ESSAY

PROTECTING PREGNANCY

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Laws to assist pregnant women in the workplace are gaining legislative momentum, both at the state and federal levels. Last year alone, four such laws went into effect at the state level, and federal legislation advanced farther than ever before in the House of Representatives. Four types of legislative protections for pregnant workers currently exist—pregnancy accommodation laws, pregnancy transfer laws, paid family leave laws, and state disability insurance programs—but very little is known about how each type of legislation performs relative to the others. This Essay provides empirical insight into this question, which is important for setting legislative priorities. After exploiting the differential timing of these laws' passage at the state level, the Essay finds across multiple specifications that pregnancy accommodation laws and paid family leave laws have several labor market benefits for women who have given birth in the past year. Conversely, pregnancy transfer laws may have unintended, negative consequences for women who have recently given birth. The results suggest that advocacy groups, who have typically favored all four types of legislation, should shift their focus to supporting accommodation and paid family leave laws.

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INTRODUCTION

Pregnancy may bring forth new life, but it may also kill a career. Indeed, women's scholars and advocates have long lamented the plight of pregnant women and new mothers in the labor market.[1] Until a few years ago, these laments have largely been derived from legal cases and other media accounts in which women experienced adverse employment actions because of pregnancy.[2] While compelling, such cases and accounts have always been subject to representativeness critiques—nor are they capable of quantifying the prevalence of pregnancy discrimination in the labor market.[3] Yet recent empirical evidence has lent validation to these earlier cases and accounts as representative of a more systematic disadvantage faced by pregnant women in the labor market.[4]

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1 *See, e.g.*, Deborah L. Brake, *The Shifting Sands of Employment Discrimination: From Unjustified Impact to Disparate Treatment in Pregnancy and Pay*, 105 GEO. L.J. 559, 592 (2017) ("Employers have often overestimated the disruption to the workplace caused by accommodating pregnant women, while underestimating the value of those women as employees."); Deborah Dinner, *Strange Bedfellows at Work: Neomaternalism in the Making of Sex Discrimination Law*, 91 WASH. U. L. REV. 453, 526 (2014) (arguing that, since the 1970s, " [a]dvocacy in favor of legal entitlements for mothers is considerably muted" and has "evolved away from a commitment to empowering women as workers"); Cary Franklin, *Inventing the "Traditional Concept" of Sex Discrimination*, 125 HARV. L. REV. 1307, 1360 (2012) ("Historically, women's capacity to become pregnant and their status as mothers have served as central justifications for their exclusion from the workforce.").

2 Recently, David Fontana and Naomi Schoenbaum have argued that many of the perceived impediments pregnant women continue to experience in the workplace (and beyond) are rooted in the widespread assumption of "pregnancy as a woman's domain." *See* David Fontana & Naomi Schoenbaum, *Unsexing Pregnancy*, 119 COLUM. L. REV. 309, 312–13 (2019) (arguing that "[d]ismantling . . . sex stereotypes after birth is too little because it is too late").

3 For extensive prior reviews of recent pregnancy case law, see, for example, Joanna L. Grossman, *Pregnancy, Work, and the Promise of Equal Citizenship*, 98 GEO. L.J. 567, 570 (2010) (arguing based on case law that "[t]he plight of pregnant workers today rests . . . in the failure of current law to account for the physical, medical, and social realities of pregnancy"); Deborah A. Widiss, *The Interaction of the Pregnancy Discrimination Act and the Americans with Disabilities Act After* Young v. UPS, 50 U.C. DAVIS L. REV. 1423, 1452 (2017) (arguing that, even after *Young v. UPS*, "the right to accommodations under the PDA remains comparative, not absolute," and "employers and employees may be confused about the extent of an employer's obligations under federal law"); Joan C. Williams & Stephanie Bornstein, *The Evolution of "FReD": Family Responsibilities Discrimination and Developments in the Law of Stereotyping and Implicit Bias*, 59 HASTINGS L.J. 1311, 1332 (2008) ("Yet today, an astonishing number of employers still do not understand that it is gender discrimination to treat someone differently at work because she is pregnant . . . .").

4 *See* Jennifer Bennett Shinall, *The Pregnancy Penalty*, 103 MINN. L. REV. 749, 787–89 (2018) (documenting persistent employment gaps between pregnant and nonpregnant women in the labor market).

Perhaps the plight of female workers surrounding childbirth is unsurprising, given the physical realities of pregnancy, childbirth, and new motherhood—not to mention the scarcity of legal protections available to them.[5] At the federal level, supportive legal protections for working pregnant women are quite limited. Three statutes currently govern these issues. First, Title VII of the 1964 Civil Rights Act, as amended by the Pregnancy Discrimination Act of 1978, requires employers to treat "women affected by pregnancy, childbirth, or related medical conditions . . . the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work."[6] At best, that language means employers may not "impose a significant burden on pregnant workers" unless the employer's legitimate, nondiscriminatory reasons for taking an adverse employment action are "sufficiently strong to justify the burden."[7] At worst, that language means "[e]mployers can treat pregnant women as badly as they treat similarly affected but nonpregnant employees."[8]

Second, the Americans with Disabilities Act (ADA) requires employers to provide "reasonable accommodations" (unless such accommodation creates an "undue hardship") to pregnant workers who become "substantially limit[ed in] one or more major life activities."[9] The extension of the ADA to pregnancy is relatively recent in origin, as federal courts had resisted extending the ADA's protections to "temporary" conditions like pregnancy until the 2008 ADA Amendments

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5 Common secondary conditions associated with pregnancy include gestational diabetes (which affects up to 14 percent of pregnant women), gestational high blood pressure (which affects between 5 percent and 8 percent of pregnant women) and low back pain (which affects roughly half of pregnant women). *See High Blood Pressure During Pregnancy*, CENTERS FOR DISEASE CONTROL PREVENTION (Jan. 29, 2020), https://www.cdc.gov/bloodpressure/pregnancy.htm [https://perma.cc/BN75-TEHB] (noting that "high blood pressure happens in 1 in every 12 to 17 pregnancies among women ages 20 to 44"); *High Blood Pressure*, NAT'L HEART, LUNG, & BLOOD INST.), https://www.nhlbi.nih.gov/health-topics/high-blood-pressure [https://perma.cc/TV67-QE3H] (last updated May 8, 2020) (scroll down to and click on "High Blood Pressure in Pregnancy"); P. Katonis et al., *Pregnancy-Related Low Back Pain*, 15 HIPPOKRATIA 205, 206 (2011) (reporting that "most studies estimate[e] that 50% of pregnant women will suffer from LBP"); Shin Y. Kim, Hoyt G. Wilson, Connie Bish, Glen A. Satten & Patricia Dietz, *Percentage of Gestational Diabetes Mellitus Attributable to Overweight and Obesity*, 100 AM. J. PUB. HEALTH 1047, 1047–48 (2010) (finding that gestational diabetes "affects 1% to 14% of pregnancies").

6 Pregnancy Discrimination Act of 1978 § 1, 42 U.S.C. § 2000e(k) (2018).

7 Young v. United Parcel Serv., Inc., 575 U.S. 206, 229 (2015).

8 Troupe v. May Dep't Stores Co., 20 F.3d 734, 738 (7th Cir. 1994).

9 *See* 42 U.S.C. §§ 12102(1)(A), 12112(b)(5)(A).

Act.[10] Still, the ADA is—at best—only available to workers with complicated pregnancies.[11] Third, the Family and Medical Leave Act (FMLA) requires employers to provide employees with twelve weeks of unpaid leave because of the birth of a child or a "serious health condition" faced by either the mother or child, including pregnancy- and childbirth-related complications.[12] The FMLA reaches fewer workers than either Title VII or the ADA, as the FMLA only applies to full-time employees who have worked for at least one year for a larger employer (the minimum employee threshold is fifty for the FMLA, versus fifteen for Title VII and the ADA).[13]

Because these three federal laws offer no protection to some pregnant workers—and only limited protection to others—calls for additional legislation have intensified, especially over the last few years. Several models of legislative protection exist, but proposals to guarantee workplace accommodations to all pregnant workers and to provide paid family leave after childbirth have gained the most traction.[14] Although no additional legislation has yet passed at the federal

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10 *Compare* Toyota Motor Mfg., Kentucky, Inc. v. Williams, 534 U.S. 184, 185 (2002) (holding that an "impairment's impact must also be permanent or long term" in order to be a disability under the ADA), *with* U.S. EQUAL EMP. OPPORTUNITY COMM'N, ENFORCEMENT GUIDANCE ON PREGNANCY DISCRIMINATION AND RELATED ISSUES (Jun. 25, 2015), https://www.eeoc.gov/laws/guidance/upload/pregnancy_guidance.pdf [https://perma.cc/8WBV-53U9] ("[I]t is likely that a number of pregnancy-related impairments that impose work-related restrictions will be substantially limiting, even though they are only temporary.").

11 Even the Equal Employment Opportunity Commission's liberal ADA enforcement guidance acknowledges that pregnancy itself is not an impairment within the meaning of the ADA. *See* 29 C.F.R. app. § 1630.2(h) (2020). Nonetheless, since 2008, some plaintiffs have successfully litigated against employers under the ADA for failure to accommodate pregnancies afflicted by complications. *See, e.g.*, Spees v. James Marine, Inc. 617 F.3d 380, 398–99 (6th Cir. 2010) (deferring to the EEOC guidance in an ADA pregnancy accommodation case); E.E.O.C. v. Mfrs. & Traders Tr. Co., 429 F. Supp. 3d 89 (D. Md. 2019) (finding the employer's failure to provide reasonable accommodation to a pregnant worker with cervical incompetence violated the ADA).

12 29 U.S.C. § 2612(a)(1) (2018).

13 *See* 29 U.S.C. § 2611(2).

14 *See, e.g.*, Sari Aviv, *Fighting for Overdue Protections for Pregnant Workers*, CBS NEWS (Jan. 12, 2020, 10:09 AM), https://www.cbsnews.com/news/fighting-for-overdue-protections-for-pregnant-workers-pregnant-workers-fairness-act/ [https://perma.cc/KR5L-B8TV] (detailing the recent federal accommodation proposal); Yuki Noguchi, *Federal Workers Poised to Get 12 Weeks Paid Parental Leave*, NPR (Dec. 11, 2019, 4:09 PM), https://www.npr.org/2019/12/11/787131372/federal-workers-poised-to-get-12-weeks-paid-parental-leave [https://perma.cc/H8WU-8UQ5] ("The popularity of paid leave comes in part out of recognition that it is a priority for nearly every worker . . . ."); Erin Spencer, *'Long Overdue' Pregnant Workers Fairness Act Advances From Committee*, FORBES (Jan. 14, 2020, 5:52 PM), https://www.forbes.com/sites/erinspencer1/2020/01/14/long-overdue-pregnant-workers-fairness-act-advances-from-committee/

level, a great deal of new legal protections have recently passed at the state level in response to this increased awareness of pregnant workers' vulnerability.[15]

Passing legislation intended to support pregnant women in the workplace may sound good in theory, yet little empirical evidence exists to document how such legislation performs in reality.[16] Along these lines, a large body of empirical work has previously demonstrated that many of the laws intended to help historically disadvantaged workers can have unintended consequences—particularly when such laws rely on information restrictions and employer uncertainty as their mechanism of protection.[17] A poorly designed workplace law can actually harm, instead of help, their intended targets, as demonstrated

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#732702543d10 [https://perma.cc/V9X2-UAN8] (describing the recent accommodation proposal in Congress).

15 *See infra* tbl.1.

16 A few empirical studies have previously evaluated the effects of California's paid family leave legislation. *See, e.g.*, Ann P. Bartel, Maya Rossin-Slater, Christopher J. Ruhm, Jenna Stearns & Jane Waldfogel, *Paid Family Leave, Fathers' Leave-Taking, and Leave-Sharing in Dual-Earner Households*, 37 J. POL'Y ANALYSIS & MGMT. 10, 31–32 (2018) (finding positive effects on fathers' leave-taking and joint leave-taking in California after passage of paid family leave); Maya Rossin-Slater, Christopher J. Ruhm & Jane Waldfogel, *The Effects of California's Paid Family Leave Program on Mothers' Leave-Taking and Subsequent Labor Market Outcomes*, 32 J. POL'Y ANALYSIS & MGMT. 224, 242 (2013) (finding positive effects on work hours and wages of mothers of young children in California after passage of paid family leave). *But see* Martha J. Bailey, Tanya S. Byker, Elena Patel & Shanthi Ramnath, *The Long-Term Effects of California's 2004 Paid Family Leave Act on Women's Careers: Evidence from U.S. Tax Data* 4 (Nat'l Bureau of Econ. Research, Working Paper No. 26416, 2019), https://www.nber.org/papers/w26416 [https://perma.cc/WA3R-W3S7] (finding negative long-term effects of California's paid leave law on women's labor market outcomes). Despite their contrary results, these studies have solely focused on one legislative model—paid leave—without considering the broader question of whether this legislative model is the best one for pregnant workers and new mothers.

17 *See, e.g.*, Amanda Agan & Sonja Starr, *Ban the Box, Criminal Records, and Racial Discrimination: A Field Experiment*, 133 Q.J. ECON. 191, 226–27 (2018) (finding through an audit study that callbacks for Black applicants declined dramatically after the passage of "Ban the Box" legislation); Jennifer Bennett Shinall, *Anticipating Accommodation*, 105 IOWA L. REV. 621, 636–37 (2020) (arguing that the ADA's ban on pre-offer discussions about applicants' underlying medical conditions increases employers' aversion towards hiring applicants with visible disabilities); Joni Hersch & Jennifer Bennett Shinall, *Something to Talk About: Information Exchange Under Employment Law*, 165 U. PA. L. REV. 49, 54–56 (2016) (demonstrating through an experimental vignette study that restricting discussions about women's career breaks hurts female job applicants); Jeff Meli & James C. Spindler, *Salary History Bans and Gender Discrimination* 8–9 (U. Tex. Pub. L. & Legal Theory Res. Paper Series No. E587), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3361431 [https://perma.cc/BQ5A-CANA] (demonstrating why bans on interview discussions about prior salary trap high-performing women in bad jobs and hurt women's overall welfare).

most recently by evaluations of laws that ban discussions of prior criminal history and of prior salary.[18]

Even if protective workplace legislation does not *harm* its intended targets, one legislative model may not be as effective as an alternative one. Because advocacy groups are resource-limited—and the political appetite for passing additional workplace protections is even more constrained—understanding how each alternative legislative model works in practice becomes critical for setting priorities. Both advocacy groups and potential beneficiaries have an interest in backing the most effective type of pregnancy legislation, given that the political will may only exist to pass one (and not multiple) types of supportive legislation.

In response to the growing need for understanding how pregnancy workplace legislation works in practice, this Essay presents a first empirical look at how each type of legislative model has served its targeted population at the state level. The Essay takes advantage of differential timing in the passage of protective legislation throughout the United States to evaluate both how (if at all) the labor market outcomes of recently pregnant women change after passage and how each type of legislative model performs relative to the others. Using a large sample of adult women of childbearing age (ages eighteen to forty-four) from the 2000 – 2018 American Community Survey (ACS) one percent yearly sample, this Essay presents evidence that both workplace accommodation legislation and paid family leave legislation can increase short-term labor market attachment, employment rates, and weeks worked for women who had a baby in the previous year.

In presenting this initial empirical evaluation of each type of pregnancy legislation's performance, the Essay proceeds as follows. Part I reviews all four existing models of pregnancy workplace legislation that exist throughout the United States. Part II considers prior scholarship on pregnancy in the workplace. Parts III and IV introduce the data and the difference-in-differences strategy utilized to identify the labor market effects of pregnancy legislation in this Essay. Finally, Part V presents empirical evidence on the performance of all four types of pregnancy legislation, both at the regional and the nationwide level.

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18 *See* Agan & Starr, *supra* note 17; Meli & Spindler, *supra* note 17.

I
FOUR LEGISLATIVE MODELS OF PROTECTING PREGNANCY IN THE WORKPLACE

At the state level, four major types of supportive laws have been passed to assist working women during and after their pregnancies. Each type of supportive legislation is briefly considered below.

Pregnancy Accommodation Laws: Pregnancy accommodation laws require employers to accommodate *all* working pregnant women, not just working pregnant women who are substantially limited in a major life activity.[19] Also known as the Pregnant Workers Fairness Act (PWFA), this legislation is wholly based on the ADA model and requires employers to provide—and pay for—reasonable accommodations to pregnant women in the workplace, unless such accommodations would create an undue hardship for the employer.[20] Like the ADA, the PWFA does not contain any explicit cost limits for employer-provided accommodation. This legislative model currently enjoys broad support from scholars, advocates, and legislators for bolstering protections for working pregnant women.[21] Although it has been introduced in Congress many times, the latest iteration of the federal bill passed the House of Representatives in September 2020 and, for the first time, has been endorsed by the U.S. Chamber of Commerce.[22]

Pregnancy Transfer Laws: Pregnancy transfer laws require employers to transfer pregnant employees to open positions that are less hazardous or less strenuous when medically nec-

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19 For the text of the PWFA legislation that passed the House in 2020, see H.R. 2694, 116th Cong. (2020), https://www.congress.gov/bill/116th-congress/house-bill/2694 [https://perma.cc/A8LX-ZCN5].

20 *Compare id.* ("[T]he bill declares that it is an unlawful employment practice to . . . fail to make reasonable accommodations to known limitations of [pregnant job applicants or] employees . . . ."), *with* 42 U.S.C. § 12112(b)(5)(A) (2018) (stating that an employer discriminates by "not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee").

21 *See* ACLU, CONGRESS SHOULD PASS THE PREGNANT WORKERS FAIRNESS ACT (2019), https://www.aclu.org/sites/default/files/field_document/pwfa_-fact_sheet-july_2019.pdf [https://perma.cc/8MB6-ELUK]; *NWLC Applauds Bipartisan House Vote Supporting Pregnant Workers Fairness Act (PWFA)*, NAT'L WOMEN'S L. CTR. (Sept. 17, 2020), https://nwlc.org/press-releases/nwlc-applauds-bipartisan-house-vote-supporting-pregnant-workers-fairness-act-pwfa/ [https://perma.cc/3SBP-8GYL].

22 *See* Alex Gangitano, *Pro-Business Lobby Endorses Bill to Protect Pregnant Workers*, THE HILL (Jan. 14, 2020, 2:42 PM), https://thehill.com/business-a-lobbying/business-a-lobbying/478204-pro-business-lobby-endorses-bill-to-protect-pregnant-workers [https://perma.cc/G7P5-4UQT].

essary for the mother and child.[23] Pregnancy transfer laws are more limited in coverage than pregnancy accommodation laws since they only apply when medical necessity dictates it. On the other hand, guaranteed transfer to an open position may go beyond the guarantees of either the PWFA or the ADA.[24] Whether reasonable accommodation requirements mandate an employer to prefer a covered employee for transfer to another open position has been the subject of a great deal of litigation and a resulting federal circuit split under the ADA.[25]

Short-Term Disability Insurance Programs: A few states provide their workers with short-term disability benefits. These benefits typically consist of a percent of a worker's normal weekly pay, subject to a maximum reimbursement amount and duration, when the worker is unable to perform essential job functions.[26] In contrast to federal disability benefits, which are targeted towards individuals who are unable to work in the long run, state programs are designed to assist individuals who are temporarily unable to work because of a health condition.[27] State short-term disability insurance programs are not de-

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23 For typical examples of pregnancy transfer laws, see, for example, ALASKA STAT. § 39.20.520(a) (2020) ("A pregnant employee may request a transfer to a suitable position under this section."); CAL. GOV'T CODE § 12945(a)(3)(C) (West 2018) (requiring an employer to "temporarily transfer a pregnant employee to a less strenuous or hazardous position for the duration of the pregnancy if the employee so requests, with the advice of the employee's physician" so long as the employer can do so reasonably); LA. STAT. ANN. § 23:342(4) (2020); (requiring employer "to temporarily transfer a pregnant female employee to a less strenuous or hazardous position for the duration of her pregnancy if she so requests, with the advice of her physician" so long as the employer can reasonably do so).

24 Although transfer to an open position is specifically defined as a reasonable accommodation in some pregnancy accommodation state statutes, *see, e.g.*, CONN. GEN. STAT. ANN. § 46a-60(a)(2) (West 2019), other pregnancy, accommodation state statutes noticeably exclude any mention of transfer from their reasonable accommodation statutes, *see e.g.*, Haw. CODE R. § 12-46-107(c) (LexisNexis 2018).

25 *See* Huber v. Wal-Mart Stores, Inc., 486 F.3d 480, 483 (8th Cir. 2007) (finding, in contrast to other circuits, that the ADA's reasonable accommodation mandate does not require transfer to an open position). The U.S. Supreme Court granted certiorari in *Huber* on precisely this issue in 2007, but the case settled before oral argument and was dismissed. Huber v. Wal-Mart Stores, Inc., 552 U.S. 1074 (2007), *cert. dismissed*, 552 U.S. 1136 (2008).

26 For a concise comparison of short-term disability laws in the United States, see NAT'L P'SHIP FOR WOMEN & FAMILIES, EXISTING TEMPORARY DISABILITY INSURANCE PROGRAMS (2015), https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/existing-tdi-programs.pdf [https://perma.cc/4D9P-6ND9].

27 *See* SOC. SEC. ADMIN., TEMPORARY DISABILITY INSURANCE 44, https://www.ssa.gov/policy/docs/progdesc/sspus/tempdib.pdf [https://perma.cc/PPB3-P8XX] ("Temporary disability insurance, sometimes referred to as cash sickness benefits, provides workers with partial compensation for loss of wages caused by temporary nonoccupational disability.").

signed to help pregnant women specifically, but since the 1980s, existing state programs have reached *qualified* pregnant women.[28] Similar to pregnancy transfer laws, short-term disability regimes do not reach all pregnant women, but only those pregnant women with complications serious enough to qualify them as disabled for the purposes of the state program. All existing state programs are funded through payroll taxes, although states vary regarding how much of the tax burden is borne by employers versus employees.[29]

Paid Family Leave: A handful of states provide their workers with paid family leave surrounding the birth of a child. Paid family leave laws are almost entirely a recent phenomenon; the earliest such law came from California in 2004, and most existing laws have been passed within the last few years.[30] Like state short-term disability insurance programs, paid family leave benefits typically consist of a percent of a worker's normal weekly pay, subject to a maximum reimbursement amount and duration, when an individual is not at work because of pregnancy and childbirth. In fact, the earliest family leave programs in California, New Jersey, Rhode Island, and New York grew out of these states' existing short-term disability insurance programs.[31] The major differences between paid family leave programs and state disability insurance programs are threefold. First, family leave programs reach all pregnancies, not just the complicated ones that disable the mother. Second, family leave programs also reach the other, nonpregnant parent. Third, family leave programs typically begin around the birth of a child, whereas state disability insurance programs end shortly after the birth of a child (assuming that childbirth

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28 Whether California's state disability insurance program extended to pregnant women was the subject of an equal protection challenge in *Geduldig v. Aiello*. 417 U.S. 484, 497 (1974) (upholding California's exclusion of pregnant women from the program). Nonetheless, states uniformly reversed course on the exclusion of pregnant women from their disability insurance programs after the passage of the PDA in 1978. Although the PDA specially applied to Title VII, the Supreme Court noted in a subsequent opinion that, through the PDA, Congress "unambiguously expressed its disapproval of both the holding and the reasoning of the Court" in failing to view pregnancy discrimination as a form of sex discrimination. Newport News Shipbuilding & Dry Dock Co. v. E.E.O.C., 462 U.S. 669, 678 (1983).

29 For an in-depth discussion of state short-term disability laws, see Shinall, *supra* note 4, at 809–12.

30 *See infra* tbl.1.

31 For an in-depth discussion of the earliest paid family leave laws, see Shinall, *supra* note 4, at 809–12.

remedies the disabling condition).[32] Like pregnancy accommodation laws, paid family leave has gained increasing support on the federal level, particularly over the past two years, although the structure of the programs favored by Democrats and Republicans remains divisive.[33]

Table 1 provides hand-collected data on the availability of these four types of laws in all fifty states, Puerto Rico, and Washington, D.C.[34]

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[32] For a comparison of paid leave benefits provided by a selection of state short-term disability programs versus paid family leave programs in states with both programs, see NAT'L P'SHIP FOR WOMEN & FAMILIES, STATE PAID FAMILY AND MEDICAL LEAVE INSURANCE LAWS, (2019), http://www.nationalpartnership.org/research-library/work-family/paid-leave/state-paid-family-leave-laws.pdf [https://perma.cc/X5JY-6U2K].

[33] For example, President Donald Trump openly supported a weak version of a paid family leave bill introduced in the Senate. *See* Advancing Support for Working Families Act, S. 2976, 116th Cong. (2019); Donald Trump, President of the United States, State of the Union Address (Feb. 4, 2020), available at https://www.nytimes.com/2020/02/05/us/politics/state-of-union-transcript.html [https://perma.cc/7236-AUKL]. More progressive federal legislators, however, support a more robust paid family leave bill introduced in the Senate. *See* Family and Medical Insurance Leave Act, S. 463, 116th Cong. (2019). For a comparison of the two family-leave bills that the Senate considered last year, see Claire Cain Miller, *Why Few Democrats Clapped for Trump's Call for Paid Family Leave*, N.Y. TIMES, Feb. 5, 2020, at B5, available at https://www.nytimes.com/2020/02/05/upshot/paid-leave-trump.html [https://perma.cc/QF9X-N2J4].

[34] Table 1 lists the effective date of all existing state short-term disability programs, although it appears that most states declined to extend these programs to pregnant women until the passage of the PDA in 1978. For the purposes of the present study, however, note that all existing state short-term disability laws have applied to pregnant women from the earliest data observations in 2000. Although some advocacy organizations provide lists of pregnancy protection laws, none of the existing lists are comprehensive. The existing lists prepared by advocacy organizations omit information on certain types of laws and/or omit some states with existing laws. A spreadsheet of all relevant statutory citations to the state laws referenced in Table 1 is on file with the author.

Table 1. Effective Dates of State Legal Protections for Pregnant Workers

	Effective Date of Laws			
State/Territory	Pregnancy Accommodation	Pregnancy Transfer	Short-Term Disability Insurance	Paid Family Leave
Alabama				
Alaska		1992		
Arizona				
Arkansas				
California	1999	1980	1949	2004
Colorado	2016	2016		
Connecticut	2017	1979		2022
Delaware	2014	2014		2019
District of Columbia	2015	2015		2020
Florida				
Georgia				
Hawaii	1990		1969	
Idaho				
Illinois	2015	2015		
Indiana				
Iowa				
Kansas				
Kentucky	2019	2019		
Louisiana		1997		
Maine				
Maryland	2013	2013		2018
Massachusetts	2018	2018		2021
Michigan				
Minnesota	2014	2014		
Mississippi				
Missouri				
Montana				
Nebraska	2015	2015		
Nevada	2017	2017		
New Hampshire				
New Jersey	2014	2014	1949	2009
New Mexico				
New York	2016		1949	2018

	Effective Date of Laws			
State/Territory	Pregnancy Accommodation	Pregnancy Transfer	Short-Term Disability Insurance	Paid Family Leave
North Carolina	2018	2018		
North Dakota	2015			
Ohio				
Oklahoma				
Oregon	2020	2020		
Pennsylvania				
Puerto Rico			1968	
Rhode Island	2015	2015	1942	2014
South Carolina	2018	2018		
South Dakota				
Tennessee				
Texas	2001	2001		
Utah	2016			
Vermont	2018			
Virginia				
Washington	2017	2017		2020
West Virginia	2014	2014		
Wisconsin				
Wyoming				

As already suggested by the above discussion (and as apparent from Table 1), it is critical to evaluate these laws at the same time, instead of separately, since these laws do not exist in isolation. Rather, supportive pregnancy legislation can (and does) coexist with other types of legislation that may offer duplicative protections. For example, the state of California has already been the focus of a few prior studies on the effect of paid family leave legislation.[35] And yet, paid family leave is not the only type of legislation protecting currently and recently pregnant workers in the state. California, in fact, has passed all four types of pregnancy legislation, albeit in different years.[36] Consequently, this Essay aims to consider all four types of laws together in an empirical evaluation of their relative labor market effects on recently pregnant women.

[35] *See supra* note 16 (describing a handful of economics studies on California's paid leave legislation).

[36] *See* Bailey, Byker, Patel & Ramnath, *supra* note 16, at 5–6 (summarizing the history of different family leave legislation passed in the United States, including California).

II
PRIOR EVALUATIONS OF PREGNANCY LEGISLATION IN THE U.S. WORKPLACE

Previous empirical scholarship examining supportive pregnancy legislation in the United States has been quite limited both in quantity and in scope.[37] The limited quantity has largely derived from a lack of available labor market data. As discussed in the next Part, most labor market datasets upon which empirical scholars typically rely do not identify pregnant women. Yet previous scholarship has been similarly limited in scope, focusing almost exclusively on paid family leave legislation in California.[38] California has been a popular choice for study by empirical scholars because, as indicated in Table 1, it was the first state to pass paid family leave legislation in 2004. On the other hand, California may be a problematic choice. Besides the obvious critique that California is different—and any results from there may not be externally valid to other U.S. states[39]—its paid leave legislation has recently undergone significant revision to correct perceived weaknesses. Beginning in 2018, the wage replacement rate for workers taking paid family leave increased dramatically from fifty-five percent to as much as seventy percent, after California state legislators realized that leave take-up rate had been too low among low-income individuals.[40] Perhaps then, it is unsurprising that prior empirical studies of the labor market effects of California's paid leave legislation have been decidedly mixed in their findings.[41]

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37 *See* Shinall, *supra* note 4, at 819–21.

38 *See* Bailey, Byker, Patel & Ramnath, *supra* note 16, at 8.

39 Empiricists commonly use the term "external validity" to indicate whether a study's results can be extrapolated more broadly (and beyond the sample of subjects who are the focus of the study). For a discussion of external and internal validity threats in observational data, field experiments, and laboratory experiments, see Justin Sevier, *Vicarious Windfalls*, 102 IOWA L. REV. 651, 705 (2017) (characterizing a study as externally valid if it "more accurately reflect[s] behavior in real trials").

40 *See* Cal. Unemp. Ins. Code §2655(e)(2) (West 2017); CAL. EMP. DEV. DEP'T, OVERVIEW OF CALIFORNIA'S PAID FAMILY LEAVE PROGRAM 18 (2021), https://www.edd.ca.gov/pdf_pub_ctr/de2530.pdf [https://perma.cc/PH2R-9XLM] (noting that "Assembly Bill 908 increased the DI and PFL wage replacement rate from approximately 55 percent to approximately 60 to 70 percent"); *see also Assembly Bill 908: Strengthening Paid Family Leave (PFL)*, CAL. WOMEN'S L. CTR., https://www.cwlc.org/2017/01/a0908-assembly-bill-908-strengthening-paid-family-leave-pfl/ [https://perma.cc/ZC5F-PWZV] (last visited Apr. 11, 2021) (noting that AB 908 "would expand upon current law, increasing the wage replacement rate by 15% to 25%").

41 *See supra* note 16 (detailing both positive and negative labor market effects after California's paid leave legislation).

Beyond the few studies of the paid family leave law in California, one other empirical study from 2018 has previously compared employment gaps between pregnant and non-pregnant women in several states with and without paid family leave legislation. The study concluded that employment gaps were narrowest in paid family leave states with high wage replacement rates for workers (i.e., *not* California before 2018).[42] This study additionally cast doubt on the ability of PWFA-style legislation to improve women's labor market outcomes in any systematic fashion. Recall from the prior Part that the PWFA's reasonable accommodation model is entirely based on the ADA's reasonable accommodation model. And while little empirical research exists with respect to *pregnancy* accommodation in the workplace, a great deal of research exists with respect to disability accommodation. This research almost universally concludes that the ADA has not improved, and may have even harmed, labor market outcomes of its covered population.[43]

Relatedly, a final empirical article has explored the problems associated with the reasonable accommodation model in the workplace—whether that model is applied to disability or to another health condition like pregnancy.[44] Using a series of experimental vignette studies and follow-up questions, the study documented decision makers' systematic hesitance to hire workers in need of accommodation.[45] Much of decision makers' hesitance towards workers in need of accom-

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42 *See* Shinall, *supra* note 4, at 818–30.

43 *See, e.g.*, Daron Acemoglu & Joshua D. Angrist, *Consequences of Employment Protection? The Case of the Americans with Disabilities Act*, 109 J. POL. ECON. 915, 926–49 (2001) (finding that the ADA decreased employment rates of disabled workers); Thomas DeLeire, *The Wage and Employment Effects of the Americans with Disabilities Act*, 35 J. HUM. RESOURCES 693, 701 (2000) (finding a decline in employment and wages of disabled men following the passage of the ADA); Julie L. Hotchkiss, *A Closer Look at the Employment Impact of the Americans with Disabilities Act*, 39 J. HUM. RESOURCES 887, 888 (2004) (finding no effect of the ADA on the labor market outcomes of disabled individuals after accounting for changes in labor supply); Douglas Kruse & Lisa Schur, *Employment of People with Disabilities Following the ADA*, 42 INDUS. REL. 31, 61–62 (2003) (finding any effect of the ADA on the labor market outcomes of disabled individuals inconclusive after considering sensitivities in how disability is defined); *see also* Jennifer Bennett Shinall, *What Happens When the Definition of Disability Changes? The Case of Obesity*, 5 IZA J. LAB. ECON. 1, 3 (2016) (finding no evidence that individuals who benefited from Congress's expansion of the disability definition in the ADAAA have improved employment outcomes); Shinall, *supra* note 4, at 802–03 (finding that pregnant women with complications, who theoretically have access to the Act's protections since the ADAAA, have not seen their employment outcomes improve since the ADAAA).

44 *See generally* Shinall, *supra* note 17, at 621.

45 *See id.* at 648–54.

modation, however, could be traced to an inability to estimate the cost of accommodation with any accuracy.[46] As currently formulated, neither the ADA nor the PWFA places an explicit upper bound on how much an employer must spend to accommodate a covered employee.[47] Employers' only guidance under this legislative model is that they must spend a "reasonable" amount, although not so much as to create an "undue hardship."[48] Moreover, the legislative model bans employers from discussing medical conditions with job applicants before making an employment offer, even though these discussions could help employers more accurately estimate accommodation costs.[49] Using a series of follow-up questions regarding workers in need of accommodation, the study presented evidence that decision makers were willing to spend money on accommodation, but that willingness diminished as the associated cost of accommodation became more uncertain.[50]

Familiarity with the above experimental results—not to mention with the multitude of previous studies showing that wage and employment outcomes of disabled individuals have failed to improve since the ADA's passage[51]—makes it difficult to be optimistic about the PWFA's potential to improve pregnant women's labor market outcomes. The PWFA's language looks exactly like the ADA's language.[52] It requires employers to provide and pay for reasonable accommodations for women affected by pregnancy and childbirth, unless such accommodations would create an undue hardship for the employer.[53]

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46 *See id.* at 654–69.

47 *See* 42 U.S.C. § 12112(b)(5) (2018); H.R. 2694, 116th Cong. § 2 (2020), https://www.congress.gov/bill/116th-congress/house-bill/2694/text [https://perma.cc/C7AU-4ZTC].

48 *See* 42 U.S.C. § 12112(b)(5); H.R. 2694 § 2.

49 *See* 42 U.S.C. § 12112(d)(2)(A).

50 *See* Shinall, *supra* note 17, at 654–69.

51 *See supra* note 43 and accompanying text (providing a comprehensive list of economics studies finding that the ADA has not improved wage and employment outcomes of disabled workers since its passage).

52 *Compare* 42 U.S.C. § 12112(b)(5)(A) ("[T]he term 'discriminate' includes . . . not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity . . . ."), *with* H.R. 2694 § 2 ("It shall be an unlawful employment practice for a covered entity to . . . not make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity . . . .").

53 *See* H.R. 2694 § 2(1).

Like the ADA, the PWFA contains no explicit upper bound on the costs that an employer must undertake to accommodate a pregnant woman; the only statutory guidance is the vague language of reasonability and undue hardship.[54]

On the other hand, the PWFA arguably has three major features that distinguish it from the ADA: certainty of coverage, finiteness of coverage, and familiarity with needed accommodations. First, before facing the uncertainty of costs inherent in complying with the ADA's accommodation mandate, employers must initially confront the uncertainty surrounding whether the employee asking for accommodation is covered by the Act. Some conditions (such as being in a wheelchair) obviously render an employee substantially limited in a major life activity (and thus covered under the ADA), but for most conditions, the decision is not so obvious. Unlike the ADA, the PWFA does not have the same uncertainty of coverage; it is much easier for an employer to determine whether an employee is pregnant than whether an employee is substantially limited in a major life activity.[55]

Second, another aspect that may increase employer uncertainty surrounding the costs associated with ADA compliance is the employer's inability to estimate the duration of the employee's substantial limitation with any accuracy. Take, for example, an employee's cancer diagnosis that results in physical limitations. An employer trying to estimate the costs of accommodating such an employee may not be able to determine whether the employee's limitations will endure for a few weeks, for a few months, or permanently. Pregnancy, on the

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54 *See id.*; *see also* 42 U.S.C. § 12112(b)(5)(A).

55 Prior legal scholarship suggests that this distinction could be particularly important, given that one of the major criticisms of the ADA prior to the 2008 Amendments was the difficulty in determining who was covered under the Act because of vague statutory language and Congress's failure to define key terms. *See, e.g.*, Jill C. Anderson, *Just Semantics: The Lost Readings of the Americans with Disabilities Act*, 117 YALE L.J. 992, 997–98 (2008) (arguing that a rigorous linguistics analysis exposes the ambiguity of the definition of disability in the ADA, which the author identifies as the inherent weakness of the Act's original version). *See generally* Samuel R. Bagenstos, *Subordination, Stigma, and "Disability"*, 86 VA. L. REV. 397 (2000) (arguing for a subordination-focused approach to interpreting the ambiguous definition of disability in the 1990 version of the ADA); Mary Crossley, *Disability Kaleidoscope*, 74 NOTRE DAME L. REV. 621 (1999) (using the social model of disability to criticize the restrictive definition of disability adopted by courts under the 1990 version of the ADA); Lisa Eichhorn, *Major Litigation Activities Regarding Major Life Activities: The Failure of the "Disability" Definition in the Americans with Disabilities Act of 1990*, 77 N.C. L. REV. 1405 (1999) (arguing that the ambiguous definition of "disability" in the 1990 Act, and courts' subsequently restrictive interpretations of it, should be amended legislatively).

other hand, is a finite nine-month period with a definite endpoint. Employers can be assured that—whatever the costs associated with accommodating a pregnant worker—their obligation to accommodate that worker will end in the near future. Employers do not always have that assurance with respect to employees in need of accommodation because of a disability.

Third, both pregnancy and its complications are not uncommon and, as a result, more likely to be familiar to employers than other disabling health conditions.[56] The set of reasonable accommodations commonly required by pregnant workers are comparatively limited in scope (lifting restrictions and additional breaks for water and restrooms are among the most common requests[57]), not to mention better understood by employers, than the accommodations required for other disabling health conditions. Along these lines, employers are more likely to have prior experience dealing with pregnant workers who had similar accommodation needs and may already own appropriate accommodating equipment.

In sum, because the PWFA's language is entirely based on the ADA's language, the PWFA could be plagued by the same problems as the ADA—most notably, the lack of a clear upper bound on an employer's accommodation expenditures. Still, the relative ease of determining coverage, the finite nature of coverage, and employers' better understanding of the underlying health condition could render the PWFA better functioning in the workplace than the ADA. The following Parts will test these hypotheses with respect to women protected by PWFA-style legislation, in addition to examining the comparative labor market outcomes of recently pregnant women in states with

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[56] *See supra* note 5 (detailing how certain pregnancy-related complications, such as back pain, are extremely common); *see also* Shinall, *supra* note 4, at 755 (describing the commonality of changes in women's body size and body characteristics during pregnancy, which may have workplace implications).

[57] *See, e.g.*, NAT'L P'SHIP FOR WOMEN & FAMILIES, THE PREGNANT WORKERS FAIRNESS ACT FACT SHEET (2019), https://www.nationalpartnership.org/our-work/resources/economic-justice/pregnancy-discrimination/fact-sheet-pwfa.pdf [https://perma.cc/3H9X-7LTJ] ("Denial of workplace accommodations for pregnancy–such as sitting instead of standing, carrying a water bottle, restricting the weight that a worker can lift, or permitting more frequent bathroom breaks–accounted for more than 650 of the pregnancy discrimination charges filed with the EEOC in 2015 alone."); *The Case for the Pregnant Workers Fairness Act, In Stories*, A BETTER BALANCE (Sept. 18, 2019) https://www.abetterbalance.org/resources/the-case-for-the-pregnant-workers-fairness-act-in-stories/ [https://perma.cc/ZE3N-YHS9] ("We speak with pregnant workers every day who face an impossible choice. What do I do if my doctor advises that I request a simple accommodation to maintain a healthy pregnancy, like a stool to sit on or assistance with heavy lifting, but my employer won't provide them?").

paid family leave, pregnancy transfer, and short-term disability insurance legislation. The next Part introduces the data necessary to undertake this comparative legislative evaluation.

III
DATA

As noted in the prior Part, almost no labor market data exist on pregnant women in the U.S. labor market. The Census and the Survey of Income and Program Participation, for instance, do not identify pregnant women.[58] The Current Population Survey only identifies pregnancy in a small subsample of women chosen to take a more detailed, periodic survey called the Eating and Health Module (EHM).[59] Because only three percent of women in the United States are pregnant at any given time,[60] the small EHM subsample contains an insufficient number of observations to identify the labor market effects of pregnancy legislation.[61]

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[58] *See generally* U.S. CENSUS BUREAU, 2010 CENSUS SUMMARY FILE 1: TECHNICAL DOCUMENTATION (2012), https://www.census.gov/prod/cen2010/doc/sf1.pdf [https://perma.cc/7G3R-UYSN] (demonstrating that survey respondents were not asked about recent pregnancy or childbirth); *Survey of Income and Program Participation Codebook*, U.S. CENSUS BUREAU, https://www.census.gov/data-tools/demo/uccb/sippdict [https://perma.cc/A4Y3-U8NH] (last visited Aug. 23, 2020) (demonstrating that survey respondents were not asked about recent pregnancies).

[59] *See* U.S. DEP'T OF AGRIC. ECON. RESEARCH SERV., AMERICAN TIME USE SURVEY: EATING & HEALTH MODULE 2014-16 QUESTIONNAIRE 14 (2017), https://www.bls.gov/tus/ehmquestionnaire1416.pdf [https://perma.cc/P3XZ-RQHH] (asking female respondents about their pregnancy status in the context of asking about their current weight); U.S. DEP'T OF AGRIC. ECON. RESEARCH SERV., AMERICAN TIME USE SURVEY: EATING & HEALTH MODULE QUESTIONNAIRE (2010), https://www.bls.gov/tus/ehmquestionnaire0608.pdf [https://perma.cc/MZ52-ACRN] (asking female respondents whether they are pregnant when asking about their current weight).

[60] This figure is calculated from the Centers for Disease Control and Prevention and U.S. Census Bureau figures in 2010, which recorded 6.155 million pregnancies and 157.0 million women. This ratio is then multiplied by 40/52 since women observed in a given year were only pregnant for 40 out of 52 weeks. *See* SALLY C. CURTIN, JOYCE C. ABMA & KATHRYN KOST, CTRS. FOR DISEASE CONTROL AND PREVENTION, 2010 PREGNANCY RATES AMONG U.S. WOMEN 5 (2015), https://www.cdc.gov/nchs/data/hestat/pregnancy/2010_pregnancy_rates.pdf [https://perma.cc/626E-DJX2]; *Women's History Month: March 2012*, U.S. CENSUS BUREAU: PROFILE AMERICA FACTS FOR FEATURES (Feb. 22, 2012), https://www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb12-ff05.html [https://perma.cc/466P-MZ52].

[61] The EHM has only been administered in six years (2006 to 2008 and 2014 to 2016). Each year of the EHM contains about 6,000 observations of adult women, some of whom are above childbearing age. *See* U.S. DEP'T OF AGRIC. ECON. RESEARCH SERV., 2014–16 EATING & HEALTH MODULE USER'S GUIDE 10–11 (2016), https://www.ers.usda.gov/webdocs/publications/42815/ap-070.pdf?v=0 [https://perma.cc/36PN-LULK]; U.S. DEP'T OF AGRIC. ECON. RESEARCH SERV., EAT-

Thus, to study the effects of such legislation on currently and recently pregnant women, the data options are quite limited. To study *currently* pregnant women, the sole publicly available option is a health-focused, annual survey dataset known as the Behavioral Risk Factor Surveillance System (BRFSS), which is compiled by the Centers for Disease Control and Prevention. Because the BRFSS data contain millions of observations that extend back to the 1980s, the 2018 empirical study on pregnant women in the labor market (discussed in the prior Part) relied on the BRFSS to highlight the persistent employment gaps between pregnant and nonpregnant women in the United States.[62] The principal downside of the BRFSS, however, is that its labor market information on respondents is extremely limited. Because the BRFSS survey data are primarily concerned with health behaviors and health status, respondents are only asked basic questions about their employment status and household income in ranges. The BRFSS does not contain any information on respondents' wages, salaries, usual hours worked, industry, or occupation.[63]

As a result, this Essay will rely instead on an alternative dataset that identifies *recently* pregnant women. The ACS, conducted by the U.S. Census Bureau, is an annual survey intended to provide "vital information on a yearly basis about our nation and its people" and to "generate[ ] data that help determine how more than $675 billion in federal and state funds are distributed each year."[64] The ACS began in 2000 as a successor to the long-form Census, although the questions and structure of the ACS have evolved over time.[65] The ACS is quite large in scale; it has grown over time from a 1-in-750 national random sample of the population in 2000 to a 1-in-

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ING AND HEALTH MODULE USER'S GUIDE 23–24 (2010), https://www.ers.usda.gov/webdocs/publications/42761/8307_ap047_1_.pdf?v=0 [https://perma.cc/KM67-JAEC].

62 *See* Shinall, *supra* note 4, at 819.

63 For a complete list of the questions asked in each year of the BRFSS, see *BRFSS Questionnaires*, CTRS. FOR DISEASE CONTROL & PREVENTION, https://www.cdc.gov/brfss/questionnaires/index.htm [https://perma.cc/8G2J-M3Z3] (last updated Jan. 14, 2021).

64 *About the American Community Survey*, U.S. CENSUS BUREAU, https://www.census.gov/programs-surveys/acs/about.html [https://perma.cc/4D5N-GAJ3] (last updated Apr. 21, 2020).

65 *See* ECON. AND STATISTICS ADMIN., U.S. CENSUS BUREAU, AMERICAN COMMUNITY SURVEY: INFORMATION GUIDE 1 (2017), https://www.census.gov/content/dam/Census/programs-surveys/acs/about/ACS_Information_Guide.pdf [https://perma.cc/84AJ-7VDV] ("After the 2000 Census, the long form became the ACS, and this survey continues to collect long-form-type information each year.").

100 national random sample of the population since 2005.[66] Most importantly, it asks all female respondents of childbearing age whether they have given birth in the past year.[67]

As detailed in Appendix Table 1, the ACS contains far richer labor market information on respondents than does the BRFSS. The ACS asks questions about wages, usual hours worked, weeks worked last year, employment status, labor market participation status, and temporary absence from work. The analysis presented below will rely on the one percent sample of all available years of the ACS (2000–2018) to compare labor market outcomes of recently pregnant women (defined as giving birth in the past year) in states with and without different types of protective pregnancy legislation.

IV
METHODOLOGY

To identify the effects of the four different types of legal protections for pregnancy in the workplace, I rely on state variations in such protections using difference-in-differences analysis. Difference-in-differences (DD) regression methodology compares an outcome of interest before and after a relevant event (here, the passage of legal protections for pregnancy), inside and outside an affected jurisdiction, holding constant other relevant differences in respondents.[68] The six labor mar-

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66 *See Description of IPUMS Samples*, IPUMS USA, https://usa.ipums.org/usa/sampdesc.shtml [https://perma.cc/CD5P-8QAZ] (last visited Sept. 27, 2020) (overviewing the sample procedure for each of the available annual ACS one percent samples since 2000).

67 *See FERTYR*, IPUMS USA, https://usa.ipums.org/usa-action/variables/FERTYR#description_section [https://perma.cc/KFA5-5W3P] (last visited Sept. 27, 2020) (detailing the variable "[c]hildren born within the last year," which is asked of female respondents of childbearing age in every year of the ACS one percent sample).

68 For recent examples of articles using DD analyses to identify legislative effects, see J. Shahar Dillbary & Griffin Edwards, *An Empirical Analysis of Sexual Orientation Discrimination*, 86 U. CHI. L. REV. 1, 53–64 (2019) (finding evidence of sexual orientation discrimination in housing, which is particularly acute for individuals who also identify as a member of a minority race); J. Shahar Dillbary, Griffin Edwards & Fredrick E. Vars, *Why Exempting Negligent Doctors May Reduce Suicide: An Empirical Analysis*, 93 IND. L.J. 457, 486–93 (2018) (finding that legislative increases in liability for psychiatrists counterintuitively lead to an uptick in suicide rates); Griffin Edwards, Stephen Rushin & Joseph Colquitt, *The Effects of Voluntary and Presumptive Sentencing Guidelines*, 98 TEX. L. REV. 1, 32–56 (2019) (identifying the effect of voluntary and presumptive sentencing guidelines on criminal sentencing outcomes); Stephen Rushin & Griffin Edwards, *De-Policing*, 102 CORNELL L. REV. 721, 759–67 (2017) (finding that police departments subjected to federally mandated legislative reform experienced increased crime rates immediately thereafter).

ket outcomes of interest to this analysis, which are defined in Appendix Table 1, include real hourly wages ($2018) for all workers, real hourly wages ($2018) for full-time workers, employment, labor market participation, number of weeks worked last year, and whether the respondent is currently at work.

More formally, I follow the DD model below:

$$Y = X\beta + L\gamma_1 + P\gamma_2 + (L * P)\gamma_3 + S\sigma_2 + T\sigma_2 + \varepsilon,$$

where Y is the labor market outcome of interest, and X is a vector of individual characteristics, including controls for age (cubic) as well as indicator variables for highest level of education, race, ethnicity, married, disabled, immigrant, having a child less than five years old, having a child present in the home, occupation (two-digit level), and industry (two-digit level). P is an indicator variable equal to one if the respondent has had a baby in the past year, and L is a vector of indicator variables equal to one if the respondent lives in a state with a pregnancy accommodation law, pregnancy transfer law, short-term disability insurance, and/or paid family leave law. The magnitude, directionality, and statistical significance of the coefficients on the interaction terms $P*L$ will indicate whether each pregnancy law affected the labor market outcome of interest in women who had a baby in the past year. The regressions additionally include state fixed effects (S) and year fixed effects (T).

The DD analysis will proceed in several parts. Solely undertaking a nationwide analysis of the four different types of pregnancy legislation from 2000 to 2018 would produce DD estimates that would average any treatment effect heterogeneity and could be biased if the actual treatment effect either varied across jurisdictions or varied over time.[69] As a result, a cleaner DD estimation results from analyses that are limited to otherwise similar states, in which the treatment effects of pregnancy legislation are less likely to be heterogeneous. Determining which subset of states on which to focus requires carefully revisiting Table 1's list of pregnancy laws' effective dates.

Two candidate states for an initial analysis immediately emerge from Table 1: New York and New Jersey. Not only are these two states geographic neighbors, but they have also

[69] For a discussion of this potential problem in DD estimation, see Andrew Goodman-Bacon, *Difference-in-Differences with Variation in Treatment Timing* 13–17 (Nat'l Bureau of Econ. Research, Working Paper No. 25018, 2018), https://www.nber.org/papers/w25018 [https://perma.cc/H2WB-KJET].

passed at least three types of protective pregnancy legislation (albeit, at different times). Moreover, these two states have arguably similar political climates—over the past thirty years, both states have largely voted Democrat (with a few Republican exceptions) in gubernatorial, U.S. Senate, and U.S. Presidential elections.[70] As a result, the initial DD analysis will focus on the estimation of pregnancy legislation effects for these two states in order to provide cleaner insight into the effects of these laws within two otherwise similar jurisdictions.

Restricting the empirical analysis solely to these two states, however, may ultimately be dissatisfying since, like California, New York and New Jersey are subject to exceptionalism and representativeness (and hence, lack of external validity) critiques.[71] Just because the laws worked one way in these two states does not mean they will work in the same way in other states. The other problem with relying solely on New York and New Jersey data is that they do not allow for identification of short-term disability insurance's causal effect on recently pregnant women (since both states have had disability insurance laws on the books for the entire 2000 to 2018 time period). Thus, the next analysis will expand to include two geographic regions in which several states have passed multiple types of protective pregnancy legislation—the Northeast (defined as New York, New Jersey, Connecticut, Massachusetts, and Rhode Island) and the West (defined as California, Oregon, Washington, Utah, Nevada, and Arizona). A final analysis in the next Part will consider whether any legislative treatment effects observed in smaller geographic regions of the United States persist in a nationwide analysis.

V
PREGNANCY LEGISLATION IN ACTION

As outlined in the prior Part, part of this Essay's causal identification strategy relies on the comparison of labor market outcomes of women who have had a baby in the past year to those women who have not had a baby in the past year. Thus,

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70 The National Governor's Association provides a historical list of prior governors of each state (and their political parties). *See Former Governors*, NAT'L GOVERNORS ASS'N, https://www.nga.org/former-governors/ [https://perma.cc/E2JG-3W6D] (last visited Sept. 27, 2020). Ballotpedia provides a historical list of prior representatives, senators, and presidential voting patterns in each state (and their political parties). *See* BALLOTPEDIA, http://ballotpedia.org [https://perma.cc/AVZ5-3LQ9] (last visited Sept. 27, 2020) (search "New York"; then select a past election under the "Elections" drop-down. Repeat for "New Jersey.").

71 *See supra* note 39 and accompanying text.

before considering the DD regression results, assessing how these two groups of women differ is useful. Table 2 presents summary statistics of the 2000 – 2018 ACS data for women of childbearing age, by childbearing status last year. Women who had a baby last year differ in a few meaningful respects—they are slightly younger, are more educated, and are much more likely to be married. Given their higher levels of education, women who had a baby last year have higher real hourly wages—even though these women are less likely to be current labor market participants, are less likely to be currently working, and worked fewer weeks last year (presumably, at least somewhat due to giving birth recently). Other than these few differences, however, not many differences stand out between women who gave birth last year and those who did not. Most importantly, childbearing status does not seem to be correlated with living in a state with protective pregnancy legislation, allaying the concern that women might move to a more pregnancy-friendly state upon finding out they are expecting.

Table 2. Characteristics of Women Ages 18–44 in the United States, 2000–2018, by Childbearing Status

	Baby Last Year	No Baby Last Year
Race/Ethnicity		
Black	11.02%	10.95%
Asian	6.24%	6.22%
Other Nonwhite Race	10.10%	8.63%
Hispanic	18.84%	15.80%
Educational Attainment		
High School	22.76%	23.19%
Some College	22.23%	25.39%
College Graduate	21.75%	21.77%
Graduate Degree	12.12%	10.19%
Other Demographics		
Age	29.39	31.85
Married	69.89%	48.07%
Own Child Present	91.48%	51.95%
Immigrant	18.33%	15.17%
Disabled	4.45%	6.76%
Labor Market Characteristics		
Real Hourly Wage ($2018)	$22.91	$20.19
Employed if in Labor Market	89.46%	92.37%
In the Labor Market	61.78%	76.28%
Weeks Worked Last Year	40.36	43.73
Currently Working if in Labor Market	77.62%	90.22%
Legal Protections		
Pregnancy Accommodation Law	27.52%	27.45%
Pregnancy Transfer Law	28.40%	28.21%
Paid Family Leave	13.36%	13.96%
State Disability Insurance	21.49%	22.53%
N	559,139	7,090,297

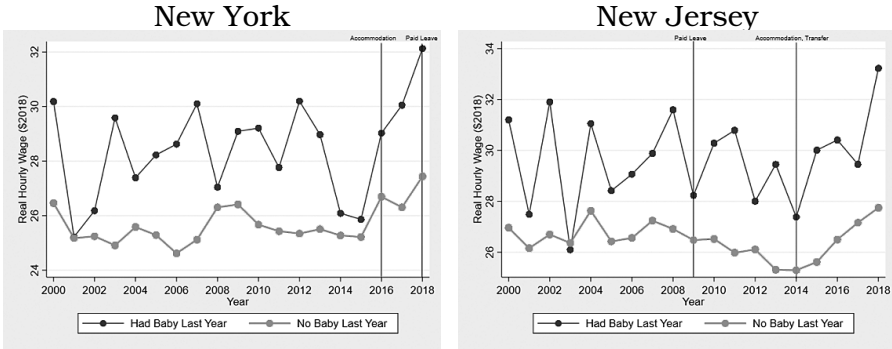
Notes: All estimates come from the 2000–2018 1% yearly samples of the ACS. For women who had a baby last year, real hourly wage estimated mean is based on 191,574 observations, and employed, weeks worked, and currently working estimated means are based on 345,461 observations. For women who did not have a baby last year, real hourly wage estimated mean is based on 3,817,981 observations, and employed, weeks worked, and currently working estimated means are based on 5,408,556 observations. All estimates use ACS sample weight.

Another part of this Essay's causal identification strategy relies on the comparison of labor market outcomes of women

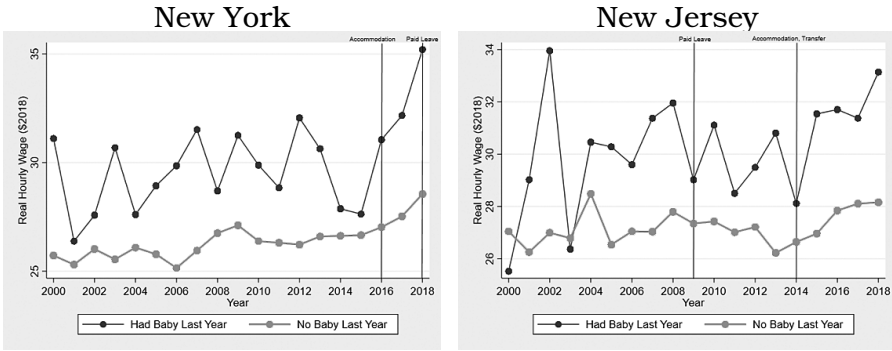
living inside and outside states with pregnancy legislation. Thus, another potentially useful exercise is to evaluate the summary statistics of women's labor market outcomes by jurisdiction, which is presented in detail within Appendix Table 2. Because labor market characteristics sufficiently vary between states, however, it is difficult to draw any conclusions from the summary statistics presented in Appendix Table 2 alone. More insightful, perhaps, are the visuals presented in Figure 1, which graph the labor market outcomes of interest for women in New York and New Jersey, by childbearing status last year. These graphs suggest that employment rates and labor market participation of women who had a baby last year may have improved, relative to women who did not have a baby last year, after the passage of either a PWFA-style accommodation law or a paid family leave law.

Figure 1. 2000–2018 New York and New Jersey Labor Market Outcomes of Women, by Childbearing Status Last Year

A. Real Hourly Wage ($2018): All Workers

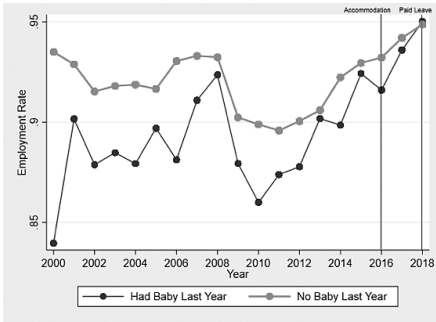


B. Real Hourly Wage ($2018): Full-Time Workers

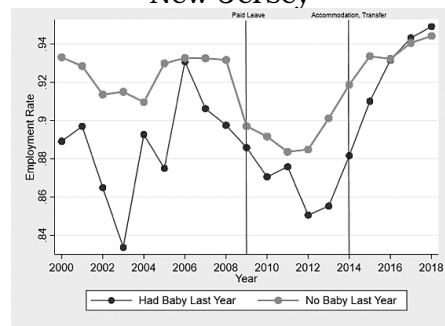


C. Employed

New York

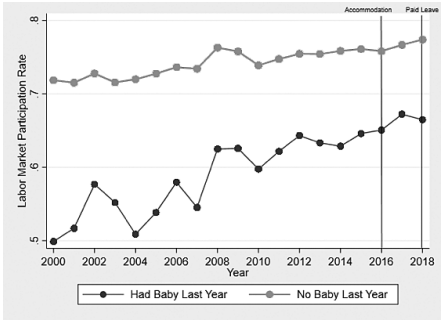


New Jersey

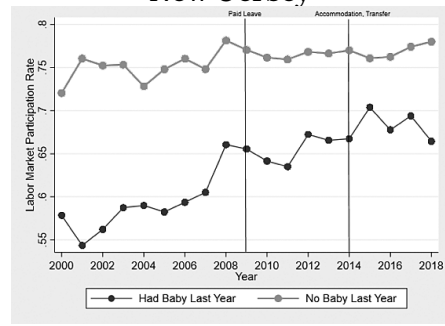


D. In the Labor Market

New York

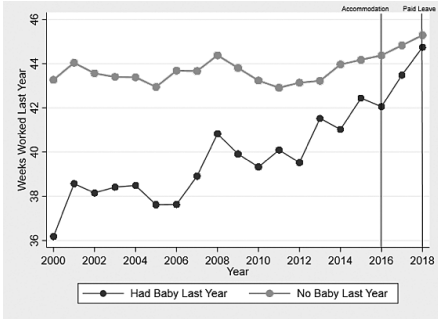


New Jersey

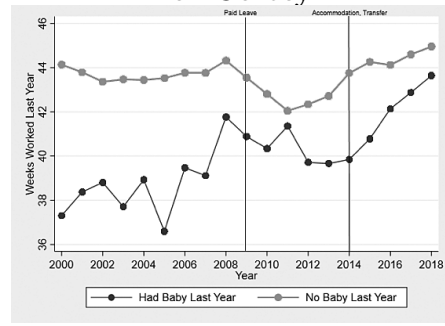


E. Weeks Worked Last Year

New York

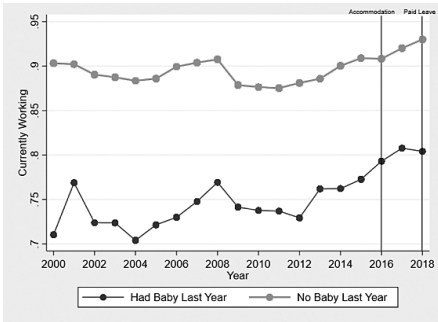


New Jersey

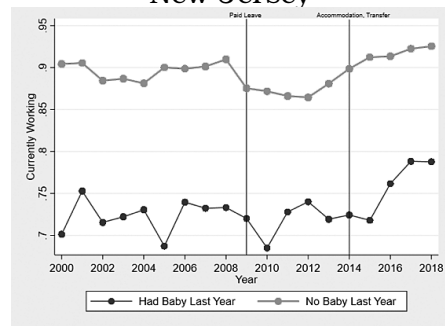


F. Currently Working if in the Labor Market

New York



New Jersey



Next, Table 3 moves to this Essay's primary empirical contribution, presenting three versions of the geographically restricted DD analysis. Turning first to the New York-New Jersey analysis, both accommodation laws and paid family leave laws (but not transfer laws) are associated with positive labor market effects for women who had a baby last year. After the passage of a pregnancy accommodation law, women in these two states increased their labor market participation rate by 3.6 percentage points and saw a 1.4 percentage point increase in their employment rate. Moreover, these women were more likely to be currently working (and hence, less likely to be absent temporarily from their job) and were able to work nearly two additional weeks during the prior year. After the passage of a paid leave law, the labor market participation rates of women who had a baby last year increased by a similar 3.0 percentage points, and these women were able to work approximately a week and a half longer in the prior year. The passage of a pregnancy transfer law, on the other hand, appears to have negatively affected the labor market outcomes of recently pregnant women, as indicated by the consistently negative coefficients. Note that, when the DD analysis is restricted to New York and New Jersey, none of the laws appear to have affected the real hourly wages of recently pregnant women.

Table 3. The Effect of Pregnancy Protections on Women Ages 18–44 Who Had a Baby Last Year in Select Regions of the United States, 2000–2018

	Ln(Real Hourly Wages)	Ln(Real Hourly Wages (Full-Time Workers Only))	Employed	In the Labor Market	Weeks Worked Last Year	Currently Working if in Labor Market
NY and NJ Only						
	(1)	(2)	(3)	(4)	(5)	(6)
Baby Last Year* Accommodation	0.012 (0.017)	0.022 (0.017)	0.014* (0.006)	0.036** (0.007)	1.795** (0.317)	0.031** (0.009)
Baby Last Year* Transfer	0.008 (0.024)	-0.006 (0.026)	-0.001 (0.008)	-0.012 (0.010)	-1.941** (0.462)	-0.033* (0.013)
Baby Last Year* Paid Leave	-0.003 (0.016)	-0.008 (0.017)	0.003 (0.006)	0.030** (0.006)	1.416** (0.305)	-0.005 (0.009)
R^2	0.439	0.450	0.190	0.529	0.208	0.149
N	297,368	251,368	525,522	698,810	525,522	525,522
Northeast Only (NY, NJ, CT, MA, RI)						
	(7)	(8)	(9)	(10)	(11)	(12)
Baby Last Year* Accommodation	0.012 (0.014)	0.026+ (0.015)	0.020* (0.005)	0.036** (0.006)	1.698** (0.281)	0.028** (0.008)
Baby Last Year* Transfer	-0.025 (0.015)	-0.029* (0.017)	-0.013* (0.006)	-0.002 (0.008)	-0.998** (0.318)	-0.017* (0.009)
Baby Last Year* Paid Leave	0.009 (0.014)	-0.002 (0.015)	0.007 (0.005)	0.026** (0.006)	1.144** (0.280)	-0.008 (0.008)
Baby Last Year* Disability Insurance	-0.013 (0.013)	-0.019 (0.015)	-0.017** (0.005)	-0.0002 (0.007)	-1.189** (0.263)	-0.023** (0.008)
R^2	0.438	0.445	0.179	0.507	0.199	0.140
N	423,902	352,826	748,329	979,401	748,329	748,329
West Only (CA, OR, WA, AZ, NV, UT)						
	(13)	(14)	(15)	(16)	(17)	(18)
Baby Last Year* Accommodation	0.036 (0.027)	0.027 (0.030)	0.017+ (0.009)	-0.022 (0.015)	1.644** (0.599)	0.029+ (0.016)
Baby Last Year* Transfer	-0.068+ (0.038)	-0.056 (0.039)	-0.003 (0.012)	0.029 (0.019)	-0.746 (0.744)	-0.048* (0.021)
Baby Last Year* Paid Leave	-0.022 (0.021)	-0.015 (0.022)	0.015+ (0.009)	0.028** (0.008)	2.044** (0.443)	-0.006 (0.012)
Baby Last Year* Disability Insurance	0.048 (0.035)	0.035 (0.033)	-0.024* (0.012)	0.004 (0.014)	-2.638** (0.634)	-0.014 (0.018)
R^2	0.453	0.472	0.187	0.495	0.201	0.147
N	569,995	470,527	1,094,775	1,515,691	1,094,775	1,094,775

+ significant at 10%; * significant at 5%; ** significant at 1%

Notes: All OLS estimates are for women ages 18 to 44, using the 2000–2018 ACS 1% yearly samples. Heteroskedasticity-robust standard errors are in parentheses underneath the estimated coefficient. All regressions include controls for age (cubic) as well as indicator variables for highest level of education, race, ethnicity, married, disabled, immigrant, having a baby in the past year, having a child less than five years old, having a child present in the home, occupation (two-digit level), industry (two-digit level), living in a state with a pregnancy accommodation law, living in a state with a pregnancy transfer law, living in a state with short-term disability insurance, living in a state with paid family leave, and state and year fixed effects. Real hourly wage regressions for full-time workers includes all non-student, non-self-employed workers with hourly wages of at least $1 who work at least 35 hours per week. Real hourly wage regressions for all workers additionally includes workers who work less than 35 hours per week. Employed, weeks worked last year, and currently working regressions include all workers who are in the labor market. Weeks worked last year, which is reported in ranges in the ACS, is calculated as the midpoint of the range. The disability insurance indicator variable and interaction term are omitted for the NY-NJ regression since both states had short-term disability insurance for workers during the entire 2000-2018 period. All estimates use the ACS sample weight.

Both the overall results and the point estimates are quite similar when the DD analysis is broadened to include five Northeastern states. Again, the passage of a pregnancy accommodation law is associated with positive effects on recently pregnant women's employment rates, labor market participation rates, ability to be at work, and ability to work more weeks during the prior year. The magnitudes are almost identical to the New York-New Jersey analysis. In addition, the analysis suggests that passage of an accommodation law may have had weakly positive effects (of approximately 2.6 percent) on the real hourly wages of recently pregnant women who work full time.[72] Likewise, passage of a paid leave law is associated with similar increases in recently pregnant women's labor market participation and weeks worked last year, as in the prior New York-New Jersey analysis. But similar to the prior analysis, both pregnancy transfer laws and state disability insurance programs appear to have had negative labor market effects for recently pregnant women within a jurisdiction (as indicated by the negative coefficients).

Shifting next to the opposite coast of the United States, the DD analysis of Western states again yields remarkably similar results to the prior two analyses. Table 3 suggests that, after passage of an accommodation law in one of the Western states, recently pregnant women's employment rates increased by 1.7 percentage points, and these women were 2.9 percentage points more likely to be currently working. Moreover, these

[72] This figure was calculated based on the coefficient on the accommodation law interaction term presented in Table 3 and the method described by Robert Halvorsen and Raymond Palmquist. Robert Halvorsen & Raymond Palmquist, *The Interpretation of Dummy Variables in Semilogarithmic Equations*, 70 AM. ECON. REV. 474, 474–75 (1980).

women were able to work over a week and a half longer during the prior year. In addition, after passage of a paid leave law, recently pregnant women increased their labor market participation rates by 2.8 percentage points, while seeing a 1.5 percentage point increase in their employment rates. They were also able to work two additional weeks during the prior year. But as in the prior two sets of geographically restricted results, pregnancy transfer laws and state disability insurance programs are associated with no labor market effects, at best—and negative labor market effects, at worst—for recently pregnant women.

Finally, Table 4 broadens the analysis to consider all U.S. states from 2000 to 2018. In terms of magnitude, the nationwide point estimates are more muted, but the direction of the results is again quite similar. Passage of a pregnancy accommodation law is associated with a 1.4 percentage point increase in recently pregnant women's employment rates, a 2.0 percentage point increase in their ability to be at work currently, and approximately one additional week of work during the prior year. Passage of a paid family leave law is associated with a 1.8 percentage point increase in recently pregnant women's labor market participation, a 0.8 percentage point increase in their employment, and almost an additional week of work during the prior year. Finally, the zero to negative effects of pregnancy transfer laws and state disability insurance programs persist in the nationwide results.[73]

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[73] Because concerns regarding heterogeneity of legislative effects over time are particularly acute in the nationwide analysis, *see supra* note 69, Appendix Table 3 restricts the nationwide analysis to the most recent five years (2014–2018) as a robustness check of the main results. There appear to be some unexplained negative labor market participation effects in more recent years; nonetheless, the other results discussed in this Part largely hold, particularly for pregnancy accommodation laws. Moreover, in the 2014–2018 nationwide analysis, positive real hourly wage effects appear for recently pregnant women after the passage of pregnancy accommodation and paid family leave laws. An additional robustness check that adds both an indicator variable and interaction term with recently pregnant women for post-2015 (to signify the *Young v. UPS* U.S. Supreme Court decision), which is presented in Appendix Table 4, also yields results similar in direction to the baseline nationwide results presented in Table 4. A final robustness check, presented in Appendix Table 5, addresses the concern that pregnancy transfer laws and pregnancy accommodation laws may be cancelling each other out, not because of real effects, but because of multicollinearity. Appendix Table 5 addresses this concern by redefining the indicator variables as equal to one if the state has an accommodation law only, a transfer law only, both an accommodation and a transfer law, a state disability insurance law only, paid leave only, or both an insurance and paid leave law. Even after redefining the indicator variables in this manner, the results in Appendix Table 5 are substantially the same as in Table 4.

Table 4. The Effect of Pregnancy Protections on Women Ages 18–44 Who Had a Baby Last Year in the United States, 2000–2018

	Ln(Real Hourly Wages)	Ln(Real Hourly Wages (Full-Time Workers Only))	Employed	In the Labor Market	Weeks Worked Last Year	Currently Working if in Labor Market
	(1)	(2)	(3)	(4)	(5)	(6)
Baby Last Year* Accommodation	0.001	0.0003	0.014**	0.0001	1.042**	0.020**
	(0.009)	(0.009)	(0.004)	(0.004)	(0.185)	(0.005)
Baby Last Year* Transfer	-0.004	0.001	-0.011**	-0.003	-1.027**	-0.011*
	(0.008)	(0.009)	(0.004)	(0.004)	(0.180)	(0.005)
Baby Last Year* Paid Leave	-0.007	-0.014	0.008*	0.018**	0.916**	-0.012*
	(0.009)	(0.010)	(0.004)	(0.004)	(0.198)	(0.005)
Baby Last Year* Disability Insurance	0.002	0.002	-0.003	-0.007*	-0.959	-0.035**
	(0.008)	(0.008)	(0.003)	(0.003)	(0.156)	(0.004)
R^2	0.447	0.461	0.173	0.464	0.195	0.139
N	3,182,517	2,676,445	5,754,017	7,649,436	5,754,017	5,754,017

+ significant at 10%; * significant at 5%; ** significant at 1%

Notes: All OLS estimates are for women ages 18 to 44, using the 2000–2018 ACS 1% yearly samples. Heteroskedasticity-robust standard errors are in parentheses underneath the estimated coefficient. All regressions include controls for age (cubic) as well as indicator variables for highest level of education, race, ethnicity, married, disabled, immigrant, having a baby in the past year, having a child less than five years old, having a child present in the home, occupation (two-digit level), industry (two-digit level), living in a state with a pregnancy accommodation law, living in a state with a pregnancy transfer law, living in a state with short-term disability insurance, living in a state with paid family leave, and state and year fixed effects. Real hourly wage regressions for full-time workers includes all non-student, non-self-employed workers with hourly wages of at least $1 who work at least 35 hours per week. Real hourly wage regressions for all workers additionally includes workers who work less than 35 hours per week. Employed, weeks worked last year, and currently working regressions include all workers who are in the labor market. Weeks worked last year, which is reported in ranges in the ACS, is calculated as the midpoint of the range. All estimates use the ACS sample weight.

In sum, no matter how the DD analysis is restricted or broadened, the results tell largely the same story. Pregnancy accommodation laws and paid family leave laws yield multiple positive labor market effects for recently pregnant women, but pregnancy transfer laws and state disability insurance programs do nothing (and may harm) these women. Passage of a pregnancy accommodation law is associated with at least a 1.4 percentage point increase in the employment rates and at least a week more work for women who had a baby last year. Such a law can also increase the labor market participation rates of women who had a baby last year, while decreasing the need to be temporarily absent from the job. On the other hand, passage of a paid family leave law is associated with at least a 1.8 percentage point increase in labor market participation rates and at least a week more work for women who had a baby

last year. Paid family leave can also increase the employment rates of women who had a baby last year.

CONCLUSION

Using 2000 – 2018 ACS data, this Essay offers an initial empirical assessment of how each type of protective pregnancy legislation works, how each type performs relative to other types of legislation, and how each type may backfire for women who have had a baby in the past year. The results tell somewhat of a cautionary tale for women's advocacy groups—who tend to be in favor of all four types of legislation—with respect to setting their legislative priorities.[74] Instead of simply pushing for whatever type of protective law is most likely to pass the legislative body of interest, advocacy groups' priorities should shift to focus on pregnancy accommodation laws and paid family leave laws, according to the results presented here. Both types of laws are associated with multi-faceted improvements in the labor market outcomes of recently pregnant women, regardless of the jurisdiction in which they are implemented.

In contrast, pregnancy transfer laws may have unintended, negative labor market consequences for the very group of women at whom they are targeted. *Why* transfer laws can negatively affect their intended beneficiaries remains a source for speculation (and should be the subject of future work). Perhaps these laws lead to job mismatch, by encouraging movement of pregnant workers into open positions that are ultimately not a good fit for them.[75] As a robust economics literature has previously demonstrated, job mismatch leads to

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[74] The National Partnership for Women and Families and A Better Balance, for example, are publicly in favor of *all* types of supportive pregnancy legislation. *See, e.g.*, *Our Campaigns*, A BETTER BALANCE, https://www.abetterbalance.org/our-campaigns/ [https://perma.cc/BJ52-SHYZ] (last visited Aug. 23, 2020) (listing their current campaigns as advancing paid leave law, securing accommodations for pregnant women, and defending progressive policies); *Our Work*, NAT'L P'SHIP FOR WOMEN AND FAMILIES, https://www.nationalpartnership.org/our-work/ [https://perma.cc/RZA3-9KT5] (last visited Feb. 10, 2021) (noting that the organization has worked on the Pregnancy Discrimination Act, the Family and Medical Leave Act, the Affordable Care Act, and many other local and state laws).

[75] For a discussion of the job mismatch literature in economics, see generally Joni Hersch, *Optimal 'Mismatch' and Promotions*, 33 ECON. INQUIRY 611, 611 (1995) (noting that "[a] substantial proportion of workers are employed in jobs for which they appear to be either overqualified or underqualified"); Boyan Jovanovic, *Job Matching and the Theory of Turnover*, 87 J. POL. ECON. 972, 975–82 (1979) (modeling turnover probability based on job match); *Nachum* Sicherman, "*Overeducation" in the Labor Market*, 9 J. LAB. ECON. 101, 104 (1991) (documenting that overeducated workers are younger and have less job training than their appropriately educated counterparts); Richard R. Verdugo & Naomi Turner Verdugo, *The Impact of Surplus Schooling on Earnings: Some Additional Findings*,

high job turnover rate and, accordingly, is costly for both employers and employees.[76] This particular result regarding pregnancy transfer laws should be especially alarming for women's advocacy groups, who, in the past, have successfully lobbied state legislatures for the passage of a pregnancy accommodation law and a pregnancy transfer law as a package deal (as in the case of New Jersey, whose legislature passed both pieces of legislation together in 2014).[77]

Whether paid family leave laws should be prioritized over pregnancy accommodation laws, or vice versa, is a more difficult question, and one ultimately beyond the scope of the current Essay. This Essay only examines the short-term consequences of protective pregnancy legislation—that is, how these laws impact the labor market consequences of *recently* pregnant women. Future analyses must consider the long-term labor market effects of these laws on mothers of young children, as well as mothers more generally. Perhaps paid family leave and pregnancy accommodation laws' short-term boost to new mothers' labor market outcomes may persist into the future. Although neither type of law seems to have robust effects on new mothers' real hourly wages, perhaps the short-run boost the laws provide to new mothers' labor market attachment eventually translates into higher hourly wages in the long run. Future research must consider whether the labor market effects of paid leave and accommodation laws withstand the test of time and long-term motherhood. The short-term effects of paid leave and accommodation legislation, however, are encouraging for new working mothers.

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24 J. HUM. RESOURCES 629, 635–41 (1989) (finding that overeducated workers earn less than their appropriately educated counterparts).

76 *See supra* note 75.

77 *See supra* tbl.1.

APPENDIX

Appendix Table 1. Variable Definitions of Labor Market Outcomes in the 2000–2018 American Community Survey

Outcome Variable Name	Survey Question	Coded Responses
Real Hourly Wages ($2018)	What were your wages, salary, commissions, bonuses, or tips from all jobs?	Wages/Usual Hours Worked ≥ $1 from all workers who are not self-employed
	During the past 12 months, in the weeks worked, how many hours did you usually work each week?	Full-time workers analysis restricted to workers with Usual Hours Worked ≥ 35
Weeks Worked Last Year	Last year, how many weeks did you work, even for a few hours, including paid vacation, paid sick leave, and military service?	51: 50-52 weeks 48.5: 48-49 weeks 43.5: 40-47 weeks 33: 27-39 weeks 20: 14-26 weeks 6.5: 13 weeks or less
Employed	Last week, did you work for pay at a job (or business), not counting housework, unpaid volunteer work, school work, or work done as a resident or inmate of an institution?	1: Employed 0: Unemployed (but in the labor force)
Currently Working if in the Labor Market	Last week, was this person temporarily absent from a job?	1: Employed and at work 0: Temporarily absent from job or unemployed (but in the labor force)
In the Labor Market	During the last 4 weeks, has this person been actively looking for a job?	1: Employed or unemployed (but in the labor force) 0: Not in the labor force

Appendix Table 2. Summary Statistics of Labor Market Characteristics of Women Ages 18–44 in the United States, 2000–2018, by Childbearing Status and Presence of Pregnancy Protection Legislation

	Real Hourly Wages ($2018)		Real Hourly Wages ($2018) (Full-Time Workers Only)		Employed if in the Labor Market		In the Labor Market		Weeks Worked Last Year		Currently Working if in the Labor Market	
	aby Last Year	No Baby Last Year	Baby Last Year	No Baby Last Year	Baby Last Year	No Baby Last Year	Baby Last Year	No Baby Last Year	Baby Last Year	No Baby Last Year	Baby Last Year	No Baby Last Year
No Legal Protections	$21.86	$20.45	$22.14	$20.75	88.12%	92.10%	61.86%	76.97%	39.25	43.70	76.95%	89.94%
No Accommodation	$22.56	$21.03	$22.90	$21.37	88.11%	92.05%	61.59%	76.67%	39.23	43.67	76.57%	89.83%
Accommodation Law	$25.01	$23.06	$25.49	$23.54	89.28%	92.03%	56.76%	73.63%	39.57	43.48	76.15%	89.71%
No Transfer	$22.65	$21.11	$23.03	$21.46	88.28%	92.12%	61.61%	76.70%	39.34	43.71	76.68%	89.91%
Transfer Law	$24.69	$22.79	$25.07	$23.23	88.76%	91.84%	56.90%	73.66%	39.25	43.38	75.85%	89.51%
No Paid Leave	$22.63	$21.11	$23.01	$21.45	88.35%	92.19%	60.64%	76.22%	39.30	43.71	76.93%	90.00%
Paid Leave Law	$27.73	$25.02	$28.17	$25.76	88.81%	90.92%	57.64%	73.26%	39.43	42.94	72.66%	88.36%
No Disability	$22.07	$20.59	$22.40	$20.90	88.30%	92.20%	61.21%	76.57%	39.36	43.73	77.28%	90.07%
Disability Law	$27.60	$25.07	$28.24	$25.70	88.81%	91.48%	57.05%	73.46%	39.14	43.23	73.31%	88.85%
NY-NJ Only												
Disability Law Only	$28.41	$25.73	$29.53	$26.34	88.81%	91.92%	58.25%	74.14%	39.18	43.59	73.68%	89.29%
No Accommodation	$28.52	$25.77	$29.56	$26.41	88.59%	91.65%	58.94%	74.36%	39.31	43.50	73.49%	89.08%
Accommodation Law	$30.00	$26.38	$31.78	$27.34	92.90%	93.80%	67.06%	76.76%	42.72	44.62	78.11%	91.73%
No Transfer	$28.74	$25.86	$29.98	$26.53	89.15%	91.95%	59.70%	74.63%	39.79	43.66	74.26%	89.43%
Transfer Law	$29.94	$26.26	$30.97	$27.33	92.29%	93.39%	68.11%	76.94%	41.85	44.34	75.56%	91.44%
No Paid Leave	$28.51	$25.78	$29.73	$26.41	89.15%	92.09%	58.88%	74.33%	39.50	43.68	74.25%	89.49%
Paid Leave Law	$29.99	$26.32	$31.15	$27.36	90.44%	91.95%	66.68%	76.86%	41.73	43.85	74.84%	90.00%

	Real Hourly Wages ($2018)		Real Hourly Wages ($2018) (Full-Time Workers Only)		Employed if in the Labor Market		In the Labor Market		Weeks Worked Last Year		Currently Working if in the Labor Market	
	aby Last Year	No Baby Last Year	Baby Last Year	No Baby Last Year	Baby Last Year	No Baby Last Year	Baby Last Year	No Baby Last Year	Baby Last Year	No Baby Last Year	Baby Last Year	No Baby Last Year
Northeast Only (NY, NJ, CT, MA, RI)												
No Legal Protections	$30.11	$26.28	$31.30	$26.91	92.28%	93.42%	64.82%	79.39%	41.34	44.40	77.74%	91.14%
No Accommodation	$28.93	$25.82	$29.91	$26.46	89.31%	92.09%	60.79%	75.86%	39.74	43.73	74.47%	89.60%
Accommodation Law	$29.82	$26.32	$31.71	$27.29	93.01%	93.91%	67.85%	77.37%	42.80	44.64	78.47%	91.88%
No Transfer	$28.98	$25.85	$30.12	$26.52	89.69%	92.27%	60.84%	75.63%	40.04	43.82	74.87%	89.78%
Transfer Law	$29.67	$26.16	$30.93	$27.06	90.93%	93.00%	67.22%	78.63%	41.15	44.16	76.32%	90.95%
No Paid Leave	$28.97	$25.86	$30.14	$26.50	89.80%	92.45%	60.99%	75.94%	39.95	43.88	75.15%	89.95%
Paid Leave Law	$29.71	$26.14	$30.83	$27.15	90.45%	92.02%	66.84%	76.98%	41.72	43.87	74.93%	90.04%
No Disability Law	$30.08	$26.31	$31.96	$27.00	91.41%	93.16%	65.48%	79.45%	41.08	44.26	77.33%	90.96%
Disability Law	$28.75	$25.76	$29.89	$26.47	89.36%	92.11%	60.62%	74.97%	39.92	43.74	74.33%	89.61%
West Only (CA, OR, WA, AZ, NV, UT)												
No Legal Protections	$21.66	$20.94	$22.09	$21.30	88.83%	92.07%	54.22%	74.90%	38.57	43.26	77.32%	89.88%
No Accommodation	$21.66	$20.94	$22.09	$21.30	88.83%	92.07%	54.22%	74.90%	38.57	43.26	77.32%	89.88%
Accommodation Law	$26.67	$24.50	$26.93	$25.07	88.51%	91.06%	54.45%	72.37%	38.58	42.87	72.74%	88.37%
No Transfer	$21.64	$20.89	$22.07	$21.25	89.04%	92.17%	54.19%	74.90%	38.69	43.30	77.60%	90.00%
Transfer Law	$27.01	$24.57	$27.78	$25.14	88.39%	90.99%	54.46%	72.34%	38.51	42.85	72.51%	88.28%
No Paid Leave	$22.49	$21.76	$22.92	$22.09	88.85%	92.15%	52.98%	73.98%	38.27	43.27	76.58%	89.80%
Paid Leave Law	$27.18	$24.74	$27.40	$25.42	88.39%	90.67%	55.87%	72.48%	38.89	42.74	72.08%	87.98%
No Disability Law	$21.84	$21.05	$22.31	$21.41	89.26%	92.29%	54.38%	75.03%	38.84	43.38	77.67%	90.13%
Disability Law	$26.84	$24.61	$27.04	$25.18	88.23%	90.89%	54.36%	72.19%	38.41	42.79	72.31%	88.15%

Notes: All estimates come from the 2000–2018 1% yearly samples of the ACS. All estimates use the ACS sample weight.

Appendix Table 3. The Effect of Pregnancy Protections on Women Ages 18–44 Who Had a Baby Last Year in the United States (Restricted to 2014–2018)

	Ln(Real Hourly Wages)	Ln(Real Hourly Wages (Full-Time Workers Only))	Employed	In the Labor Market	Weeks Worked Last Year	Currently Working if in Labor Market
	(1)	(2)	(3)	(4)	(5)	(6)
Baby Last Year* Accommodation	0.025*	0.028*	0.010*	-0.014**	0.645**	0.016*
	(0.012)	(0.013)	(0.005)	(0.005)	(0.250)	(0.007)
Baby Last Year* Transfer	-0.030*	-0.028*	-0.008+	0.010+	-0.860**	-0.016*
	(0.012)	(0.013)	(0.005)	(0.005)	(0.249)	(0.007)
Baby Last Year* Paid Leave	0.028+	0.019	0.006	-0.013*	0.015	-0.016+
	(0.015)	(0.016)	(0.005)	(0.006)	(0.293)	(0.008)
Baby Last Year* Disability Insurance	-0.022	-0.023	0.0001	0.026**	-0.098	-0.029**
	(0.014)	(0.015)	(0.005)	(0.005)	(0.267)	(0.008)
R^2	0.467	0.480	0.225	0.541	0.224	0.175
N	1,076,600	907,833	1,809,478	2,379,411	1,809,478	1,809,478

+ significant at 10%; * significant at 5%; ** significant at 1%

Notes: All OLS estimates are for women ages 18 to 44, using the 2014–2018 ACS 1% yearly samples. Heteroskedasticity-robust standard errors are in parentheses underneath the estimated coefficient. All regressions include controls for age (cubic) as well as indicator variables for highest level of education, race, ethnicity, married, disabled, immigrant, having a baby in the past year, having a child less than five years old, having a child present in the home, occupation (two-digit level), industry (two-digit level), living in a state with a pregnancy accommodation law, living in a state with a pregnancy transfer law, living in a state with short-term disability insurance, living in a state with paid family leave, and state and year fixed effects. Real hourly wage regressions for full-time workers includes all non-student, non-self-employed workers with hourly wages of at least $1 who work at least 35 hours per week. Real hourly wage regressions for all workers additionally includes workers who work less than 35 hours per week. Employed, weeks worked last year, and currently working regressions include all workers who are in the labor market. Weeks worked last year, which is reported in ranges in the ACS, is calculated as the midpoint of the range. All estimates use the ACS sample weight.

Appendix Table 4. The Effect of Pregnancy Protections on Women Ages 18–44 Who Had a Baby Last Year in the United States, 2000–2018, with Control/Interaction Term for *Young v. UPS*

	Real Hourly Wages	Real Hourly Wages (Full-Time Workers Only)	Employed	In the Labor Market	Weeks Worked Last Year	Currently Working if in Labor Market
	(1)	(2)	(3)	(4)	(5)	(6)
Baby Last Year* Accommodation	0.006	0.004	0.008*	-0.009*	0.372*	0.014**
	(0.009)	(0.009)	(0.004)	(0.004)	(0.191)	(0.005)
Baby Last Year* Transfer	-0.007	-0.001	-0.008*	0.001	-0.736**	-0.008+
	(0.008)	(0.009)	(0.004)	(0.004)	(0.181)	(0.005)
Baby Last Year* Paid Leave	-0.006	-0.013	0.007+	0.016**	0.790**	-0.013*
	(0.009)	(0.010)	(0.004)	(0.004)	(0.197)	(0.005)
Baby Last Year* Disability Insurance	0.003	0.0001	-0.0001	-0.003	-0.668**	-0.032**
	(0.008)	(0.008)	(0.003)	(0.003)	(0.157)	(0.004)
R^2	0.447	0.461	0.173	0.464	0.195	0.139
N	3,182,517	2,676,445	5,754,017	7,649,436	5,754,017	5,754,017

+ significant at 10%; * significant at 5%; ** significant at 1%

Notes: All OLS estimates are for women ages 18 to 44, using the 2000–2018 ACS 1% yearly samples. Heteroskedasticity-robust standard errors are in parentheses underneath the estimated coefficient. All regressions include controls for age (cubic) as well as indicator variables for highest level of education, race, ethnicity, married, disabled, immigrant, having a baby in the past year, having a child less than five years old, having a child present in the home, occupation (two-digit level), industry (two-digit level), living in a state with a pregnancy accommodation law, living in a state with a pregnancy transfer law, living in a state with short-term disability insurance, living in a state with paid family leave, and state and year fixed effects. All regressions also include a control for post-*Young v. UPS* (2015) and an interaction term with having a baby last year. Real hourly wage regressions for full-time workers includes all non-student, non-self-employed workers with hourly wages of at least $1 who work at least 35 hours per week. Real hourly wage regressions for all workers additionally includes workers who work less than 35 hours per week. Employed, weeks worked last year, and currently working regressions include all workers who are in the labor market. Weeks worked last year, which is reported in ranges in the ACS, is calculated as the midpoint of the range. All estimates use the ACS sample weight.

Appendix Table 5. The Effect of Pregnancy Protections on Women Ages 18–44 Who Had a Baby Last Year in the United States, 2000–2018 (State Law Indicators Redefined)

	Real Hourly Wages	Real Hourly Wages (Full-Time Workers Only)	Employed	In the Labor Market	Weeks Worked Last Year	Currently Working if in Labor Market
	(1)	(2)	(3)	(4)	(5)	(6)
Baby Last Year* Accom. Law Only	0.003	0.014	0.016**	0.012*	2.128**	0.031**
	(0.013)	(0.014)	(0.004)	(0.005)	(0.238)	(0.007)
Baby Last Year* Transfer Law Only	-0.003	0.009	-0.010*	0.003	-0.407+	-0.005
	(0.011)	(0.011)	(0.005)	(0.005)	(0.238)	(0.006)
Baby Last Year* Transfer + Accom.	-0.004	0.0002	0.003	-0.004+	-0.056	0.009**
	(0.005)	(0.005)	(0.002)	(0.002)	(0.115)	(0.003)
Baby Last Year* Dis. Ins. Only	0.002	-0.001	-0.003	-0.008*	-1.021**	-0.035**
	(0.008)	(0.008)	(0.003)	(0.003)	(0.162)	(0.004)
Baby Last Year* Leave Only	-0.037	-0.046	0.029**	0.063**	2.920**	0.002
	(0.032)	(0.034)	(0.011)	(0.017)	(0.665)	(0.022)
Baby Last Year* Dis. Ins. + Leave	-0.004	-0.011+	0.006*	0.011**	-0.011	-0.046**
	(0.006)	(0.006)	(0.003)	(0.003)	(0.134)	(0.044)
R^2	0.447	0.461	0.173	0.464	0.195	0.139
N	3,182,517	2,676,445	5,754,017	7,649,436	5,754,017	5,754,017

+ significant at 10%; * significant at 5%; ** significant at 1%

Notes: All OLS estimates are for women ages 18 to 44, using the 2000–2018 ACS 1% yearly samples. Heteroskedasticity-robust standard errors are in parentheses underneath the estimated coefficient. All regressions include controls for age (cubic) as well as indicator variables for highest level of education, race, ethnicity, married, disabled, immigrant, having a baby in the past year, having a child less than five years old, having a child present in the home, occupation (two-digit level), industry (two-digit level), living in a state with a pregnancy accommodation law only, living in a state with a pregnancy transfer law only, living in a state with both a pregnancy accommodation law and a pregnancy transfer law living in a state living in a state with short-term disability insurance only, living in a state with paid family leave only, living in a state with both short-term disability insurance and paid family leave, and state and year fixed effects. All regressions also include a control for post-*Young v. UPS* (2015) and an interaction term with having a baby last year. Real hourly wage regressions for full-time workers includes all non-student, non-self-employed workers with hourly wages of at least $1 who work at least 35 hours per week. Real hourly wage regressions for all workers additionally includes workers who work less than 35 hours per week. Employed, weeks worked last year, and currently working regressions include all workers who are in the labor market. Weeks worked last year, which is reported in ranges in the ACS, is calculated as the midpoint of the range. All estimates use the ACS sample weight.