudes about pregnant women persist. These attitudes often reflect longstanding stereotypes and perceptions, and result in many women losing out on valuable job opportunities. What is striking is how frequently cases involve straightforward violations of the PDA that seem to be fueled by a fundamental resistance to having pregnant women in the workplace, or having to accommodate the needs of pregnant women. Examples include a case involving a female regional manager of a hotel chain who was demoted repeatedly after announcing her pregnancy. A senior vice president for the chain asserted that women were not suitable for managerial positions because they missed too much work.<sup>35</sup> In another case, a maternity clothing specialty store agreed to pay a settlement after being sued for its policy of not hiring pregnant job applicants.<sup>36</sup> In still another case, a rising star who had quickly moved into a manager-in-training position was told to consider her options and had her training rescinded when she announced her pregnancy.<sup>37</sup> Many of these reveal biases about both the abilities of pregnant women and their proper roles in the workplace and in the home.

The stereotypes reflected in the cases also have been documented in research conducted to explore attitudes and stereotypes about pregnant women. In one study, researchers found that pregnant women were viewed more negatively by male colleagues, and these colleagues also believed pregnant women ought to prioritize family over career.<sup>38</sup> Researchers also found that pregnant women were rated lower than non-pregnant women by individuals reviewing videotapes of pregnant and non-pregnant women performing the same tasks. In a different study using pregnant (wearing a prosthesis) and non-pregnant testers, researchers found that pregnant women encountered more hostility when applying for jobs, particularly jobs in non-traditional fields.<sup>39</sup> It also concluded that both men and women exhibited these biases about pregnant women.

Both the cases and the studies confirm the stubborn presence and persistence of negative stereotypes and attitudes about pregnant women workers. They also make clear the importance of devoting significant resources to education efforts to confront and combat these attitudes head on, and supplement agency enforcement efforts.

**Demographic and labor forces changes.** Demographic changes cannot explain the rise in pregnancy discrimination complaints. This issue is particularly important because it is crucial to make clear employers' obligation to provide workplaces free of discrimination – and that obligation takes on added significance as more women and people of color enter the workplace. The influx of women or people of color into the job market cannot be used to justify growth in discriminatory conduct. Indeed, the data suggest that industries with more women workers actually may expose more women to discrimination, unless there is careful attention to compliance with the law. Labor market and demographic shifts have led to higher numbers of

women, particularly women of color, in the workforce.<sup>40</sup> Between 1992 and 2007, the percentage of women in the labor force – either employed or actively looking for work – increased steadily but modestly, from 57.8% to 59.3% of the population of women, or in raw numbers from just over 58 million to 71 million.<sup>41</sup> An increasing number of women who are mothers are at work as well. For example, in 1992, 53.8% of women who had had a child were in the workforce within a year of the child’s birth, and by 2006, this percentage had increased to 55.9%.<sup>42</sup> The number of women working during pregnancy has similarly increased modestly over the past fifteen years: 66.8% of women who had their first child between 1991 and 1995 worked while pregnant, increasing to 67% of women who had their first child between 2001 and 2003.<sup>43</sup> Women today are working slightly longer into their pregnancies than they previously did. Among the first-time mothers who gave birth between 1991 and 1995 and worked at some time during their pregnancy, 7.1% stopped working between six and nine months before giving birth and 72.9% worked up until less than one month before giving birth.<sup>44</sup> Only 4.3% of women who had their first child between 2001 and 2003 stopped working between six and nine months before giving birth, whereas 79.7% who worked during pregnancy were at work until within a month of giving birth.<sup>45</sup>

All of these documented increases in women’s and mothers’ participation in the workforce are much smaller than the dramatic 65% increase in pregnancy discrimination complaints filed with the EEOC between 1992 and 2007. But these demographic and labor force statistics do make clear that more and more women are at risk of facing discriminatory workplace practices that will limit their job opportunities. In fact, many of the women in female-dominated industries may be among those most vulnerable to discriminatory practices, including pregnancy discrimination.

## **ENFORCEMENT, OUTREACH, AND EDUCATION**

Clearly, it is critical for the EEOC and employers to take a comprehensive approach to tackling – and reducing – pregnancy discrimination in the workplace. Importantly, the EEOC has increased the percentage of lawsuits filed by the agency that include allegations of pregnancy discrimination – from 1.3% in FY1997 to 8.6% in FY2006. But this increase has not slowed the steady growth in pregnancy discrimination charges, thus suggesting the need for additional enforcement measures.

One area of focus must be stepped up education of employers and employees about protections against pregnancy discrimination. Many officials and experts have observed that, while the rising numbers of pregnancy discrimination claims could reflect greater awareness of the law, their experience is that many women and employers do not understand the law and how it works.<sup>46</sup> Employer antidiscrimination policies may not make specific mention of pregnancy discrimination and, even when they do, employers may not carry out regular trainings for supervisors and other staff on how the law works. When a potential claimant gets to the EEOC, the materials she receives may not refer specifically to pregnancy as a ground for illegal discrimination, nor to employees’ rights while on maternity leave.<sup>47</sup> For instance, the EEOC reportedly does *not* include pregnancy discrimination as a category on its charge form or in the overview materials provided to potential claimants about the laws it enforces.<sup>48</sup> This may make it difficult for a woman who has experienced pregnancy discrimination to recognize that the treatment she has encountered is illegal and to file a charge on the basis of this conduct.

Also important, even when claimants are aware of their rights, many resist pursuing an employment discrimination case. Experts have noted, however, that pregnancy discrimination

claims often are underreported for a host of reasons, including fear of retaliation at work and confusion about the law.<sup>49</sup> Greater education about the law and its protections is crucial to ensuring that women feel free to come forward and challenge discriminatory conduct whenever it occurs.

## RECOMMENDATIONS AND CONCLUSIONS

This analysis of pregnancy discrimination charges suggest several trends that merit closer evaluation, and important next steps:

- **Consistent analysis of data broken down by race and ethnicity.** The pregnancy discrimination charge data show a clear increase in pregnancy discrimination charges filed by women of color. Further, some of the data breakdowns, for example by industry and by state, also reveal differences by race and ethnicity. The reasons for these differences are unclear, but they suggest the need for education or enforcement efforts targeted at particular communities. Further research and analysis of these racial and ethnic differences is warranted, and should be incorporated as a regular part of EEOC's ongoing analysis of all enforcement data. Moreover, this data should be used to improve EEOC's enforcement and public education efforts.
- **Targeting selected industries or occupations.** The breakdown of pregnancy discrimination charges by industry indicates the highest number of charges are filed by women in the service industry. More research is needed to determine, for example, whether there are specific occupations that generate more claims than others. At a minimum, however, the EEOC should consider whether there are industry-wide initiatives that could be pursued to draw attention to the law, employee rights, and employers' legal obligations.
- **Strengthening enforcement efforts in individual states.** The state breakdowns of pregnancy discrimination charges suggest that there may be benefits to engaging in state-wide education or enforcement campaigns around pregnancy discrimination. EEOC and state agencies should coordinate on developing and implementing these enforcement activities.
- **Greater examination of "other" categories to improve data collection.** The pregnancy discrimination charge data reveals the growth of the generic "other" category in several different areas. Both the racial and ethnic breakdowns, and the industry breakdowns include a category of complaints called "other" that has grown over time. This phenomenon raises serious concerns. To the extent charges are increasingly lumped together in an "other" category, it becomes much more difficult to assess pregnancy discrimination trends. The catchall "other" category hinders the ability to target outreach, education, and enforcement efforts towards those job sectors that are most in need of intervention. Thus, it is crucial that EEOC study this surge of pregnancy discrimination charges in "other" categories. Steps that could be taken include, for example, improvements to the industry classifications used by EEOC.
- **Nationwide Enforcement and Public Education Initiative.** EEOC should pursue a nationwide effort to reduce the rise in pregnancy discrimination complaints. Such an initiative would include enforcement, public education, and research components.

- **Enforcement Strategies.** The enforcement effort should include a comprehensive look at its enforcement statistics and other data to identify what has worked, what has not worked, and possible trends across the country. It also should explore convening a conference with its own experts – and perhaps outside experts as well – to share information about successful strategies in investigating, combating, and preventing pregnancy discrimination. The agency should consider ways to continue increasing the number pregnancy discrimination cases, and explore ways to combat related types of discrimination, such as its recent effort to examine family responsibility discrimination.
- **Public Education.** The education component of the initiative would incorporate extensive outreach at the local and national level to distribute information about pregnancy discrimination and the protections provided by law.
- **Accuracy and Comparability of Data.** As part of this initiative, it is crucial for EEOC to evaluate the quality and accuracy of its data. Moreover, EEOC should explore ways to collect data in a manner consistent with other agencies to facilitate comparisons using other workforce statistics.
- **Clarity of Forms and Pregnancy Discrimination Materials.** EEOC should evaluate the materials and forms provided to pregnancy discrimination claimants to ensure that they provide clear and complete information about pregnancy discrimination.

The Pregnancy Discrimination Act was enacted thirty years ago to make clear that employers could not use pregnancy as an excuse to deny women job opportunities. The law was premised on the core principle of equality to establish the importance of basing hiring decisions on individual merit and qualifications, rather than stereotypes and assumptions. Today, despite significant progress, pregnancy discrimination remains a very real barrier to women’s employment. This report lays out concrete initiatives that can help reverse this trend – and make the promise of equality a reality for all women.

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## ENDNOTES

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<sup>1</sup> The EEOC reports charge data on a government fiscal year basis, which begins on October 1 of the prior calendar year and ends on September 30 of the next calendar year. For example, fiscal year 2007 runs from October 1, 2006 through September 30, 2007.

<sup>2</sup> Equal Employment Opportunity Commission, Pregnancy Discrimination Charges, EEOC & FEPAs Combined: FY1997 – FY2007, <http://www.eeoc.gov/stats/pregnanc.html> (last modified Feb. 26, 2008) [hereinafter Pregnancy Discrimination Charges FY1997 – FY2007]; Equal Employment Opportunity Commission, Pregnancy Discrimination Charges, EEOC & FEPAs Combined: FY1992 – FY1996, <http://www.eeoc.gov/stats/pregnanc-a.html> (last modified Jan. 31, 2007) [hereinafter Pregnancy Discrimination Charges FY1992 – FY1996]. These numbers include charges received by EEOC offices and federal law charges filed with state or local fair employment practice agencies (FEPAs) that were subsequently referred to EEOC.

<sup>3</sup> Pregnancy Discrimination Act, Pub. L. No. 95-555, 92 Stat. 2076 (1978) (codified at 42 U.S.C. § 2000e(k)).

<sup>4</sup> Throughout this report, we use the terms “pregnancy discrimination complaints” and “pregnancy discrimination charges” interchangeably to refer to allegations of discrimination filed by individuals with the Equal Employment Opportunity Commission or its state agency counterparts.

<sup>5</sup> Pregnancy Discrimination Charges FY1997 – FY2007, *supra* note 2; Pregnancy Discrimination Charges FY1992 – FY1996, *supra* note 2.

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<sup>6</sup> The National Partnership requested detailed breakdowns of pregnancy discrimination charges filed under Title VII, as amended by the Pregnancy Discrimination Act, for the period FY1994 to FY2005 from the EEOC Program Planning and Analysis Division. We received charts listing the number of charges filed broken down by race and ethnicity, industry, state, and district office, and focused our analysis on the data from the last ten fiscal years running from FY1996 through FY2005. The data offers valuable insights into pregnancy discrimination trends, but there are important parameters and limits to the data that should be kept in mind throughout this report: First, the charge number totals we received from the EEOC differed slightly from the total number of charges publicly reported by EEOC (e.g., posted on the EEOC’s website). According to the EEOC, these differences can occur for several reasons. Some charges have incomplete information, e.g., a complainant fails to identify her race or ethnicity. The resulting gaps in information are reflected when the data is broken down into smaller categories. Further, as charges are closed or otherwise resolved over the years, the overall yearly charge totals change. Data reports processed at different times, thus, will reflect those changes. See Written Answers to Pregnancy Discrimination Data Questions from James Goldweber, Director, EEOC Program Planning and Analysis Division, Office of Research, Information, and Planning (September 11, 2006); see also Telephone Interview with James Goldweber, Director, EEOC Program Planning and Analysis Division, Office of Research, Information, and Planning (May 19, 2004). Second, there may be some overlap in some of the data categories. For example, there may be some overlap in the industry categories because charges may be classified under more than one industry code. Even with these caveats, we believe the EEOC data provide a useful and unprecedented glimpse into pregnancy discrimination charge trends and, thus, merit close examination.

<sup>7</sup> Equal Employment Opportunity Commission, EEOC Pregnancy Discrimination Charge Data for FY1996-FY2005 by Race, Ethnicity, Industry, and State (July 2006) (unpublished data compiled by special request) (on file with author) [hereinafter Pregnancy Discrimination Charge Data FY1996 – FY2005].

<sup>8</sup> Throughout this report, the term “women of color” is used to refer collectively to African American or Black, Hispanic, Asian/Pacific Islander, and American Indian/Alaska Native women. We recognize that Hispanic women can be of any race, but for purposes of this analysis, we have defined “women of color” to include all Hispanic women.

<sup>9</sup> It is important to view these percentage changes and overall numbers from the proper perspective. Although the pregnancy discrimination claims filed by women of color have increased by large percentages, the *actual* numbers of claims for some of the different racial and ethnic categories may be quite small, undoubtedly reflecting size differences in the overall population. Changes in these smaller numbers can result in large percentage increases that may overstate their significance. Nonetheless, we believe that any sharp changes in numbers, regardless of whether the category is large or small, merit close scrutiny.

<sup>10</sup> Pregnancy Discrimination Charge Data FY1996 – FY2005, *supra* note 7, at Chart A: Data by Industry.

<sup>11</sup> It is difficult to determine precise numbers of employees within each of the EEOC industry categories because there are significant differences between the EEOC’s industry data and the labor statistics by industry reported by the Bureau of Labor Statistics (“BLS”). First, the data reported by BLS is based on data gathered over the calendar year, while EEOC’s data are reported on a fiscal year (October 1-September 30) basis. Second, there are slight differences in the industry categories used by both agencies. The EEOC uses the following industry categories: (1) Agriculture, Forestry, and Fishing, (2) Mining, (3) Construction, (4) Manufacturing-Durable/Non-durable, (5) Transportation and Public Utilities, (6) Wholesale Trade, (7) Retail Trade, (8) Finance, Insurance, and Real Estate, and (9) Services, and also tracks a general “Other” category. BLS used similar industry categories up until 2003 except that BLS combined the wholesale and retail trade fields into one industry. In 2003, however, BLS changed its industry categories to include (1) Mining, (2) Construction, (3) Manufacturing-Durable/Non-durable, (4) Transportation and Public Utilities, (5) Wholesale and Retail Trade, (6) Information, (7) Financial Activities, (8) Professional and Business Services, (9) Education and Health Services, (10) Leisure and Hospitality, (11) Other Services, and (12) Public Administration. BUREAU OF LABOR STATISTICS, BLS HANDBOOK OF METHODS 5 (1997 with updates), at <http://www.bls.gov/opub/hom/pdf/homch1.pdf>. Among the changes, BLS now uses a breakdown for the service and FIRE industry components that are different from the breakdown utilized by the EEOC. It is therefore difficult to determine the number of women working in the services and FIRE industries as defined by EEOC. BLS classifies some of the workers in the FIRE industry as working in the financial activities industry, but also has a category for business and professional services, which encompasses those

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working in insurance and real estate as well as other professional services. In addition, the BLS has a number of distinct industry categories that are subsumed within the EEOC's service category: education and health services, leisure and hospitality, and other services. Finally, BLS continues to consider wholesale and retail trade as one industry. The differences between the EEOC industry data and the BLS industry data make it difficult to draw direct comparisons between these data sets. Nonetheless, we reference the BLS industry data herein not for statistically exact comparisons, but rather to provide context and make general observations about shifts in workforce composition over time.

<sup>12</sup> In 1996, BLS reported the industries with the greatest number of women workers as the service industry, followed by the wholesale and retail trade, manufacturing, and FIRE industries. Bureau of Labor Statistics, Household Data Annual Averages: Employed persons in nonagricultural industries by age, sex, and race 1996 (Table 14), <ftp://ftp.bls.gov/pub/special.requests/lf/AA96/aat14.txt> (last modified February 13, 1997) [hereinafter BLS Employment by Industry & Sex 1996]. In 2005, the service and wholesale and retail trade industries employed the largest and second largest numbers of women workers among the industries. Bureau of Labor Statistics, Household Data Annual Averages: Employed persons in nonagricultural industries by age, sex, and race 2005 (Table 14), <ftp://ftp.bls.gov/pub/special.requests/lf/aa2005/aat14.txt> (last modified May 12, 2008) [hereinafter BLS Employment by Industry & Sex 2005]. Of the next two industries with the most women workers in that year, more women worked in the FIRE industry than in manufacturing. *Id.* If the business and professional services category is included within FIRE, the services, wholesale and retail trade, and FIRE industries constituted 80.1% of the female force in 2005; if business and professional services is not included, the three industries constituted 71.2% of the female labor force in 2005. *Id.*

<sup>13</sup> See Pregnancy Discrimination Charge Data FY1996 – FY2005, *supra* note 7, at Chart A: Data by Industry. Among the 9 industry categories, in both FY1996 and FY2005, the most pregnancy discrimination charges were filed in the service industry, followed by the retail trade, manufacturing, and finance, insurance, and real estate industries.

<sup>14</sup> See Pregnancy Discrimination Charge Data FY1996 – FY2005, *supra* note 7, at Chart B: State-by-State Comparison.

<sup>15</sup> *Id.* at Chart B and Chart C: Top Fifteen States Receiving Pregnancy Discrimination Charges.

<sup>16</sup> See Pregnancy Discrimination Charge Data FY1996 – FY2005, *supra* note 7, at Chart C. In addition, during the FY1996-FY2005 time period, five other states – Wisconsin, North Carolina, Missouri, Maryland, and Michigan – appeared in different years among the top ten states with the highest number of pregnancy discrimination charges.

<sup>17</sup> The racial or ethnic categories provided to claimants are White, Black, Hispanic, Asian/Pacific Islander, and American Indian/Alaska Native.

<sup>18</sup> See Pregnancy Discrimination Charge Data FY1996 – FY2005, *supra* note 7, at Chart A.

<sup>19</sup> The term “double discrimination” refers to the phenomenon where individuals are subjected to discrimination for multiple reasons. For example, women of color – because they are both women and affiliated with a racial or ethnic group – may be subject to unique biases that make them more likely targets for discrimination.

<sup>20</sup> BLS Employment by Industry & Sex 2005, *supra* note 12.

<sup>21</sup> *Id.* This measure includes the following BLS industry categories: education and health services, leisure and hospitality, and other services.

<sup>22</sup> BLS Employment by Industry & Sex 2005, *supra* note 12; BLS Employment by Industry & Sex 1996, *supra* note 12. Women also are a large portion of the retail and wholesale trade workforce, comprising 44.4% of all workers in the industry in 2005. BLS Employment by Industry & Sex 2005, *supra* note 12.

<sup>23</sup> See Pregnancy Discrimination Charge Data FY1996 – FY2005, *supra* note 7, at Chart A.

<sup>24</sup> BLS Employment by Industry & Sex 2005, *supra* note 12.

<sup>25</sup> See Pregnancy Discrimination Charge Data FY1996 – FY2005, *supra* note 7, at Chart A.

<sup>26</sup> See *id.* The “other” industry category encompasses claims of several different types. A claim may be in the “other” industry category because the industry in which the complainant works does not fall within any of the defined industry categories. A claim may also be classified as “other” because neither the complainant nor the EEOC agent knew the industry category in which the complainant's job fits. Finally, a claim may be in the “other” category because information regarding the industry in which the complainant works was not recorded.

<sup>27</sup> See Pregnancy Discrimination Charge Data FY1996 – FY2005, *supra* note 7, at Chart A.



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<sup>28</sup> The state-by-state data includes charge data from the District of Columbia and Puerto Rico. These jurisdictions are included in the numerical state-by-state breakdown presented herein and the references to “states” when discussing this state-by-state data are meant to include Puerto Rico and the District of Columbia.

<sup>29</sup> See Pregnancy Discrimination Charge Data FY1996 – FY2005, *supra* note 7, at Chart B.

<sup>30</sup> *Id.* In some instances, the actual numbers of claims were small, even though the percentage increase was significant. For example, claims jumped 100% in Vermont, from 3 claims in FY1996 to 6 claims in FY2005. But states with high actual numbers of claims also recorded large increases. For example, Texas – which had the highest number of pregnancy discrimination claims overall during the ten-year time period – saw its claims increase by 50%. Puerto Rico recorded the largest percentage increase in pregnancy discrimination claims, jumping almost 300%, from 56 claims in FY1996 to 219 claims in FY2005. Some of the growth in claims in Puerto Rico may be linked to opening of an EEOC office in Puerto Rico in 2001. Press Release, Equal Employment Opportunity Commission, EEOC to Open Area Office in Puerto Rico (July 18, 2001), <http://www.eeoc.gov/press/7-18-01.html>.

<sup>31</sup> See Pregnancy Discrimination Charge Data FY1996 – FY2005, *supra* note 7, at Chart C.

<sup>32</sup> See Pregnancy Discrimination Charge Data FY1996 – FY2005, *supra* note 7, at Chart B.

<sup>33</sup> Letter from Karen Gilbert, Research Analyst, California Department of Fair Employment & Housing, to Naomi Schoenbaum, Policy Counsel – Women’s Law and Public Policy Fellow, National Partnership for Women & Families (Oct. 12, 2006) (on file with the National Partnership for Women & Families).

<sup>34</sup> California’s pregnancy discrimination law compares favorably to the federal statute in several key areas. Under the federal law (the PDA), an employee can only raise a claim of pregnancy discrimination if she works for an employer with fifteen or more employees. 42 U.S.C. § 2000e(b). In California, however, employees working for employers with five employees or more can raise discrimination charges under state law. CAL. GOV. CODE § 12926(d). In addition, the statute of limitations under the California pregnancy discrimination statute is longer than the statute of limitations under the PDA. CAL. GOV. CODE § 12960(d); 42 U.S.C. § 2000e-5(e)(1). Therefore, a claim under the PDA may be untimely while still valid under California’s pregnancy discrimination law. A plaintiff might also file a pregnancy discrimination claim solely under state law even when she could file a federal claim so that she can retain jurisdiction in state court. If a plaintiff files a federal claim, the defendant has the opportunity to remove the case to federal court. There are distinct advantages and disadvantages to both federal and state forums.

<sup>35</sup> Taylor v. Bigelow Management, Inc., 242 Fed. Appx. 178 (5<sup>th</sup> Cir. 2007).

<sup>36</sup> Press Release, Equal Employment Opportunity Commission, Maternity Store Giant to Pay \$375,000 to Settle EEOC Pregnancy Discrimination and Retaliation Lawsuit (January 8, 2007), <http://www.eeoc.gov/press/1-8-07.html>.

<sup>37</sup> Press Release, Equal Employment Opportunity Commission, EEOC Sues John Harvard’s Brew House for Pregnancy Discrimination (August 6, 2003), <http://www.eeoc.gov/press/8-06-03.html>.

<sup>38</sup> Jane A. Halpert, Midge L. Wilson & Julia L. Hickman, *Pregnancy as a Source of Bias in Performance Appraisals*, 14 J. of Organizational Behav. 649 (Dec. 1993).

<sup>39</sup> Michelle R. Hebl, Peter Glick, Eden B. King, Sarah L. Singletary & Stephanie Kazama, *Hostile and Benevolent Reactions Toward Pregnant Women: Complementary Interpersonal Punishments and Rewards That Maintain Traditional Roles*, 92 J. of Applied Psychol. 1499 (2007).

<sup>40</sup> Compare Bureau of Labor Statistics, Household Data Annual Averages: Employment status of the Hispanic or Latino population by age and sex 2005 (Table 4), <ftp://ftp.bls.gov/pub/special.requests/lf/aa2005/aat4.txt> (last modified May 12, 2008); and Employment status of the civilian noninstitutional population by sex, age, and race 2005 (Table 5), <ftp://ftp.bls.gov/pub/special.requests/lf/aa2005/aat5.txt> (last modified May 12, 2008) (indicating that 8,158,000 Black women and 7,295,000 Hispanic women were working in the United States in 2005), with Bureau of Labor Statistics, Household Data Annual Averages: Employment status of the civilian noninstitutional population by sex, age, race, and Hispanic origin 1995-1996 (Table 5), <ftp://ftp.bls.gov/pub/special.requests/lf/AA96/aat5.txt> (last modified February 13, 1997) (indicating that 7,086,000 Black women and 4,602,000 Hispanic women were working in the United States in 1996).

<sup>41</sup> Bureau of Labor Statistics, Household Data Annual Averages: Employment status of the civilian noninstitutional population 16 years and over by sex, 1973 to date (Table 2), <http://www.bls.gov/cps/cpsaat2.pdf> (last visited October 28, 2008)

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<sup>42</sup> Census Bureau, Women 15 to 44 Years Old Who Had a Child in the Last Year and Their Percentage in the Labor Force: Selected Years, 1976 to 2006 (Table SF5),

<http://www.census.gov/population/www/socdemo/fertility.html#hist> (last modified August 2008).

<sup>43</sup> Tallese D. Johnson, Census Bureau Current Population Reports P70-113, *Maternity Leave and Employment Patterns of First-Time Mothers: 1961-2003* at Table 1, Pg. 4 (February 2008),

<http://www.census.gov/prod/2008pubs/p70-113.pdf>.

<sup>44</sup> *Id.* at Table 3, Pg. 7.

<sup>45</sup> *Id.*

<sup>46</sup> See Testimony of Elizabeth Grossman, Regional Attorney, New York District Office, U.S. Equal Employment Opportunity Commission, to the U.S. Equal Employment Opportunity Commission, Hearing on Perspectives on Work/Family Balance and the Federal EEO Laws 3 (Apr. 17, 2007).

<sup>47</sup> Testimony of Elizabeth Grossman, *supra* note 46, at 3.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* (testifying that “underreporting of pregnancy discrimination claims remains a significant problem” due to fear of retaliation and confusion regarding whether pregnancy discrimination is barred by antidiscrimination laws).

**Chart A: EEOC Pregnancy Discrimination Charge Data by Industry  
FY1996-FY2005**

	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
<b>INDUSTRY</b>										
<b>Agriculture, Forestry &amp; Fishing</b>	18	21	24	23	24	34	34	26	30	17
<b>Mining</b>	12	10	11	14	12	13	12	9	10	5
<b>Construction</b>	47	56	52	56	71	81	97	60	35	25
<b>Manufacturing- Durable/Nondurable</b>	484	436	493	468	460	478	449	364	335	352
<b>Transportation &amp; Public Utilities</b>	228	179	214	248	216	236	255	216	208	171
<b>Wholesale Trade</b>	83	69	77	80	71	76	73	77	91	54
<b>Retail Trade</b>	693	705	710	665	661	682	806	822	763	730
<b>Finance, Insurance &amp; Real Estate</b>	276	313	280	336	322	313	358	313	285	284
<b>Services</b>	1380	1535	1649	1439	1506	1454	1603	1514	1634	1491
<b>Other/Not provided</b>	655	791	847	990	970	1206	1398	1455	1646	1711
<b>Total Charges</b>	<b>3876</b>	<b>4115</b>	<b>4357</b>	<b>4319</b>	<b>4313</b>	<b>4573</b>	<b>5080</b>	<b>4856</b>	<b>5037</b>	<b>4840</b>

**Chart B: EEOC Pregnancy Discrimination Charge Data  
FY1996-2005  
State-by-State Comparison**

State	Population 2005	1996 Claims	2005 Claims	# Change	% Change
Alabama	4,557,808	71	72	1	1.4
Alaska	663,661	19	8	-11	-57.9
Arizona	5,939,292	88	98	10	11.4
Arkansas	2,779,154	38	57	19	50
California	36,132,147	94	124	30	31.9
Colorado	4,665,177	93	96	3	3.2
Connecticut	3,510,297	73	36	-37	-50.7
Delaware	843,524	32	42	10	31.3
DC	550,521	22	17	-5	-22.7
Florida	17,789,864	334	341	7	2.1
Georgia	9,072,576	144	155	10	6.9
Hawaii	1,275,194	20	27	7	35
Idaho	1,429,096	18	23	5	27.7
Illinois	12,763,371	211	287	76	36
Indiana	6,271,973	133	131	-2	-1.5
Iowa	2,966,334	50	75	25	50
Kansas	2,744,687	37	33	-4	10.8
Kentucky	4,173,405	33	44	10	30.3
Louisiana	4,523,628	40	52	12	30
Maine	1,321,505	29	8	-21	-72.4
Maryland	5,600,388	113	105	-8	-7
Massachusetts	6,398,743	11	16	5	45.5
Michigan	10,120,860	113	143	30	26.5
Minnesota	5,132,799	67	54	-13	-19.4
Mississippi	2,921,088	45	44	-1	-2.2
Missouri	5,800,310	89	131	42	47.2
Montana	935,670	8	18	10	125
Nebraska	1,758,787	52	37	-15	-28.8
Nevada	2,414,807	22	43	21	95.5
New Hampshire	1,309,940	21	18	-3	-14.3
New Jersey	8,717,925	80	131	51	63.8
New Mexico	1,928,384	29	48	19	65.5
New York	19,254,630	235	317	82	34.9
North Carolina	8,683,242	95	160	65	68.4
North Dakota	636,677	1	3	2	200
Ohio	11,464,042	188	195	7	3.7
Oklahoma	3,547,884	29	65	36	124.1
Oregon	3,641,056	31	70	39	125.8
Pennsylvania	12,429,616	157	189	32	20.4
Puerto Rico	3,865,280	56	219	163	291
Rhode Island	1,076,189	10	12	2	20
South Carolina	4,255,083	69	82	13	18.8
South Dakota	775,933	11	12	1	9.1
Tennessee	5,962,959	94	93	-1	-1.1
Texas	22,859,968	278	417	139	50
Utah	2,469,585	40	34	-6	-15
Vermont	623,050	3	6	3	100
Virginia	7,567,465	84	103	19	22.6
Washington	6,287,759	43	81	38	88.4
West Virginia	1,816,856	10	9	-1	-10
Wisconsin	5,536,201	111	123	12	10.8
Wyoming	509,294	9	13	4	44.4

**Chart C: Top Fifteen States Receiving EEOC Pregnancy Discrimination Charges FY1996-FY2005**

<b>State Rank</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>	<b>2005</b>	<b>TOTAL</b>		<b>States with highest number of charges</b>
<b>1.</b>	334 (FL)	317 (FL)	346 (TX)	376 (NY)	336 (NY)	341 (NY)	351 (FL)	414 (TX)	398 (TX)	417 (TX)	<b>3630</b>		<b>Texas</b>
<b>2.</b>	278 (TX)	297 (TX)	327 (FL)	323 (TX)	314 (TX)	340 (FL)	341 (TX)	350 (FL)	326 (FL)	341 (FL)	<b>3237</b>		<b>Florida</b>
<b>3.</b>	235 (NY)	263 (NY)	314 (NY)	292 (FL)	277 (FL)	314 (TX)	330 (NY)	321 (NY)	321 (NY)	317 (NY)	<b>2984</b>		<b>New York</b>
<b>4.</b>	211 (IL)	240 (PA)	220 (IL)	232 (PA)	231 (IL)	209 (IL)	268 (IL)	292 (IL)	291 (IL)	287 (IL)	<b>2481</b>		<b>Illinois</b>
<b>5.</b>	188 (OH)	211 (IL)	208 (PA)	222 (IL)	201 (PA)	196 (PA)	234 (PA)	206 (PA)	234 (OH)	219 (PR)	<b>2119</b>		<b>Pennsylvania</b>
<b>6.</b>	157 (PA)	202 (OH)	199 (OH)	204 (OH)	196 (OH)	179 (GA)	200 (PR)	205 (PR)	227 (PR)	195 (OH)	<b>1964</b>		<b>Ohio</b>
<b>7.</b>	144 (GA)	136 (GA)	167 (GA)	155 (GA)	181 (GA)	175 (OH)	183 (OH)	199 (OH)	198 (PA)	189 (PA)	<b>1727</b>		<b>Georgia</b>
<b>8.</b>	133 (IN)	133 (IN)	151 (IN)	143 (IN)	164 (IN)	164 (IN)	178 (GA)	183 (GA)	181 (GA)	160 (NC)	<b>1590</b>		<b>Indiana</b>
<b>9.</b>	113 (MD)	122 (MO)	120 (CA)	120 (CA)	127 (CA)	137 (CA)	153 (IN)	137 (WI)	154 (IN)	155 (GA)	<b>1338</b>		<b>Puerto Rico</b>
<b>10.</b>	113 (MI)	116 (WI)	117 (NC)	113 (NC)	110 (NC)	117 (AZ)	149 (WI)	135 (CA)	136 (CA)	143 (MI)	<b>1249</b>		<b>California</b>
<b>11.</b>	111 (WI)	113 (SC)	114 (CA)	102 (MD)	109 (CO)	116 (NC)	141 (CA)	117 (IN)	121 (WI)	131 (IN)	<b>1175</b>		<b>Wisconsin</b>
<b>12.</b>	95 (NC)	110 (AZ)	104 (TN)	99 (WI)	100 (MO)	116 (PR)	127 (MO)	112 (AZ)	118 (AZ)	131 (MO)	<b>1112</b>		<b>North Carolina</b>
<b>13.</b>	94 (CA)	109 (MI)	102 (CT)	98 (TN)	100 (VA)	114 (WI)	120 (AZ)	111 (NC)	117 (NC)	131 (NJ)	<b>1096</b>		<b>Missouri</b>
<b>14.</b>	94 (TN)	100 (NC)	98 (SC)	96 (SC)	95 (WI)	113 (MO)	116 (NC)	111 (TN)	116 (MO)	155 (GA)	<b>1063</b>		<b>Maryland</b>
<b>15.</b>	93 (CO)	96 (CT)	95 (NJ)	94 (VA)	93 (AZ)	97 (VA)	114 (NJ)	103 (MO)	116 (VA)	123 (WI)	<b>1024</b>		<b>Michigan</b>