Center for Employment Equity
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Pregnancy Discrimination at Work:

An Analysis of Pregnancy Discrimination Charges Filed with the U.S. Equal Employment Opportunity Commission

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Introduction

Despite laws intended to end workplace pregnancy discrimination, thousands of women continue to face employer discrimination related to their pregnancies every year.[1] This is true for women in low wage physically demanding occupations,[2] high wage occupations,[3] and even workplaces dedicated to supporting women.[4]

Discrimination against pregnant workers has been illegal since the Pregnancy Discrimination Act (PDA) was passed in 1978. The PDA formally prohibited employer discrimination on the basis of pregnancy by explicitly categorizing pregnancy discrimination as sex discrimination under Title VII of the Civil Rights Act of 1964. Though the PDA has helped more women continue working while pregnant, research has consistently found that women continue to face employer discrimination related to their pregnancies.[5]

However, much of this research focuses on litigated court cases. Litigated cases are important for clarifying courts' interpretation of laws and providing precedent, however, since only a small minority of employer discrimination charges go to court, examining litigated cases does not provide a full understanding of the extent of pregnancy discrimination and the remedies available to those who file a charge against their employer. Our report provides a broader understanding of workplace pregnancy discrimination by analyzing all 26,650 pregnancy discrimination charges filed with the U.S. Equal Employment Opportunity Commission (EEOC) and state Fair Employment Practices Agencies (FEPAs) between 2012 and 2016.

This report provides a brief introduction to pregnancy discrimination law and what is known about the prevalence of pregnancy discrimination in U.S. workplaces. We then outline the process of filing a charge and examine who files pregnancy discrimination charges. Next, we examine the content of pregnancy charges—the types of discrimination that targets allege. We then analyze the industrial and workplace contexts that produce pregnancy dis-

[1] National partnership for women & families. *Listening to Mothers: The Experiences of Expecting and New Mothers in the Workplace*. `http://www.nationalpartnership.org/our-work/resources/economic-justice/pregnancy-discrimination/listening-to-mothers-experiences-of-expecting-and-new-mothers.pdf`. 2014.

[2] Jessica Silver-Greenberg and Natalie Kitroeff. *Miscarrying at Work: The Physical Toll of Pregnancy Discrimination*. October 21, 2018. URL: `https://www.nytimes.com/interactive/2018/10/21/business/pregnancy-discrimination-miscarriages.html`.

[3] Natalie Kitroeff and Jessica Silver-Greenberg. *Pregnancy Discrimination is Rampant Inside America's Biggest Companies*. February 8, 2019. URL: `https://www.nytimes.com/interactive/2018/06/15/business/pregnancy-discrimination.html`.

[4] Natalie Kitroeff and Jessica Silver-Greenberg. *Planned Parenthood is Accused of Mistreating Pregnant Employees*. December 20, 2018. URL: `https://www.nytimes.com/2018/12/20/business/planned-parenthood-pregnant-employee-discrimination-women.html`.

[5] Elizabeth Gedmark Bakst Dina and Sarah Brafman. *Long Overdue: It Is Time for the Federal Pregnant Workers Fairness Act*. Tech. rep. A Better Balance.

crimination and review the outcomes of pregnancy discrimination charges. We conclude with some policy proposals and recommendations for future research and EEOC data collection protocols.

Data

This report analyzes confidential discrimination charge data from the U.S. Equal Employment Opportunity Commission (EEOC). This report focuses on charges that include an allegation of employer discrimination on the basis pregnancy filed between fiscal years 2012 and 2016. These charges may be filed directly with the EEOC or with one of the state or local Fair Employment Practices Agencies (FEPAs) that have work sharing agreements with the EEOC. As a result, this report analyzes data on charges dual-filed with the EEOC and FEPAs from all states and the District of Columbia. This research was conducted under strict confidentiality restrictions enforced by the EEOC and the Center for Employment Equity.

Main Findings

- Pregnancy discrimination is a unique form of sex discrimination. Compared to other forms of discrimination, pregnancy discrimination happens quickly—when discriminating employers learn that an employee is pregnant she is often fired on the same day.

- Despite an overall higher success rate of receiving benefits than other forms of sex discrimination, the majority (74%) of pregnancy charges result in no monetary benefit or required workplace change through the EEOC process. Of the 23% of charges that receive any monetary benefit, the average benefit is only $17,976 and the median benefit is only $8,000. These monetary benefits are lower than those secured for other sex-based discrimination charges.

- The rate of pregnancy discrimination appears to be higher in male dominated industries.

- Having more female managers appears to reduce the likelihood of pregnancy discrimination in a workplace. Establishments charged with pregnancy discrimination tend to have more male managers.

- Pregnancy discrimination claims take on average 280 days to resolve within the EEOC case processing system. Since a normal pregnancy lasts about the same amount of time and it is likely that women do not disclose their pregnancy in the first trimester, the charging system is not well designed to prevent or redress pregnancy discrimination.

Pregnancy Discrimination and the Law

Prior to the implementation of pregnancy discrimination laws, women were routinely fired from their jobs because of their pregnancies.[6] This practice was both common and legal. Through both official policy and personal biases, employers frequently refused to hire pregnant women, forced pregnant women to resign, and denied them the insurance benefits and disability coverage available to other workers.[7]

Two early Supreme Court cases upheld these practices by ruling that pregnancy discrimination was not a form of sex discrimination under the Equal Protection Clause or Title VII of the Civil Rights Act. In a controversial ruling in *Geduldig v. Aiello* (1974), the Court ruled that the exclusion of pregnancy from California's disability insurance program did not constitute sex discrimination because the program did not discriminate between men and women, but rather "the program divided potential recipients into two groups–pregnant women and nonpregnant persons."[8] The ruling in Geduldig laid the groundwork for a similar Supreme Court ruling two years later. In *General Electric Co. v. Gilbert* (1976), the Supreme Court held that Title VII protection against sex discrimination did not include pregnancy discrimination by allowing General Electric's insurance policy to exclude coverage for pregnancy.[9] Outrage following this ruling quickly led to the formation of the Campaign to End Discrimination Against Pregnant Workers (CEDAPW), a coalition of over 200 activists and feminists, and even some anti-abortion activists, dedicated to amending Title VII to protect pregnant workers.[10] The campaign culminated in the passage of the Pregnancy Discrimination Act of 1978 (PDA).

The Pregnancy Discrimination Act is the only federal law aimed at protecting pregnant women in the workplace. The PDA amended Title VII of the Civil Rights Act of 1964 to "prohibit sex discrimination on the basis of pregnancy."[11] The PDA applies to all aspects of employment, including hiring, firing, promotions, benefits, and other terms and conditions of employment. The PDA requires employers to accommodate pregnant workers only if it is already doing so for other employees who are "similar in their ability or inability to work."[12] Under the PDA, employers are required to treat pregnant workers the same as any other

[6] Deborah Dinner. "Recovering the LaFleur Doctrine". In: *Yale JL & Feminism* 22 (2010), p. 343.

[7] Joanna L Grossman. *Nine to Five: How Gender, Sex, and Sexuality Continue to Define the American Workplace*. Cambridge University Press, 2016.

[8] *Geduldig v. Aiello. 417 U.S. 484.* 1974.

[9] *General Electric Co v. Gilbert. 429 U.S. 125.* 1976.

[10] Grossman, *Nine to Five: How Gender, Sex, and Sexuality Continue to Define the American Workplace*, op. cit., p. 499.

[11] U.S. EEOC (Equal Employment Opportunity Commission). *Pregnancy Discrimination Act of 1978*. `https://www.eeoc.gov/laws/statutes/pregnancy.cfm`. [Online; accessed 9/9/19]. n.d.-a.

[12] Ibid.

temporarily disabled employee, such as someone with a back injury, by providing reasonable accommodations. Reasonable accommodations include allowing a pregnant employee more frequent bathroom breaks, modifying a work schedule, granting leave in addition to what an employer may provide under sick leave, or temporarily assigning an employee to light duty.[13] Because employers are only required to accommodate workers if it accommodates "similarly situated" employees, this means "employers can treat pregnant women as badly as they treat similarly affected but nonpregnant employees."[14]

Additionally, under the 2008 Americans with Disabilities Act Amendments Act (ADAAA) employers must provide reasonable accommodation for pregnancy related disabilities, unless doing so would result in "significant difficulty or expense."[15] Although pregnancy itself is not a disability, the ADAAA expanded the definition of disability to include pregnancy related impairments, such as gestational diabetes, pregnancy related carpal tunnel syndrome, or preeclampsia, as covered disabilities. Although the ADAAA expanded the coverage for some pregnant workers, "it is not likely to substantially impact women's ability to be protected from adverse employment" given how few pregnancy discrimination claims include ADA claims.[16] Additionally, the court's distinction between the natural state of pregnancy and "pregnancy related disabilities" has limited the ability of the ADA to protect pregnant employees.[17]

The interpretation of these laws in U.S. courts has a complex history.[18] While the PDA provides pregnant workers the right to be treated the same as workers with similar abilities, the courts have historically struggled to define the proper comparison group. The 2015 Supreme Court ruling in *Young v. United Parcel Service, Inc.* provided some clarity on employers' responsibilities to accommodate pregnant workers. When Peggy Young, a delivery driver for United Parcel Service (UPS), became pregnant her doctor recommended that she not lift more than 20 pounds. As an "air driver," delivering packages that arrived overnight by air, Young primarily delivered small envelopes and rarely had to deliver packages that weighed 20 pounds, much less the 70 pounds required in the job description. When she

[13]U.S. EEOC (Equal Employment Opportunity Commission). *Fact Sheet for Small Businesses: Pregnancy Discrimination*. `https://www.eeoc.gov/eeoc/publications/pregnancy_factsheet.cfm`. [Online; accessed 9/9/19]. n.d.-b.

[14]Gillian Thomas. *Because of sex: one law, ten cases, and fifty years that changed American women's lives at work*. Picador USA, 2017.

[15]U.S. EEOC (Equal Employment Opportunity Commission), *Fact Sheet for Small Businesses: Pregnancy Discrimination*, op. cit.

[16]Michelle D Deardorff and James G Dahl. *Pregnancy Discrimination and the American Worker*. Springer, 2016, p. 131.

[17]Ibid., pp. 131-132.

[18]See for example Deardorff and Dahl, *Pregnancy Discrimination and the American Worker* or Dinner, Strange Bedfellow, or Thomas, *Because of sex*

provided her supervisor with her doctor's note, she was told she would not be allowed to work if she could not lift the required 70 pounds for drivers and was placed on unpaid leave.

Trial and appellate courts ruled that UPS did not violate the PDA because they did not single out pregnancy—there were, in theory, other employees who would need accommodations and not receive them. However, Ms. Young provided evidence that UPS provided accommodations to other employees suffering disabilities that had not occurred on the job, including accommodations to drivers who lost their Department of Transportation certifications due to driving under the influence or a motor vehicle accident, but did not provide her the same accommodations.[19] The Supreme Court ruled 6 to 3 in favor of Peggy Young and stated that accommodating a large group of employees but not pregnant workers is a violation of the PDA.

Despite ruling in Ms. Young's favor, the court did not provide outright protection for pregnant workers. In the majority opinion, the Court wrote that the PDA did not require employers to provide accommodations to pregnant workers that were offered to any other worker. Instead, the Court wrote that PDA failure to accommodate cases will require pregnant workers "to show that many workers were treated better than they were and that the employer's reason for differential treatment was in fact a 'pretext' for discrimination."[20]

Activists and politicians have argued that by only providing a comparative, rather than absolute, right to accommodation, current laws stop short of guaranteeing protection for all pregnant workers. A recent report by A Better Balance, a work and family legal center, found that in over two-thirds of pregnancy discrimination cases brought to court since the 2015 Young ruling, courts have ruled that employers were permitted to deny accommodations to pregnant workers under the PDA primarily because of the difficulties plaintiffs face in establishing "comparator" employees.[21]

Because the PDA only provides comparative protection, many activists and legal scholars are advocating for Congress to pass the federal Pregnant Workers Fairness Act (PWFA). The PWFA, if passed, would explicitly require reasonable accommodation of pregnancy regardless of how employers treat other similarly situated employees. As with the current ADA, the proposed PWFA would apply only to employers with 15 or more employees and would allow exemptions for businesses if the accommodation imposes undue hardship on an employer.

The PWFA was first introduced in 2012 and was referred to Committees but never reached the floor for a vote. After years of failing to come to a vote, in September 2020 the House of Representatives passed the Pregnant Workers Fairness Act in a strong bipartisan

[19]Young v. United Parcel Serv., Inc. *135 S. Ct. 1338.* 2015.

[20]Thomas, *Because of sex: one law, ten cases, and fifty years that changed American women's lives at work*, op. cit., p. 227.

[21]Bakst and Brafman, *Long Overdue: It Is Time for the Federal Pregnant Workers Fairness Act*, op. cit.

vote (329-73). Although the federal law has not yet passed, as of May 2020, 29 states, the District of Columbia, and four cities have passed similar legislation requiring employers to provide reasonable accommodation for pregnant workers.[22]

How Prevalent is Pregnancy Discrimination?

Estimating the national prevalence of pregnancy discrimination is difficult given the lack of data on pregnant women's work experiences. Yet, understanding the workplace experiences of expecting mothers is essential given their growing labor force participation and increasing labor force attachment. According to a 2011 Census Report, the likelihood that a woman in the U.S. would work while pregnant increased significantly through the 1960s and 70s.[23] In the early 1960s about 45% of women worked during their first pregnancies, but by 2008 about 65% of women worked during their first pregnancies. Today, nearly 70% of women work during their pregnancies.

Not only are more women working during their pregnancies, but they are also working later into their pregnancies. In the 1960s, most (65%) women pregnant with their first child stopped working more than a month before the birth and only about 35% continued working into the final month of their pregnancy. By 2008, this trend reversed with about 82% of working women pregnant with their first child continuing to work within one month of the birth compared with just 18% who stopped more than a month before their birth.

Despite the increasing trend of women working during their pregnancies, expecting mothers continue to face challenges in the workplace. While many women can continue working during pregnancy without any adjustments to their job, a recent survey by Childbirth Connection, an initiative focused on maternity care, found that the majority of women who worked during their pregnancies needed some type of workplace accommodation related to their pregnancy. Often, these accommodations are minor; the majority (71%) of women who reported needing an accommodation required more frequent breaks, such as extra bathroom breaks. While most of the surveyed women reported that their employers honored their request, a significant number of women reported that employers denied their requests and claimed they were not required to honor pregnancy-related accommodations. Based on these survey results, an estimated 250,000 women are denied accommodations related to

[22]National Partnership for Women & Families. *Reasonable Accommodations for Pregnant Workers: State and Local Laws*. `https://www.nationalpartnership.org/our-work/resources/economic-justice/pregnancy-discrimination/reasonable-accommodations-for-pregnant-workers-state-laws.pdf`. [Online; accessed 7/21/20]. May 2020.

[23]Lynda Lvonne Laughlin. *Maternity leave and employment patterns of first-time mothers: 1961-2008*. Tech. rep. US Department of Commerce, Economics and Statistics Administration, 2011.

their pregnancies each year.[24] This is likely a conservative estimate of unmet need, given that around 36% of women who reported needing an accommodation did not ask their employer.[25]

As with other forms of employer discrimination, the majority of women who experience workplace pregnancy discrimination do not file a formal discrimination charge. For example, our prior research has estimated that less than 1% of workplace sexual harassment incidences are filed with the EEOC or FEPA.[26] Approximately 5,300 pregnancy discrimination charges are filed each year, suggesting that only about 2% of pregnancy discrimination incidences are filed with the federal EEOC or state FEPA.

Filing a Pregnancy Discrimination Charge

Before an employee who believes they have been discriminated against can file a lawsuit against their employer, they first must submit a complaint to the EEOC or a local state Fair Employment Practices Agency (FEPA).[27] A charge of discrimination does not determine that unlawful discrimination occurred; rather, it initiates the process for the EEOC to investigate whether there is reasonable cause to determine that discrimination occurred.

After the charge is filed, the EEOC has several routes to resolving charges, any of which can lead to monetary or other benefits, such as the primary goal of workplace accommodations, for the charging party. Prior to an investigation, the EEOC offers charging parties and their employers a mediation process with a third-party mediator to resolve a complaint.[28] Charges may also be settled at any time during the investigation process. Mediation and settlements are voluntary and typically save time and effort associated with investigations. If the charge is not resolved through mediation or a settlement, it will continue through the investigation process where the EEOC will collect additional information from the charging party and the employer to determine if there is reasonable cause to believe discrimination occurred.

[24] National partnership for women & families, *Listening to Mothers: The Experiences of Expecting and New Mothers in the Workplace*, op. cit.

[25] Ibid.

[26] Carly McCann, Donald Tomaskovic-Devey, and Lee Badgett. "Employers' Responses to Sexual Harassment". In: *Center for Employment Equity* (2018).

[27] Charges filed with either the EEOC or a FEPA are dual filed, so the EEOC database includes charges filed with a local FEPA, but the FEPA retains the charge for processing. In the course of this research we discovered that California does not report all complaints to the EEOC. Many of the charges filed with FEPAs and submitted to the EEOC do not include data on the race, sex, or other demographic characteristics of the charging party. For more on FEPAs, see U.S. EEOC (Equal Employment Opportunity Commission). *Fair Employment Practices Agencies(FEPAs) and Dual Filing*. `https://www.eeoc.gov/employees/fepa.cfm`. [Online; accessed 9/7/19]. n.d.-c

[28] U.S. EEOC (Equal Employment Opportunity Commission). *Resolving a Charge*. `https://www.eeoc.gov/employers/resolving.cfm`. [Online; accessed 9/7/19]. n.d.-d.

After an investigation in which the EEOC finds reasonable cause to believe discrimination has occurred, the EEOC works to resolve a complaint through a conciliation process. Approximately 2% of pregnancy discrimination charges filed with EEOC between 2012 and 2016 resulted in successful conciliation. Although a small proportion of pregnancy discrimination charges, it is similar to the rate for all types of employer discrimination charges protected under Title VII filed with the EEOC.[29] Most charges are settled in the EEOC's mediation or conciliation processes or are dropped. A charging party may drop out of the EEOC process and request a right to sue letter or the charge may be closed for administrative reasons such as failure to locate the charging party, lack of jurisdiction, or the charging party requests withdrawal of the charge.[30] In the EEOC charge data, 15% of pregnancy charges were closed for these administrative reasons.

If conciliation fails, either the charging party or the EEOC may file a lawsuit in court.[31] Only a small number of employer discrimination charges goes to court, and the EEOC files a limited number of employer discrimination cases.[32] For example, in 2014 the EEOC filed 14 pregnancy related lawsuits.[33] Charging parties can get a "right to sue" letter from the EEOC and bring a lawsuit to court via the private bar. Research by Michelle Deardorff and James Dahl suggests this is also rare. From the passage of the PDA in 1978 to 2013, Deardorff and Dahl recorded 1,112 federal district and appellate court cases that explicitly relied on the PDA and/or ADA for legal authority. This suggests only about 33 pregnancy discrimination cases go to court each year.[34] Thus, it is the EEOC resolution process, not private courts, that is the primary legal adjudicator of pregnancy discrimination complaints.

Charges that go to trial are likely some of the most contested cases (charges with the most merit are likely settled prior to trial and charges with the least merit are likely dropped).[35] These cases that reach the litigation phase are important, not just for that specific case, but

[29]U.S. EEOC (Equal Employment Opportunity Commission). *Title VII of the Civil Rights Act of 1964 Charges (Charges Filed with EEOC)*. `https://www.eeoc.gov/eeoc/statistics/enforcement/titlevii.cfm`. [Online; accessed 9/7/19]. n.d.-e.

[30]U.S. EEOC (Equal Employment Opportunity Commission). *Definition of Terms*. `https://www.eeoc.gov/eeoc/statistics/enforcement/definitions.cfm`. [Online; accessed 9/7/19]. n.d.-f.

[31]In some states, charges filed with the FEPA are given the right to appear in a public hearing presided over by a public law judge. The law judge evaluates the case and issues a final order either dismissing or upholding the case. If the case is upheld, the law judge also decides whether to issue mandates.

[32]Among charges in which the EEOC believes discrimination occurred and conciliation was unsuccessful, the EEOC files a lawsuit in less than 8% of charges. See U.S. EEOC (Equal Employment Opportunity Commission). *What You Should Know: The EOC, Conciliation, and Litigation*. `https://www.eeoc.gov/eeoc/newsroom/wysk/conciliation_litigation.cfm`. [Online; accessed 9/7/19]. n.d.-g

[33]U.S. EEOC (Equal Employment Opportunity Commission). *Fact Sheet on Recent EEOC Pregnancy-Discrimination Litigation*. `https://www.eeoc.gov/fact-sheet-recent-eeoc-pregnancy-discrimination-litigation`. [Online; accessed 9/9/19]. n.d.-k.

[34]Deardorff and Dahl, *Pregnancy Discrimination and the American Worker*, op. cit., p. 64.

[35]Ibid., p. 65.

for future cases as they "have an impact on precedent, the determination of future litigation and statutory interpretation."[36] The rulings in courts can determine how other federal courts and the EEOC interpret the PDA and ADA.

Who Files a Pregnancy Discrimination Charge?

Using data on employer discrimination charges filed with the EEOC or state FEPAs between 2012 to 2016, table 1 describes the race of women who filed pregnancy discrimination charges compared to sex-based discrimination complaints that do not include an allegation of pregnancy discrimination.[37]

Table 1: Title VII Employment Discrimination Charges by Race

	Percent of All Pregnancy Charges	Percent of Other Sex-Based Charges	Percent of U.S. Female Labor Force
White Women	57%	52%	76%
Black Women	37%	42%	14%
Women of Other Races	6%	6%	10%

Note: Race is frequently missing in the charge data. Approximately 40% of pregnancy charges and 36% of other sex-based charges are missing race information.

Relative to other sex-based discrimination charges, pregnancy discrimination charges are more common among white women and less common among black women. However, relative to their representation in the labor market overall, black women report a disproportionately large percentage of workplace pregnancy discrimination charges; they account for 14% of the female labor force but file 37% of pregnancy discrimination charges.[38] This may be because mothers in low-wage jobs, where workplace accommodations for pregnancy may be more necessary due to the physical requirements of these jobs, are disproportionately

[36] Ibid., p. 67.

[37] Less than 1% of charges in our database were filed by men. These charges likely represent cases were men filed charges due to benefits denied to their pregnant spouses. In their analysis of pregnancy discrimination lawsuits, Deardorff and Dahl also find about 1% of cases had male litigants, generally involving spousal benefits. Because we compare pregnancy to other sex-based charges filed by women, we dropped these charges in our analysis. Results are not sensitive to this restriction.

[38] Data on labor force participation come from the Bureau of Labor Statistics. See Labor Force Statistics from the Current Population Survey. *Employment status of the civillian noninstitutional population by age, sex, and race*. `https://www.bls.gov/cps/cpsaat03.htm`. [Online; accessed 9/7/19]. January 18, 2019

women of color.[39] It may also be driven by different expectations and assumptions of work and motherhood along racial, ethnic, and class lines.[40]

Contents of a Pregnancy Discrimination Charge

Discrimination charges may contain one or more legal basis for the complaint as well as at least one issue. A basis is the legally protected category that the plaintiff claims was the root cause of discrimination. Under Title VII of the 1964 Civil Rights Act and its extensions, these protected categories include race, sex, pregnancy, color, religion, disability, age, and national origin. Additionally, the law prohibits retaliation against individuals who file a discrimination claim by protecting an employee's right to oppose unlawful discrimination, thus protection from retaliation is another basis for filing a discrimination charge.

An issue is the action or policy alleged to be discriminatory—the kind of discrimination that took place—such as firing, demotion, or harassment. Discrimination charges often contain multiple bases and issues. However, as we show below, pregnancy discrimination charges contain fewer co-occurring issues and bases compared to other forms of sex discrimination.

Timing of allegations

Pregnancy discrimination is frequently a targeted response to the charging party's pregnancy status. Whereas other forms of discrimination may develop over time with escalating incidences, discrimination on the basis of pregnancy happens relatively quickly.

Table 2: Time Frame of Pregnancy and Other Sex-Based Allegations

	Percent of Pregnancy Allegations	Percent of Other (Non-Pregnancy) Sex Based Allegations
1 Day	53%	44%
2 Days - 2 Weeks	6%	4%
2 Weeks - 2 Months	13%	10%
2-6 Months	17%	17%
6 Months - 1 Year	8%	13%
More Than 1 Year	4%	12%

[39] Julie Vogtman. *Nearly One in Five Working Mothers of Very young Children work in Low-Wage Jobs.* April 12,2017. URL: .https://nwlc.org/blog/nearly-one-in-five-working-mothers-of-very-young-children-work-in-low-wage-jobs/.

[40] Nora Ellmann and Jocelyn Frye. *Efforts to Combat Pregnancy Discrimination.* November 2,2018. URL: .https://www.americanprogress.org/issues/women/news/2018/11/02/460353/efforts-combat-pregnancy-discrimination/.

Table 4 displays the breakdown of the number of days between when the alleged discriminatory behavior began and ended. The average duration of discriminatory behavior based on pregnancy is about 2.5 months (75 days), however the median is 0 days, compared to the average for other sex-based discrimination is around 6 months (180 days) with median of 22 days. Nearly 60% of pregnancy discrimination continues for less than 2 weeks. This aligns with previous research of pregnancy discrimination cases that has found women are frequently fired on the spot or shortly after they disclose their pregnancy status to their employers.[41] Although there are some pregnancy discrimination charges with long durations, in some cases longer than the pregnancy itself, these are charges that allege multiple forms of discrimination, which may have continued after the pregnancy. For example, if a woman of color alleges both pregnancy and race discrimination, the race discrimination may continue after the pregnancy.

On average, women experience other sex-based discrimination for longer periods of time than pregnancy discrimination before filing a discrimination charge. This may also reflect the law for other forms of sex discrimination. For example, the law regarding sexual harassment in the workplace does not prohibit "isolated incidents that are not very serious," but regards harassment as illegal when it is severe or pervasive that a reasonable person would consider it a hostile work environment.[42]

Examining the timing of allegations also reveals when the alleged discriminatory behavior occurred. Of particular interest is whether employer responses occur before or after the target files a formal charge. Comparing the date when the alleged discriminatory action occurred and the date the target initially contacted the EEOC, we find that the vast majority (98%) of all alleged Title VII discrimination occurs before the target contacts the EEOC or FEPA, rather than as a response to the employee filing a discrimination charge.

The EEOC charge data does not report if employees raised their discrimination concerns with their employer prior to contacting the EEOC. Prior research on sexual harassment suggests that only about a third of people who perceive discrimination raise the issue with

[41] See Reginald A Byron and Vincent J Roscigno. "Relational power, legitimation, and pregnancy discrimination". In: *Gender & society* 28.3 (2014), pp. 435–462 and Stephanie Bornstein. *Poor, pregnant, and fired: Caregiver discrimination against low-wage workers*. Center for Worklife Law, 2011

[42] U.S. EEOC (Equal Employment Opportunity Commission). *Sexual Harassment*. `https://www.eeoc.gov/laws/types/sexual_harassment.cfm`. [Online; accessed 9/7/19]. n.d.-h. Additionally, although there are limitations on when a target must file a charge (typically within 180 or 300 days of the incident), the EEOC considers all incidents of harassment, even if the earlier harassment occurred more than 300 days earlier. For more information, see U.S. EEOC (Equal Employment Opportunity Commission). *Time Limits For Filing A Charge*. `https://www.eeoc.gov/employees/timeliness.cfm`. [Online; accessed 9/7/19]. n.d.-i

someone in their workplace.[43] Since the period of pregnancy discrimination is so much shorter and firing happens fairly quickly in many instances, we suspect there are few opportunities for recourse with the employer. The 23% of pregnancy discrimination charges that report retaliation are likely to include this group of workers who first looked for redress internally from their employer.

In only 3% of all sex-based discrimination cases does employer retaliation occur after the target contacts the EEOC or FEPA. This is true for pregnancy charges that contain a retaliation allegation, other sex-based charges, and sexual harassment charges. This confirms our interpretation that most women experience retaliation after raising concerns with their employer, but that women who experience pregnancy discrimination are less likely to challenge, or have time to challenge, their employer over their treatment before filing a pregnancy related discrimination charge with the EEOC or FEPA.

Co-occurring bases

Table 2 shows the co-occurring bases for other (non-pregnancy) sex-based charges filed by women and for pregnancy discrimination charges. Nearly half (47%) of pregnancy discrimination allegations are filed exclusively on the basis of pregnancy. The most common co-occurring bases are sex (24% of pregnancy charges also include another sex-based charge), retaliation (23% of pregnancy charges), and disability (17% of pregnancy charges).

It is much more common for other (non-pregnancy) sex-based charges to contain additional co-occurring bases. Only 25% of other sex-based charges are filed exclusively on the basis of sex. Over half (51%) of all other sex-based charges filed by women also include a retaliation charge, 24% include a race/color charge, and 18% include an age discrimination charge. Compared to other (non-pregnancy) sex-based charges filed by women, pregnancy-based charges have a much lower rate of retaliation—only 23% of pregnancy-based charges include a retaliation charge compared to 51% of other sex-based charges.

The lower rate of co-occurring bases may reflect the immediate salience of pregnancy status.[44] Whereas non-pregnancy-based sex discrimination may develop insidiously over time, once the employee discloses her pregnancy status it often quickly results in job loss. The high rate of firing based on pregnancy status may make employer retaliation less common since the employment relationship is ended relatively quickly upon the employer learning of the pregnancy. Previous research has also found that pregnancy discrimination cases typically

[43] Chai R. Feldblum and Victoria A. Lipnic. *Select Task Force on the Study of Harassment in the Workplace*. Tech. rep. U.S. EEOC (Equal Employment Opportunity Commission).

[44] Additionally, pregnant women tend to be younger and heterosexual, thus removing some of the possible co-occurring bases.

result in an employee losing her job once she reports her pregnancy to her employer.[45]

Table 3: Co-Occuring Discrimination Bases

	Pregnancy Charges	Other (Non-Pregnancy) Sex Based Charges
Single Basis	47%	25%
Basis Type		
Pregnancy	**100%**	**0%**
Sex	24%	100%
Race/Color	9%	24%
Religion	1%	3%
National Origin	3%	8%
Age	1%	18%
Retaliation	23%	51%
Sexual Orientation/Gender Identity	Less than 1%	2%
Disability	17%	11%
Other Basis	4%	4%
Number of Charges	26,650	131,304

Co-occurring issues

Pregnancy discrimination charges are distinct from other charges of sex discrimination in that they are more commonly filed on a single basis and issue. Targets of pregnancy discrimination typically allege being fired as a result of their pregnancy. Table 3 shows the issues alleged for other sex-based charges filed by women and for pregnancy-based charges. Pregnancy charges are also more likely than other sex-based charges to include only one issue—46% of pregnancy charges include only one issue compared to 30% of other sex-based charges. This may reflect the more immediate response to pregnancy discrimination compared to other forms of discrimination–women report their pregnancy to their employer and subsequently lose their jobs. Of the charges filed on just one issue, the vast majority (71%) allege discharge.

In a study of pregnancy discrimination charges filed in Ohio, Byron and Roscigno also find high rates of firing in pregnancy discrimination charges.[46] They find that employers typically try to justify these firings by vilifying the employee or amplifying purportedly meritocratic policies or business/financial concerns. Employers, in such cases, tend to emphasize

[45]Deardorff and Dahl, *Pregnancy Discrimination and the American Worker*, op. cit., p. 62.

[46]Byron and Roscigno, "Relational power, legitimation, and pregnancy discrimination", op. cit.

concerns about the target's anticipated undependability due to family responsibilities and question their commitment to the job. A majority (75%) of plaintiffs in the reviewed cases asserted their job performance was questioned *only after* disclosing their pregnancies to their employers.[47] Employers also amplified "neutral meritocratic" policies as a way to fire pregnant employees, despite protections provided by law.[48] For example, in one case an employer insisted that all employees were covered by the same "neutral" policy where work related injuries were accommodated, but pregnancy was not.[49]

Table 4: Co-Occuring Discrimination Issues

	Pregnancy Charges	Other (Non-Pregnancy) Sex Based Charges
Single Issue	46%	30%
Issue Type		
Discharge	68%	48%
Terms and Conditions	28%	31%
Harassment	17%	30%
Other Issue	16%	18%
Reasonable Accommodation	12%	4%
Discipline	11%	14%
Constructive Discharge	5%	11%
Wages	5%	11%
Demotion	4%	4%
Hiring	3%	4%
Intimidation	3%	6%
Promotion	3%	8%
Sexual Harassment	3%	32%
Suspension	3%	4%
Benefits	2%	2%
Layoffs	2%	2%
Number of Charges	26,650	131,304

Pregnancy discrimination charges are also three times more likely than other sex-based charges to allege that the employer did not provide a reasonable accommodation (12% versus 4% of charges). While the EEOC's charge data do not contain information on what types of accommodation were requested, qualitative reviews of pregnancy discrimination charges have found that women most often request relief from heavy lifting, light duty (temporary

[47]Ibid., p. 448.
[48]Ibid., p. 452.
[49]Deardorff and Dahl, *Pregnancy Discrimination and the American Worker*, op. cit., p. 453.

reassignment to a different task), other physical restrictions such as no sitting or standing for long period of time, or periodic rest breaks.[50] When these requests are denied, the consequences can be severe, especially when women work in physically demanding jobs such as in factories, restaurants, and grocery stores. The New York Times reviewed instances in which women had been denied work accommodations and found that women subsequently suffered miscarriages, experienced premature labor, or even stillbirth.[51]

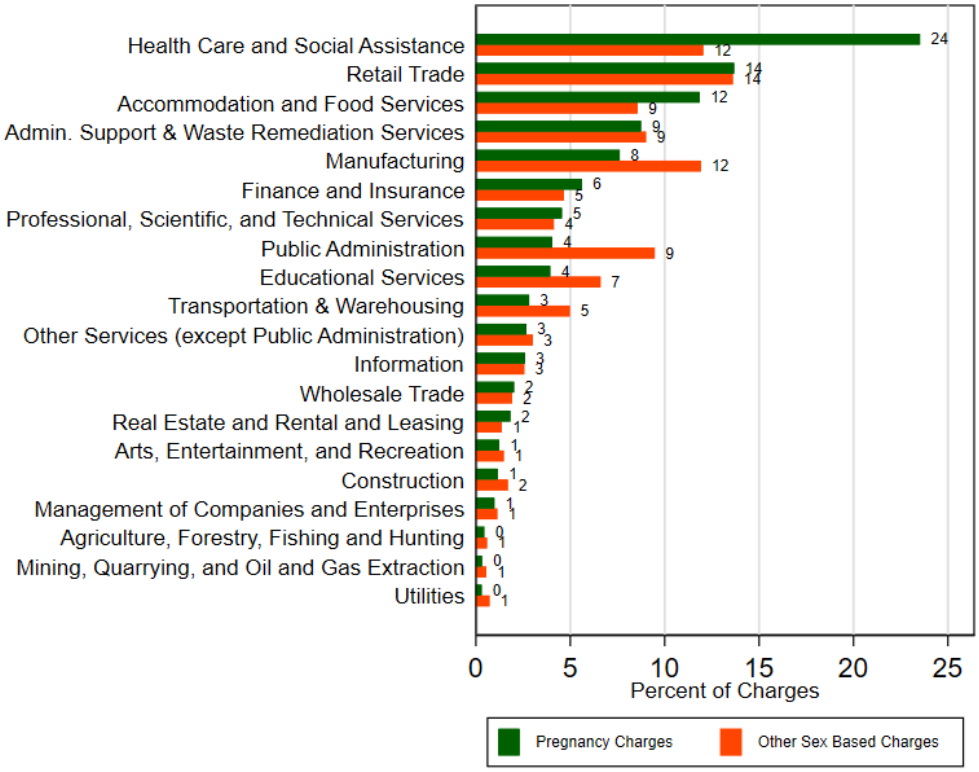
Contexts That Produce Pregnancy Discrimination

This section examines the workplace contexts that are more likely to produce pregnancy discrimination charges. We focus on industry and firm characteristics by matching the discrimination charge data to EEO-1 employer reports. The EEOC collects annual data for private sector employers on the EEO-1 survey. Private employers with 100 or more employees and federal contractors with 50 or more employees and a contract of at least $50,000 are required to submit an EEO-1 report. The EEO-1 data include establishment-level records of the employer's name and address, industry, federal contractor status, and employment totals by race, sex, and occupation. By matching the charge data to the EEO-1 employer report, we can compare the makeup of establishments charged with pregnancy discrimination to those who were not charged. For more information on the matching process, see the matching appendix.

[50] Jamie Dolkas Farrell Noreen and Mia Munro. *Expecting a Baby, Not A Lay-Off: Why Federal Law Should Require The Reasonable Accommodation of Pregnant Workers.* Tech. rep. Equal Rights Advocates, 2012.

[51] Silver-Greenberg and Kitroeff, *Miscarrying at Work: The Physical Toll of Pregnancy Discrimination*, op. cit.

Figure 1: Industry Distribution of Pregnancy and Other Sex-Based Discrimination Charges



Industries

Although about half of all case processing reports are missing information on the industry of the workplace, we have found that industry appears to be missing randomly.[52] Thus, examining the distribution of charges by industry only for charges with industry information is not biased by the missing industry information. Figure 1 shows the distribution of pregnancy discrimination charges by industry compared to other sex-based charges filed by women. The majority of pregnancy discrimination charges are filed in only a few industries: health care, retail trade, and accommodation and food services. These are all industries with high levels of female employment and many low wage employees.

Prior research has found that women in low wage jobs are particularly vulnerable to pregnancy discrimination.[53] Low wage jobs are typically more physically demanding and thus require accommodations for pregnancy. At the same time, these jobs are also the most

[52]Data are missing at random when there is no systematic correlation with any other know trait (see Daniel F Heitjan and Srabashi Basu. "Distinguishing missing at random and missing completely at random". In: *The American Statistician* 50.3 (1996), pp. 207–213). Charges that were missing industry information tended to have the same characteristics examined in this report as charges with industry present (see missing industry appendix at end of report).

[53]Bornstein, *Poor, pregnant, and fired: Caregiver discrimination against low-wage workers*, op. cit.

inflexible and least likely to offer employees paid sick, vacation, or medical leaves.[54] Unfortunately, the EEOC charge data do not contain information on the earnings or occupation of the charging party.

Health care and the social insurance industry account for the largest portion of pregnancy discrimination charges, producing nearly twice as many pregnancy discrimination charges as other sex-based charges. Although on average a high wage industry, many women in health care work as nursing care assistants and domestic care aides with median hourly earnings of $11.83 and $10.16 respectively.[55] This work is very physically demanding, often involving the necessary care of bathing, dressing, feeding, and moving patients. In fact, nursing assistants are 3.5 times as likely to be injured on the job as an average U.S worker.[56] The physical nature of these jobs may explain why pregnancy discrimination charges are filed so often in the health care industry.[57]

Industries vary by their gender and age composition, and thus the number of pregnant workers at risk for discrimination. This affects the rate at which we would expect industries to produce pregnancy discrimination. Given that charges in our dataset only represent those who chose to pursue a charge, we have no way of knowing if rates of reporting reflect underlying rates of discrimination or are also influenced by industry variation in the quality of managerial responses to internal complaints. Acknowledging these limitations, we calculate rates of pregnancy discrimination charges by industry to the EEOC and the state FEPAs by dividing the number of pregnancy discrimination charges by an estimate of the number of pregnant workers in the industry.[58]

In figure 2, we graph the estimated pregnancy discrimination rate against the proportion

[54]See Bakst and Brafman, *Long Overdue: It Is Time for the Federal Pregnant Workers Fairness Act*, op. cit.; Bornstein, *Poor, pregnant, and fired: Caregiver discrimination against low-wage workers*, op. cit.; and Joan Williams and Heather Boushey. "The three faces of work-family conflict: The poor, the professionals, and the missing middle". In: *Available at SSRN 2126314* (2010)

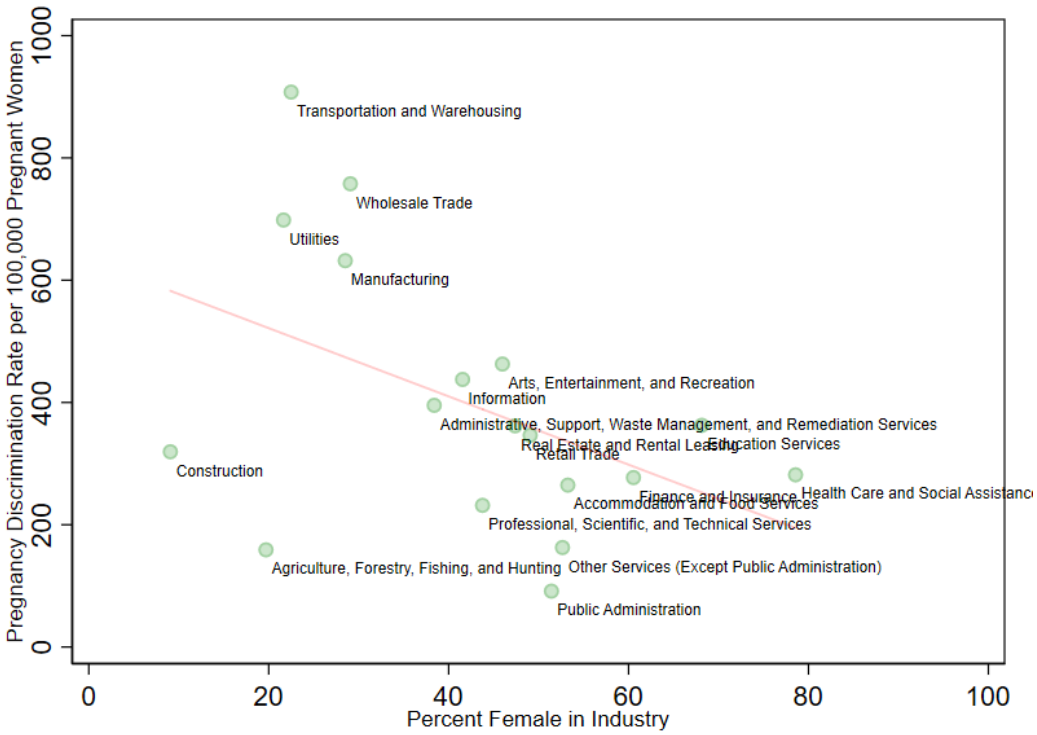
[55]Elyse Shaw, Ariane Hegewisch, Emma Williams-Baron, and Barbara Gault. *Undervalued and Underpaid in America*. Tech. rep. Institute for Women's Policy Research.

[56]Ibid., p. 11.

[57]Unfortunately, the EEOC charge data do not collect information on occupation.

[58]We first took the total number of pregnancy discrimination charges in the EEOC's 2012-2016 database. Industry is missing in 61% of charges. Assuming that industry is missing at random we inflate each industry count by dividing by .61. From the National Health Interview Survey (NHIS) we calculate the percent of pregnant women working in each industry. We use Bureau of Economic Analysis (BEA) estimates of full-time equivalent employees in each industry. The BEA uses employer data to adjust for probable self-report error in industry of employment in household surveys such as the ACS. We also reason that discrimination charges are less likely from part-time employees, making full-time equivalent a more attractive operationalization of total industry employment. We estimate the employment for pregnant workers by multiplying total female BEA employment by NHIS 2012-2016, divided by total five-year full-time pregnant worker employment, times 100,000. Our estimated denominator—the number of pregnant women in an industry —has a larger standard error for industries with few female employees in the NHIS data. This likely explains the more dispersed pattern for industries with low female representation in figure 2.

Figure 2: Pregnancy Discrimination Rate by Percent Female in Industry



female in that industry. Transportation and warehousing has the largest pregnancy discrimination rate followed by wholesale trade, utilities, and manufacturing. These industries tend to include physically demanding jobs, which are likely to require an accommodation during pregnancy. For example, in its exposé on pregnancy discrimination, The New York Times interviewed workers in an XPO Logistics warehouse in Tennessee where multiple women suffered miscarriages after their accommodation requests were denied.[59]

As figure 2 shows, the estimated rate of pregnancy discrimination tends to decrease as the proportion female in the industry increases. Male dominated industries are less likely to employ a pregnant woman, but more likely to fire her when her pregnancy becomes known.

Workplaces

Workplaces, like industries, vary in their gender composition and their risk of producing pregnancy discrimination. To compare workplaces that are charged with pregnancy discrimination to workplaces that are not charged with pregnancy discrimination, we match establishments in our charge dataset with employer filed EEO-1 forms (for more information

[59]Silver-Greenberg and Kitroeff, *Miscarrying at Work: The Physical Toll of Pregnancy Discrimination*, op. cit.

on this process, see the matching appendix).

Previous literature has found that women's risk of sex discrimination, and in particular sexual harassment, increases with the share of men in the workplace.[60] However, as we have already seen, pregnancy discrimination is a different form of sex discrimination and may not follow the same pattern. Our analysis finds that workplaces charged with pregnancy discrimination tend to be more female dominated compared to establishments not charged with pregnancy discrimination. Consistent with this pattern, in a study of pregnancy discrimination charges filed in Ohio, Byron and Roscigno find that "plaintiffs of pregnancy-based firing discrimination were more likely to be fired from female-dominated establishments and female-dominated occupations".[61] We assume that much of this higher rate of pregnancy discrimination charges in more female workplaces reflects, as we saw for industry, that there are more women who become pregnant in these workplaces.

Research on pregnancy discrimination litigation has found that plaintiffs typically allege the discrimination they experience was from their supervisors, rather than their coworkers.[62] As such, the composition of management in a workplace may also be an important factor influencing the incidence of pregnancy discrimination. One might expect that more female managers in a workplace may help protect women from pregnancy discrimination.

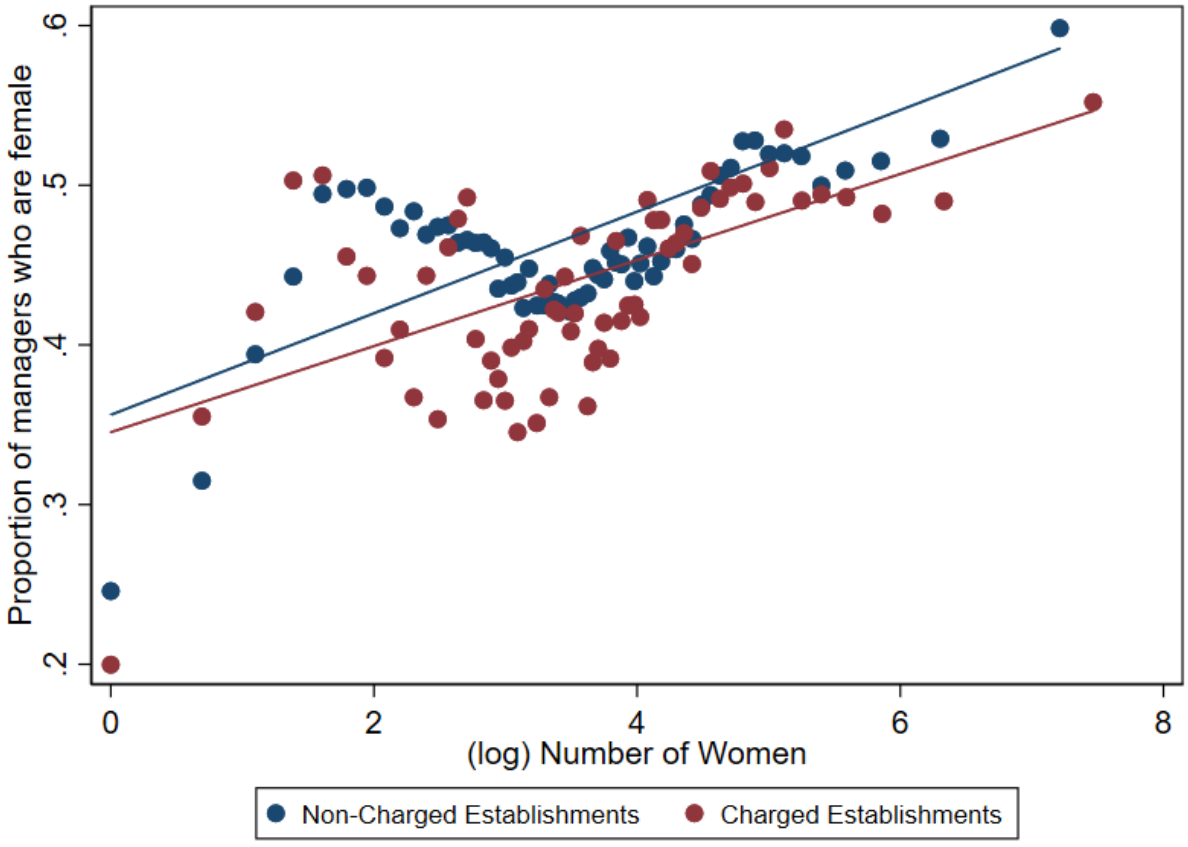
Workplaces with more female managers, also tend to have more female workers overall. In order to control for the number of women at risk of facing pregnancy discrimination, we examine the number of women in a workplace and the gender composition of management. Figure 4 charts the proportion of managers who are female against the number of women in the workplace (on a logarithmic scale) for charged and non-charged establishments. After controlling for the overall number of women in a workplace, establishments charged with pregnancy discrimination tend to have a smaller proportion of managers who are female. This is observable in the scatter of red dots tending to lie below the blue dots in figure 4. Only in workplaces with very few female employees is there a pattern of higher pregnancy discrimination associated with more women managers. Generally, more male managers is associated with more pregnancy discrimination. It appears that more women in management may help prevent pregnancy discrimination.

[60] Heather McLaughlin, Christopher Uggen, and Amy Blackstone. "Sexual harassment, workplace authority, and the paradox of power". In: *American sociological review* 77.4 (2012), pp. 625–647.

[61] Byron and Roscigno, "Relational power, legitimation, and pregnancy discrimination", op. cit., p. 444.

[62] Deardorff and Dahl, *Pregnancy Discrimination and the American Worker*, op. cit., p. 75.

Figure 3: Proportion of Managers Who are Female by (log) Number of Women for Charged and Non-Charged Workplaces



Outcomes for Pregnancy Discrimination Charges

There are several routes to resolving employer discrimination charges, some of which can potentially lead to monetary and other benefits for the charging party. In many cases, the charge will be resolved through mediation before an investigation occurs or settled during the investigation.

Charges not settled in mediation proceed through the EEOC investigation process. If the EEOC finds reasonable cause that discrimination occurred, the parties are invited to participate in conciliation discussions to resolve the charge prior to litigation. If conciliation fails, the EEOC may decide to litigate, although this is a rare event. However, the rarity of litigation may benefit the charging parties in terms of saved time and emotional duress, as plaintiffs in employment discrimination cases win less than 25 percent of district court cases.[63] The outcomes examined in this section reflect discrimination charges in which the charging party did not withdraw her charge and thus proceeded through mediation, negotiation/settlement, or conciliation.

Table 5 shows the percent of charges filed by women that received any (monetary or nonmonetary) benefit by discrimination basis. Among non-pregnancy-based charges filed by women, between 16 and 22 percent of charges received a benefit.[64] Twenty-six percent of pregnancy charges received some benefit, the highest percent of all types of discrimination filed by women. This may be a result of the often direct and blatant nature of pregnancy discrimination, which may make employers more likely to settle disputes in favor of the charging party.

[63]Ibid., p. 76.

[64]Outcomes were analyzed only for allegations that were closed for reasons other than administrative closure, 77% of all Title VII charges filed by women were non-administrative closure charges and 75% of pregnancy charges were closed by December 31, 2016.

Table 5: Percent of Women Who Received Benefit by Discrimination Basis

Basis	Percent Received Benefit
Pregnancy	26%
Sex	22%
Disability	20%
Retaliation	20%
Other Basis	17%
Religion	17%
National Origin	17%
Age	17%
Race/Color	16%
Sexual Orientation/Gender Identity	16%

Most people who file discrimination charges do not receive any monetary or workplace benefit. At the same time, pregnancy charges stand out as more likely than other forms of discrimination to secure some benefit. About a quarter of women who file pregnancy charges and do not withdraw their charge, receive some benefit under this process. Black women are slightly less likely to receive a benefit. While 26% of all pregnancy discrimination charges receive a benefit, 25% of those filed by white women receive a benefit compared to 23% filed by black women, and 25% filed by women of other races.[65]

The charges that proceed through mediation, conciliation, or (more rarely) court processes typically result in no compensation or a modest monetary compensation for the charging party. Very few cases lead to mandated changes at the workplace level that could help foster a more supportive environment for working mothers (see table 6). Almost 3 out of 4 (74%) pregnancy discrimination charges produce no benefit of either kind for the charging party.

Twenty-three percent of pregnancy discrimination charges produce some monetary benefit for the charging party, and 11% result in a required workplace-level change. Nearly 9 out of 10 (89%) pregnancy charges do not lead to any required change in employer behavior or managerial practices. Only eight percent of pregnancy discrimination charges lead to both a monetary benefit for the charging party and some negotiated change in workplace managerial practices.

[65]Race is frequently unreported in the charge database, 40% of pregnancy charges are missing race information, 29% of these charges receive a benefit.

Table 6: Benefit Type for Pregnancy Discrimination Charges

Benefit Type	Number	Percent
Monetary Benefit	3,025	15%
Monetary and Workplace Benefit	1,589	8%
Workplace Only	621	3%
No Benefit	14,890	74%

Overall, charging parties who received monetary compensation for pregnancy charges were awarded $17,601 on average, with a median award of only $7,500. This is slightly less than the approximate $21,100 received on average for other sex-based charges filed by women. Large monetary benefits are very rare—less than 1% of charges resulted in monetary compensation over $100,000 (table 7). The amount of compensatory and punitive damages available to a target is limited based on the size of her employer. According to the EEOC, the limit ranges from $50,000 for employers with 15-50 employees to $300,000 for employers with more than 500 employees.[66] Thus, the benefits received tend to be much lower than the maximum benefit available.

Compensation was higher for the 19% of those who filed a pregnancy discrimination charge and were represented by legal counsel ($33,427 on average). However, lawyers typically get a third of any settlement, reducing the added monetary value of representation. There is both a small monetary benefit to securing legal counsel and a higher probability (34% vs. 21%) of receiving a monetary settlement. It is unclear if this represents the efficacy of legal representation or that lawyers are more likely to take cases with a high probability of success.[67]

Those represented by counsel are also more likely to allege job loss and retaliation. While 20% of those not represented by counsel alleged employer retaliation, 38% of those with representation alleged employer retaliation. Additionally, 72% of those not represented by legal counsel alleged job loss compared to 83% of those represented by counsel.

[66]U.S. EEOC (Equal Employment Opportunity Commission). *Remedies For Employment Discrimination.* `https://www.eeoc.gov/employers/remedies.cfm`. [Online; accessed 9/7/19]. n.d.-j.

[67]Past research reports that the employment lawyers reject up to 90% of potential discrimination cases (See Ellen Berrey, Robert L Nelson, and Laura Beth Nielsen. *Rights on trial: How workplace discrimination law perpetuates inequality.* University of Chicago Press, 2017)

Table 7: Monetary Reward Amount for Pregnancy Discrimination Charges

	All Pregnancy Charges	Represented by Counsel	Not Represented by Counsel
$0	77%	66%	79%
$1 - $5,000	9%	4%	10%
$5,001 - $15,000	7%	12%	6%
$15,001 - $30,000	3%	9%	3%
$30,001 - $100,000	2%	7%	2%
$100,001+	Less than 1%	2%	Less than 1%
Average	$17,976	$33,427	$13,524
Median	$8,000	$17,500	$5,500

Overall, charging parties in pregnancy discrimination complaints typically receive modest or no monetary settlements and no change in their workplace. Those who lost their job are only very slightly more likely to receive a monetary benefit, an average of $17,601, which is unlikely to make up for the economic cost of the job loss, much less the added expenses of raising a child.

The benefit the target receives appears to depend on the process of resolving the charge. Table 8 reports the breakdown of benefit outcomes by three types of charge resolution processes. Settlement with benefits reflect instances where charges are "settled with benefits to the charging party as warranted by evidence of record", successful conciliations are instances where "charges with reasonable cause determination [by the EEOC are] closed after successful conciliation", and withdrawal with benefits are instances where the "charge is withdrawn by charging party upon receipt of desired benefits. The withdrawal may take place after a settlement or after the employer grants the appropriate benefit to the charging party".[68]

Overall, successful conciliations result in the largest monetary benefits as well as a very large proportion of workplace benefits. We think the latter is a particularly important result, as this is an opportunity to change employer behavior. Monetary damages are so low that we do not think they represent much of a threat to most employers. Unfortunately, successful conciliation agreements are much less common than the other closure types, only about 2% of closed charges ended in a successful conciliation compared to 15% that ended in a settlement with benefits and 13% that ended in a withdrawal with benefits.

Importantly, the conciliation process takes considerably longer. While on average pregnancy discrimination charges are closed in 280 days, successful conciliation cases take on average 660 days to close compared with withdrawals and settlements which each take approximately 220 days on average to close. If women do not reveal their pregnancy until the

[68]U.S. EEOC (Equal Employment Opportunity Commission), *Definition of Terms*, op. cit.

middle or end of the first trimester, which seems likely, then most resolutions happen after the pregnancy has ended.

Table 8: Pregnancy Discrimination by Closure Type for Charges with Benefits

	Settlement with Benefits	Successful Conciliation	Withdrawal with Benefits
Monetary Benefit	55%	19%	66%
Monetary and Workplace Benefit	38%	67%	16%
Workplace Only	7%	14%	18%
Average Monetary Amount	$14,960	$28,319	$20,691
Median Monetary Amount	$6,000	$18,000	$10,000
Average closure time (days)	222	660	224

Conclusions and Recommendations

While prior research has tended to focus on a small subset of pregnancy discrimination charges, or those charges that proceed to litigation, our report examines all pregnancy discrimination charges filed with the EEOC or state FEPAs between 2012 and 2016. Our analysis highlights pregnancy discrimination as a unique form of sex discrimination. While other forms of sex discrimination tend to develop insidiously over time, pregnancy discrimination is often a quick and direct managerial response to the discovery of an employee's pregnancy and typically results in rapid job loss. Though more likely to result in benefits to the charging party than other forms of discrimination, only a quarter of charges result in benefits—typically a modest monetary amount, and rarely required changes in managerial practices.

We find that male dominated industries tend to have higher rates of pregnancy discrimination charges. Our unique data set matched to the EEO-1 employer reports allows us to examine the gender composition of the workforce and managers of workplaces charged with pregnancy discrimination compared to workplaces not charged with discrimination. Unlike sexual harassment, which is more common in male dominated workplaces, female dominated workplaces are more likely to be charged with pregnancy discrimination. We also find evidence that, once accounting for the total number of women in the workplace, establishments charged with pregnancy discrimination tend to have more male mangers. These findings are an initial step to better understanding the contexts of pregnancy discrimination, which our future work will explore with more formal econometric modeling.

Our report provides a starting point for further research to better understand the patterns and contexts of employer pregnancy discrimination. However, some questions raised from this work suggest changes to the current EEOC data collection process. For example, the current charge discrimination data does not collect occupation, current wage/benefits, or job tenure data from the charging party, which would provide a more nuanced analysis of women experiencing pregnancy and other forms of discrimination. The EEOC also does not collect information on the alleged source of discrimination, such as co-workers, supervisors, personnel departments, or upper managers/owners. Since a goal of EEOC enforcement is to reduce the incidence of discrimination in the U.S. labor force, such data would permit a clearer picture of the actors and contexts involved. Such data collection would directly enhance the EEOC's ability to understand and redress employment discrimination.

The somewhat higher monetary damages associated with a successful conciliation process and the much higher rates of workplace benefits argues for an expansion of the conciliation process. Unfortunately, this process is expensive and the EEOC currently lacks the resources to expand these efforts. One potential solution would be for conciliation agreements to include a payment to the EEOC to cover expenses. Such practices are widespread in other regulatory agencies and would shift the funding burden from taxpayers to the employers charged with discrimination.

Overall, our report reinforces that pregnancy discrimination remains a persistent problem for many women in their workplaces. Pregnancy discrimination is partially rooted in business practices and enduring cultural beliefs regarding women, particularly pregnant women. Though there are legal structures in place intended to protect pregnant workers, it is important to consider whether these policies do enough. As described earlier, some activists argue that the current Pregnancy Discrimination Act does not do enough to protect pregnant workers and argue for a federal level Pregnant Workers Fairness Act, which would explicitly require pregnancy to be accommodated to the same degree as any other disability.

Passing the Pregnant Workers Fairness Act (PWFA) is an important first step in closing the legal coverage gap between the PDA and the ADA for pregnant workers and will expand the legal coverage available to women who experience pregnancy discrimination. However, it may not be enough to truly help pregnant workers retain employment during and after their pregnancies. Some have argued that adopting the ADA reasonable accommodation model, which requires employers to provide accommodations, may have unintended consequences for pregnant workers. Because this model requires employers to provide accommodations, employers may seek to avoid these costs by not employing pregnant women or women who may become pregnant.[69] As more states implement state level PWFA laws, future research

[69]Jennifer Bennett Shinall. "The Pregnancy Penalty". In: *Minn. L. Rev.* 103 (2018), p. 749.

should examine whether these laws affect the number and outcomes of charges filed, and whether they help pregnant women remain employed.

Fuzzy Matching Appendix

Introduction

Fuzzy matching is a probabilistic record linkage technique used to link two datasets where no perfectly identical identifier exists in the two datasets. Fuzzy matching between the charge data and the EEO-1 reports is necessary because a unique numeric identifier is not consistently available. The EEO-1 data contain a unique unit number, however, this unit number is not required during the intake process for filing a charge, and is thus missing for most charges. For example, only 17% of pregnancy discrimination charges have a valid EEO-1 unit number in the charge database. Fuzzy matching allows for linking the charge data and the EEO-1 reports using firm name and address available in both datasets. In this report, we match pregnancy charges to EEO-1 reports in order to compare workplaces charged with pregnancy discrimination to those not charged with pregnancy discrimination. This appendix details the process for matching pregnancy discrimination charges to the EEO-1 employer reports.

Before proceeding with the matching process, it important to note that all charges are not expected to match in the EEO-1 reports data. First, EEO-1 reports are only required for firms with 100 or more employees (or 50 employees for federal contractors with a contract of at least $50,000), so charges against smaller firms will likely not find matches in the EEO-1 reports data. Additionally, the EEO-1 reports only cover private employers, so charges against public employers will not match.

The charge data contain a rough categorical variable for the number of employees: 2% of pregnancy discrimination charges are filed against employers with 15 or fewer employees, 42% are filed against employers between 15 and 100 employees, and 42% are filed against employers with 101 or more employees (13% of charges are missing information on employer size). The charge data also contain a rough categorical variable indicating the institution type: about 7% of charges are made against public employers. Based on these variables, we expect about half of the charges to match in the EEO-1 data. This match rate aligns with previous research matching the charge and EEO-1 data.

We proceed with the fuzzy matching process in 3 steps: (1) direct match for charges with a valid EEO-1 unit number (2) standardize names and addresses (3) fuzzy matching. We then assess how the matched sample compares to the charges which we expected to match (based on size and institution type) but did not match.

Data Sources

The EEO-1 establishment level reports are matched to the charge data to obtain establishment level characteristics of workplaces charged with pregnancy discrimination.

EEOC Charge Data

The charge data comprise workplace discrimination charges from the Equal Employment Opportunity Commission (EEOC). The charges can be filed directly with the EEOC or with one of the state or local Fair Employment Practices Agencies (FEPAs). The data include all workplace charges filed between fiscal years 2012 and 2016 with the EEOC and FEPAs that have agreements with the EEOC to share the processing of charges.

The charge data are derived from the EEOC's case processing software and originally were in four data files: "allegations", "charging party", "respondents", and "charges". All data files contain a consistent unique charge identification number which allowed the four files to be merged into a single analysis file.

Data on each charge include the employer information (address, industry, and establishment size); charging partys basic demographics (age, race, national origin, and sex); the basis for the charge—the protected class, such as sex, sexual orientation, gender identity, race, national origin; the issue charged—the action or policy alleged to be discriminatory (the type of discrimination that took place such as promotion, harassment, discharge, etc.); the processing of the charge; and the outcome of the charge.

EEO-1 Reports

The EEOC collects annual data for private sector employers on the EEO-1 survey. The EEOC has been collecting these data since 1966, two years after they were authorized to do so by the U.S. Congress in Title VII of the 1964 Civil Rights Act. Title VII instructed the EEOC to monitor progress toward an equal opportunity society. Employers with 100 or more employees and federal contractors with 50 or more employees and a contract of at least $50,000 are required to submit an EEO-1 report. The EEO-1 data include establishment-level records of the employers name and address, industry, federal contractor status, and employment totals by race, sex, and occupation.

Direct Matching

First, we merge charges with a valid (non-missing) EEO-1 unit number by year. Table 9 shows the number of charges with a valid EEO-1 unit number, the number of matches made, the number of valid matches, and the number of charges that remain unmatched for each year and overall.

Table 9: Direct Matching Results by Year

	Total Charges	Valid Unit Number	Matches	Valid Matches	Total Unmatched
2012	5,690	1,054	834	743	4,947
2013	5,435	988	777	692	4,743
2014	5,244	987	733	656	4,588
2015	5,277	886	671	610	4,667
2016	5,101	722	527	469	4,632
Total	26,747	4,637	3,542	3,170	23,577

Overall, only 4,637 of the total 26,747 pregnancy discrimination charges (17%) had a valid EEO-1 number. Of the 4,637 charges with a valid EEO-1 unit number, 3,542 matched with an establishment in the EEO-1 database for that year. To ensure the validity of these matches (i.e. that the EEO-1 number was correctly assigned in the charge data), we keep only those matches in which the three digit zip code match in the charge data and EEO-1 report data ("valid matches"). Three digit zip code, rather than the full five digit zip code, is used because the final digits of a zip code are often error prone and the person reporting the zip code may have made a typing error. Of the 3,542 EEO-1 unit matches, 3,170 (90%) are valid matches. After this direct matching process, 23,577 charges (88%) remained unmatched.

Because we perform this process by year, it is possible that some matches are missed because the firm did not submit its EEO-1 form(s) in that year. As such, we next take all charges which had a non-missing EEO-1 unit number, but did not match an EEO-1 establishment in its given year and perform a direct match against all other EEO-1 years, keeping the year closest to the charge (for example, if a charge in 2012 matched in the 2013 and 2014 EEO-1 years, we keep the 2013 match). After this process, we match 369 additional charges. Table 10 shows the additional matches picked up for each charge year and overall. At the end of the two rounds of direct matching, we matched 3,539 charges and 23,208 charges (87%) remained unmatched.

Table 10: Direct Matching Results by Year Round 2

	Unmatched Round1	Matched in Other Years	Total Direct Match	Total Unmatched
2012	220	51	794	4,896
2013	211	41	733	4,702
2014	254	78	734	4,510
2015	215	96	706	4,571
2016	195	103	572	4,529
Total	1,095	369	3,539	23,208

Name and Address Standardization

We next move on to the fuzzy matching process for all 23,208 charges that did not have a direct match. Before the fuzzy matching can be implemented, company names and addresses must be standardized. To standardize names and addresses, we implement user written Stata commands, `stnd_compname` and `stnd_address` for standardizing company names and addresses written by Wasi and Flaaen.[70] This process helps remove inconsistencies in name formats. Specifically, these commands use rule-based pattern files to breakdown the company name and addresses into sub-parts. In addition to these standardize commands, we implement our own customized standardizing routine based on the specifics of the data.

Fuzzy Matching

To perform the fuzzy matching, we use Stata command `reclink2`, an extension of `reclink`.[71] We match the charge data to the EEO-1 reports using standardized parent company name and establishment address, blocking on the three digit zip code. We use parent company name because establishment names of multi-establishment firms often abbreviate the full company name and are likely to contain extra information (for example, a branch number) that could lower the quality of the match. In the case of a single establishment firm, the parent company name is the same as the establishment name.

To assess the performance of the fuzzy matching routine, we first perform the fuzzy match on the set of direct matches from stage 1. This allows us to assess how the fuzzy match routine performs on data known to be matches from the direct matching process.

[70] Nada Wasi and Aaron Flaaen. "Record linkage using Stata: Preprocessing, linking, and reviewing utilities". In: *The Stata Journal* 15.3 (2015), pp. 672–697.

[71] Ibid.

Table 11: Test of Fuzzy Match Using Direct Matched Sample

	Total Charges	Fuzzy Match	Exact Match	Unmatched	Avg rlsc
2012	794	603	318	191	0.95
2013	733	559	305	174	0.96
2014	734	558	301	176	0.95
2015	706	547	309	159	0.96
2016	572	433	233	139	0.94
Total	3,539	2,700	1,466	839	0.95

Table 11 shows the number of fuzzy, exact, and unmatched charges by year and overall. An exact match indicates the standardized establishment name and address in the charge data *exactly* matched the establishment name and address in the EEO-1 data. The fuzzy matching procedure produces a pair-similarly score (the rlsc) which indicates the strength of the match (where 1=exact match). Records with a minimum pair similarity score of .6 are considered "fuzzy matches". Records with a pair similarity score below .6 are considered unmatched. Column 6 of Table 11 also shows the average pair similarly score. Overall, about 54% of the direct match charges are exact matches, 76% are fuzzy matches, and 24% are unmatched in the fuzzy matching process. Overall, the average pair similarity score (rlsc) is .95 (median is .99) which indicates that the "fuzzy matches" are likely to be true matches.

Next, we perform the fuzzy match routine on the unmatched sample—the records that were not directly matched in the direct match process. Table 12 shows the number of exact, fuzzy, and unmatched charges for the charges which were unmatched during the direct matching process by year and overall. As Table 12 shows, the number of exact matches is low. Overall only 8% of charges were exactly matched in the EEO-1 data. The number of fuzzy matches is large (78% of charges are fuzzy matches), however, the average pair similarity score is only .74. This implies that many of these fuzzy matches are weak matches (lower rlsc score) and therefore less likely to be true matches.

Table 12: Unweighted Fuzzy Match Results

	Total Charges	Fuzzy Match	Exact Match	Unmatched	Avg rlsc
2012	4,896	3,666	367	1,230	0.74
2013	4,702	3,584	402	1,118	0.74
2014	4,510	3,492	350	1,018	0.74
2015	4,571	3,600	373	971	0.74
2016	4,529	3,721	410	808	0.75
Total	23,208	18,063	1,902	5,145	0.74

To account for the large number of weak matches, we perform the fuzzy matching procedure again using the weighting options available in the `reclink2` command.[72] The `wmatch` and `wnomatch` options allow for different weights to be applied to the various matching variables. Weights must be greater than or equal to 1 and are typically between 1 and 20. Specifically, the `wmatch` option specifies weights given to matches for each variable in the matching variable list. The weights reflect the relative likelihood of a variable match indicating a true observation match. Larger weights are applied to variables that more likely predict a true match. For example, a name variable will typically have a larger weight (as it is more likely to predict a true match) while a variable like city will have a smaller weight since duplicates are expected.[73]

Similarly, the `wnomwatch` option specifies weights given to mismatches for each variable in the matching variable list. These weights reflect the relative likelihood that a mismatch on a variable indicates that the observations do not match. A small weight indicates mismatches are expected even if the observation is a true match. For example, telephone number would commonly have a small `wnomatch` because of changes over time, multiple phone numbers per entity, or data entry errors.

There are no exact rules for what weights should be applied. In results not shown, we experiment with different weighting techniques. Generally, larger weights reduce the number of "fuzzy matches" (and thus increase the number of unmatched observations) while smaller weights increase the number of "fuzzy matches". Table 13 shows results from our preferred weighting scheme. We weight on firm name, firm address, and zip code.

Table 13: Weighted Fuzzy Match Results

	Total Charges	Fuzzy Match	Exact Match	Unmatched	Avg rlsc
2012	4,896	1,277	367	3,619	0.89
2013	4,702	1,275	402	3,427	0.90
2014	4,510	1,224	350	3,286	0.90
2015	4,571	1,240	373	3,331	0.90
2016	4,529	1,423	410	3,106	0.90
Total	23,208	6,439	1,902	16,769	0.90

Fuzzy match results using weights on firm name, address, and zip code and are defined as: wmatch(10 8 1) wnomatch(8 6 8)

[72] Ibid.
[73] Ibid.

As the table 13 shows, with this weighting scheme, the number of fuzzy matches is reduced but the pair similarity score increases indicating that although fewer matches were made, the matches are more likely to be true. This method produced 6,437 matches.

We consider all fuzzy matches with a pair similarity score of .95 or larger to be true matches (a non-systematic review of these charges indicated that those with a pair similarity score of .95 or larger were true matches). Because we use the `npairs(2)` option in the fuzzy matching routine, which allows for the top 2 potential matches to be retained, we manually go through those with multiple potential matches and determine the correct match. This created a sample of 3,563 charges. I then added back in the 3,539 direct matches for a final sample of 7,102 charges.

Matched Sample Vs. Expected Matches

The sample from this process is below the expected match rate (we expected to match around half of the charges), however, as long as it is a random sample of the potential matches, the smaller sample will not bias the results. Of the charges we expected to match (private employers with at least 100 employees), there is no reason to suspect that the charges that are matched in this sample are different than those which did not match in this sample (i.e the charges which matched are a random sample of the charges that could have matched). In the tables below, we compare the matched charges in the sample to the charges we expected to match (based on size and institution type), but did not match in the sample. As tables 14 -17 show, the matched sample and the expected matches (but unmatched) samples are very similar. The one exception is that our matched sample are more likely to have non-missing industry information.

Table 14: Variable Means Matched Sample vs. Expected Matches

	Matched Sample	Expected Matches
Found Cause	0.024	0.028
Got Benefit	0.196	0.203
White	0.326	0.333
Observations	7,102	8,216

Table 15: Receiving District Office Matched Sample vs. Expected Matches

	Matched Sample	Expected Matches
Atlanta District Office	4.44	4.00
Birmingham District Office	3.27	2.58
Charlotte District Office	5.27	4.89
Chicago District Office	10.03	7.96
Dallas District Office	4.67	6.33
Houston District Office	3.25	3.16
Indianapolis District Office	7.81	8.12
Los Angeles District Office	4.18	3.58
Memphis District Office	3.13	2.54
Miami District Office	6.24	7.07
New York District Office	10.63	13.84
Office of The Chair	8.70	9.94
Philadelphia District Office	9.14	7.70
Phoenix District Office	5.49	6.57
San Francisco District Office	6.52	6.04
St. Louis District Office	5.51	3.82
Washington Field Office	1.73	1.84
Observations	7,102	8,216

Table 16: Charge Year Matched Sample vs. Expected Matches

	Matched Sample	Expected Matches
2012	20.50	21.34
2013	20.70	19.72
2014	19.59	20.17
2015	19.74	19.43
2016	19.47	19.35
Observations	7,102	8,216

Table 17: Industry Matched Sample vs. Expected Matches

	Matched Sample	Expected Matches
Accommodation and Food Services	4.48	4.03
Admin. Support & Waste Remediation Services	5.70	3.13
Agriculture, Forestry, Fishing and Hunting	0.20	0.13
Arts, Entertainment, and Recreation	0.84	0.37
Construction	0.70	0.32
Educational Services	0.51	1.01
Finance and Insurance	5.00	1.92
Health Care and Social Assistance	17.46	6.73
Information	2.39	0.63
Management of Companies and Enterprises	0.94	0.29
Manufacturing	7.29	2.04
Mining, Quarrying, and Oil and Gas Extraction	0.31	0.11
Other Services (except Public Administration)	1.15	0.96
Professional, Scientific, and Technical Services	3.79	1.07
Public Administration	0.25	0.51
Real Estate and Rental and Leasing	0.89	0.84
Retail Trade	10.67	4.33
Transportation & Warehousing	2.18	0.96
Utilities	0.24	0.15
Wholesale Trade	1.80	0.55
Missing	33.19	69.91
Total	100.00	100.00
Observations	7,102	8,216

Missing Industry Appendix

Introduction

This appendix compares pregnancy discrimination charges that are missing industry information to those not missing industry information. We examine whether charges missing industry information are systematically related to other variables. Table 18 displays the means of key variables used in this analysis for pregnancy discrimination charges that are missing and not missing industry information. Table 19 shows the duration of pregnancy discrimination for charges that are missing and not missing industry information. As tables 18 and 19 show, charges missing industry information are quite similar to those not missing industry information.

Tables 20 - 23 explore additional variables that are not central to the analysis in this paper. Though the two samples are generally similar, there is some variation across employer size, district office, and time. Smaller establishments are more likely to be missing industry information (table 20). The Dallas, New York and San Francisco EEOC district offices as well as state FEPA agencies are more likely to be missing on industry as well. In contrast, The Charlotte, Chicago, Indianapolis, and Los Angeles EEOC district offices have substantially lower rates of industry missing data (table 21). There is also a secular trend toward lower rates of industry missing, which hopefully will continue into the future (table 23).

Table 18: Variable Means: Charges Missing Industry vs. Charges Not Missing Industry

	Charges Missing Industry	Charges Not Missing Industry
Found Cause	0.03	0.03
Got Benefit	0.20	0.19
White	0.32	0.39
Total Number of Issues	1.89	1.97
Total Number of Bases	1.78	1.90
Represented by Counsel	0.19	0.19
Average Monetary Benefit	15,128.69	21,734.22
Observations	16,314	10,433

Table 19: Duration of Pregnancy Discrimination: Charges Missing Industry vs. Charges Not Missing Industry

	Charges Missing Industry	Charges Not Missing Industry
1 Day	53.26	52.78
2 Days-2 Weeks	6.32	5.64
2 Weeks - 2 Months	12.97	12.70
3 - 6 Months	16.46	17.02
7 Months - 1 Year	7.45	7.70
More than a year	3.54	4.16
Observations	28,183	18,497

Note: The number of observations in this table is larger than other tables because this table is examining all individual allegations of pregnancy discrimination, rather than charges which contain a pregnancy allegation

Table 20: Number of Employees: Charges Missing Industry vs. Charges Not Missing Industry

	Charges Missing Industry	Charges Not Missing Industry
Under 15 Employees	2.92	0.65
15 - 100 Employees	47.82	33.96
101 - 200 Employees	7.05	9.17
201 - 500 Employees	7.07	12.38
501+ Employees	18.73	33.97
Unknown Number Of Employees	15.72	4.78
Missing	0.68	5.08
Observations	16,314	10,433

Table 21: Receiving District Office: Charges Missing Industry vs. Charges Not Missing Industry

	Charges Missing Industry	Charges Not Missing Industry
Atlanta District Office	4.19	3.19
Birmingham District Office	2.41	3.72
Charlotte District Office	3.92	6.23
Chicago District Office	4.73	13.85
Dallas District Office	6.34	3.04
Houston District Office	3.52	2.26
Indianapolis District Office	4.96	10.18
Los Angeles District Office	2.92	5.41
Memphis District Office	3.15	2.86
Miami District Office	10.46	9.07
New York District Office	15.20	4.88
Office of The Chair	8.71	8.87
Philadelphia District Office	6.94	9.20
Phoenix District Office	5.87	4.71
San Francisco District Office	10.70	5.45
St. Louis District Office	4.39	5.99
Washington Field Office	1.61	1.10
Observations	16,314	10,433

Table 22: Charge Filed With EEOC or FEPA: Charges Missing Industry vs. Charges Not Missing Industry

	Charges Missing Industry	Charges Not Missing Industry
EEOC	63.82	72.28
FEPA	36.18	27.72
Observations	16,314	10,433

Table 23: Year Charge Filed: Charges Missing Industry vs. Charges Not Missing Industry

	Charges Missing Industry	Charges Not Missing Industry
2012	19.93	23.37
2013	19.84	21.08
2014	19.37	19.98
2015	20.20	18.99
2016	20.66	16.59
Observations	16,314	10,433

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