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Abstract

This lecture will explore the relationship between pregnancy, work, and equal citizenship. While women have long fought for the rights of full citizenship – from property rights to suffrage to jury service – their effort to obtain “social citizenship,” including equal access to paid work and economic security, began in earnest in the 1970s. Pregnancy became a real obstacle to women’s full citizenship only when women entered the workforce in greater numbers in the second half of the twentieth century and, later still, when they tried to enter traditionally male-dominated occupations. Conflicts between pregnancy (and childbirth) and work escalated, triggering an anti-discrimination movement that resulted in, among other things, the Pregnancy Discrimination Act of 1978 (PDA). The PDA was part of a broader access-to-work movement that drew on notions of equal *social* citizenship for women, but the aspiration of the PDA—that pregnant workers would cease being second-class citizens – has not come to pass.

Though the law of pregnancy discrimination has reversed from an era of permissible exclusion to an era of access, it has stopped short of promoting the integration of pregnant women into the workplace – a necessary component of their equal social citizenship. The law protects many women against “pregnancy discrimination,” but it provides absolute rights only to the extent a pregnant woman is able to work at full capacity, uninterrupted by pregnancy or childbirth. The law does not generally permit employers to refuse to hire pregnant women or to make assumptions about their inability to carry out certain tasks. But it also does not insist that employers provide accommodations that would enable a woman to continue working through her pregnancy, and permits employers to fire employees who suffer a full or partial temporary loss in capacity due to pregnancy. Crabbed judicial interpretations have further limited the effectiveness of the PDA, particularly through unwarranted rejections of disparate impact theory in the pregnancy context.

The lack of a basic right to reasonable accommodation of pregnancy-related disability overlooks the real physical effects of pregnancy and childbirth on women and their employment opportunities. Doors have been opened, but not enough has been done to ensure pregnant women can make full use of their innate talents and capacities once inside. A genuine commitment to equal social citizenship can be carried out only by a legal framework that accounts for both the capacity and the potential incapacity of pregnant women.