

STATEMENT OF
KIMBERLIE MICHELLE DURHAM
FOR THE HEARING ON
**LONG OVER DUE:
EXPLORING THE PREGNANT WORKERS' FAIRNESS ACT (H.R. 2694)**

BEFORE

**UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON EDUCATION AND LABOR
CIVIL RIGHTS AND HUMAN SERVICES SUBCOMMITTEE**

OCTOBER 22, 2019

My name is Michelle Durham, and I'm a mom from Arab, Alabama. Arab is a small city in the northeast corner of the state, near the Tennessee and Georgia borders. I have lived my whole life in Alabama. In fact, before yesterday I had never been on a plane before. But I made the trip here to Washington, DC because I wanted to tell you my story. I wanted you to know what happened to me when I became pregnant for the first time four years ago. No one should go through what I did when starting a family.

Pregnancy should be a time of joy. A time of anticipation, and of possibility. But for me, pregnancy was a time of anxiety, fear, and sadness. Those negative emotions replaced the positive ones for the simple reason that my employer refused to let me keep working during my pregnancy. Instead, it sent me home, without pay, right at the time I needed a paycheck the most. That just isn't the way it should be.

In March 2015, when I was 22 years old, I began working for Rural/Metro Corporation in Gadsden, Alabama, about an hour outside Birmingham. My job was Emergency Medical Technician, or EMT. Rural/Metro is a company that provides emergency medical care to people living in areas that lack basic medical services. In that role, I served Gadsden and the surrounding areas in Etowah County, and St. Clair County, a rural county of poultry, livestock, and crop farms.

Rural/Metro was my first job after becoming licensed as an EMT, and I was so excited to start my career. I had worked so hard to get there. After finishing my Associate's degree, I earned my EMT certificate from Wallace State Community College. During the clinical part of my training, spending 12-hour shifts riding in the ambulance with EMTs and paramedics, I learned I loved creating that direct relationship with people in need. I felt a calling to help others, and I wasn't put off by taking care of people going through real trauma. It's not a role that's right

for everyone, but it was exactly what I wanted to do. I was so happy when I learned, the day before Christmas Eve in 2014, that I'd passed the national EMT certification exam. A few months later, I interviewed at Rural/Metro, and they hired me on the spot. My plan was to get some experience as an EMT and save up so that I could continue my training, with an eye toward eventually becoming a paramedic.

About six months after I started working for Rural/Metro, I learned I was pregnant with my first child. I had always wanted to be a mom, but doctors had led me to believe that I might not be able to have kids. So although the pregnancy was a surprise, it was a very happy one.

During one of my first pre-natal appointments, I was told that I should not lift anything over 50 pounds. Because my job required that I lift patients and stretchers on a pretty regular basis, I knew that I would need to ask Rural/Metro to temporarily reassign me so that I could follow my health provider's orders and have a healthy pregnancy.

It was important to me to do whatever my medical provider told me was necessary to stay safe while pregnant, but continuing to work, and earn, was a necessity, too. I wasn't worried about asking for a temporary break from lifting because everyone knew that Rural/Metro had a policy of giving "light duty" or "modified duty" job assignments to EMTs when they had lifting restrictions due to reasons other than pregnancy, like a back injury. I also checked the company's job listings and saw that there were vacant dispatcher jobs that I could do and would not involve any lifting, either. With all of these options, I was sure that it would not be a problem for me to keep on working until my due date.

I was so wrong. Instead of spending the next few months working for Rural/Metro in an alternative position, and then returning to continue the EMT career I had just begun, my life derailed the moment I told my employer that I was pregnant.

My manager, Mr. Crowell, told me that the company only gave light or modified duty jobs to EMTs who had been injured while working, and that pregnant workers didn't qualify. He later told me that he had checked with Rural/Metro's Human Resources Department, and that HR confirmed that pregnant EMTs were not eligible for alternative assignments. HR also told Mr. Crowell that because I had a medically-imposed lifting restriction, Rural/Metro would not allow me to keep working as an EMT, either. Instead, HR said that my only option was to take an unpaid leave of absence.

I was stunned. At that point, I was about six months away from my due date. How was I supposed to live for six months without a paycheck? How could I buy what I needed to prepare for my baby's arrival? How would I support my son after he was born? When I got the leave paperwork from the company, the news got even worse: Rural/Metro's policy did not allow employees who were on leave to work for another company, either. Also under that policy, leave was only approved up to 90 days, which would expire long before my due date. (Because I had not worked at the company for a year, I was not yet entitled to Family and Medical Leave Act (FMLA) leave – although even if I were, that would expire before I gave birth, too.) The reality was that I not only was going to lose my paycheck temporarily; I also was at risk of losing my job forever.

I decided to follow up with HR myself to try to convince Rural/Metro not to force me out. After all, the company had a policy of letting other EMTs work when they had restrictions, and I was in good standing as an employee. I couldn't believe the company would not let me work when I wanted to so badly. But the HR representative I spoke to, Ms. Harmon, wouldn't budge. She repeated the policy that Mr. Crowell had told me: only EMTs with on-the-job injuries could get light or modified duty jobs, and all the company did for pregnant employees

was to put them on unpaid leave. After that, I again called Mr. Crowell, begging for some way to keep working. He told me that he would check with HR again – but this time, he never called me back.

I soon realized that I needed help, and that's when I called a lawyer in Birmingham, Heather Leonard. I was sure Rural/Metro's position was due to a misunderstanding, and that Heather could help me get my job back. She wrote Rural/Metro a letter, telling them that the Supreme Court recently had decided a case like mine. She explained that under the federal Pregnancy Discrimination Act, the company was not allowed to have one policy for EMTs injured on the job and a different, worse one for pregnant EMTs. That seemed sensible to me. It shouldn't matter *why* another EMT needed an alternative assignment. Those other EMTs and I were in the same position: we all had some limitations that meant it we temporarily couldn't do all of our job duties. If the company made it possible for those other EMTs to keep working, why should pregnant EMTs get any less?

The company never answered Ms. Leonard. After a month of silence, I filed for unemployment benefits so that I could at least pay my bills. *That's* what got a response from Rural/Metro: the company opposed my application, telling the state that I still worked there – even though it had refused to schedule me for any shifts. After that, I had no choice but to file a charge of discrimination with the Equal Employment Opportunity Commission, followed by a lawsuit in federal court in the fall of 2016.

Unfortunately, my experience in the court system has been an uphill battle. The judge who heard my case said that it did not matter what Rural/Metro did for EMTs with on-the-job injuries, because those workers were not “similar” to me, a pregnant person. For that reason, she ruled that the law against pregnancy did not require I be treated the “same” as those EMTs. The

company also had a policy for “accommodating” my co-workers with qualifying disabilities, but the judge didn’t even discuss that policy at all. The lower court’s decision is now on appeal to the Eleventh Circuit, and the case will be heard this January. I’m grateful that the ACLU Women’s Rights Project has joined my legal team for this phase of the case. But the truth is, I didn’t want to hire a lawyer or go to court. I just wanted to keep my job and keep working.

Even if I win my case, so much damage already has been done. After Rural/Metro forced me to take leave in September 2015, I was unemployed for about seven months, despite diligently looking for a job. Without an income, I couldn’t pay my rent, and had to move in with my grandmother. As excited as I was about meeting my baby, his approaching birth terrified me. I worried all the time how I would provide for him. I am incredibly lucky that I had a place to live, and family and friends who helped with hand-me-down supplies and clothes. But I couldn’t depend on them for everything, and racked up credit card debt covering necessities for my son and me, and repaying the loans I’d taken out to finance my EMT training. Because I’d lost health coverage when I lost my job, I still have a hospital bill from when I gave birth in March 2016 to my son, Aedan.

My career as an EMT ended the day Rural/Metro put me on leave. I tried finding other emergency care jobs in my community, but there just aren’t many options in my neck of the woods. I eventually found a job in a factory, although it didn’t come with overtime or benefits like my Rural/Metro position did, and I later supplemented that income with a second job in a fast-food restaurant. Recently I changed jobs again, and am now manager of a pet store. I’m still uninsured, and my son receives health coverage through Medicaid. I hope one day to return to school and continue toward my goal of becoming a paramedic, but that will take more savings, which will take more time.

Aedan is now three years old. He is my greatest joy, and I wouldn't trade the experience of being his mom for anything. But I will never be able to get back those months before and after he was born, when all I could think about was what I was losing by being pregnant – not what I was gaining. At this point, all these years later, I'm fighting only for a principle. Pregnant workers need to be able to point to the law, in real time, to make their employers do the right thing so that a long-fought lawsuit isn't necessary. I wish I'd been able to point to a law that stood just for me and my rights as a pregnant worker. As is clear from how my employer worked with EMTs with on-the-job injuries who needed temporary accommodations, it would have been easy for us to come up with a solution.

I hope that Congress passes the Pregnant Workers' Fairness Act because what happened to me was wrong. It's wrong that something as normal and natural as becoming a parent cost me a career that I loved and was good at, and cost me my financial well-being. My employer could have kept me on the job, but it didn't – because it didn't think it had to. You have the power to change that. Please use that power to help millions of pregnant workers across the country. Starting a family should not come at the price I was forced to pay.