



“The Motherhood Penalty”: The Intersection of Law and Social Unrest Concerning Pregnancy Discrimination Against Female Athletes

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ABSTRACT

Women’s professional sports have rapidly expanded over the past five years, marked by increased visibility, commercial success, and public recognition of female athletes’ accomplishments. Despite this progress, professional female athletes continue to face structural barriers, including the “motherhood penalty.” These athletes face a unique form of pregnancy discrimination because their employment rights exist at the intersection of antidiscrimination law, labor law, and collective bargaining agreements. These overlapping legal structures inadequately protect pregnant athletes and create uncertainty regarding career stability, compensation, and roster security.

Using Dearica Hamby’s pregnancy discrimination lawsuit as a contemporary case study, this Article examines this problem head on – asking why federal employment law leaves professional female athletes vulnerable to pregnancy discrimination in ways not experienced by more traditional employees. This Article argues that the intersection between the Pregnancy Discrimination Act, Pregnant Workers Fairness Act, National Labor Relations Act, and collective bargaining structures create doctrinal and practical gaps that fail to adequately safeguard pregnant professional athletes. Although recent legal developments have expanded workplace protections for pregnant workers, professional female athletes remain consistently under protected due to the confines of professional sports employment.

To address these deficiencies, this Article proposes a framework for systemic reform through enhanced league governance, stronger collective bargaining protections, increased institutional support and resources for pregnant athletes, and broader cultural and structural change within professional sports.

INTRODUCTION

This Article explores the legal rights of pregnant women who are professional athletes and recommends several changes to how the law currently treats those women and their economic opportunities. As professional women's sports become more popular in the United States, more women will have opportunities to pursue often lucrative, but typically brief, careers as professional athletes. These athletes occupy a unique position in employment law: they are employees entitled to protection under federal antidiscrimination statutes, yet their working conditions in these unionized leagues are largely governed by collective bargaining agreements, which dictate their terms of employment. This Article argues that the intersection of federal antidiscrimination protections, labor law, and collectively bargained league governance creates significant doctrinal and practical gaps that leave pregnant professional athletes inadequately protected from adverse employment actions.

Within this context, eligibility rules, salary caps, and revenue sharing provisions tend to attract the most attention from fans and media. Yet these same employment structures create substantial uncertainty for athletes who become pregnant and may subsequently face trades, contract non-renewals, reduced playing opportunities, or other adverse career consequences. Existing legal frameworks frequently fail to account for how professional sports uniquely shape employment decision-making, leaving pregnant athletes particularly vulnerable despite broader expansions in workplace pregnancy protections. These tensions are emerging in WNBA player Dearica Hamby's lawsuit against the Las Vegas Aces, in which Hamby alleges the team traded her after learning that she was pregnant. This lawsuit is the first modern pregnancy discrimination claim involving a professional athlete trade, raising unresolved questions about roster decisions, collective bargaining protections (or lack thereof), and Title VII liability in professional sports.

As Dr. Kathryn Ackerman, a sports medicine physician, urges, "female athletes shouldn't have to give up motherhood because they want to be an athlete."¹ Even when female athletes do decide to continue playing their respective sport while simultaneously becoming a mother, many endure "a cut in or removal of funding or a loss of sponsorship during pregnancy, forcing

¹ Anna Furman, *Pregnancy and Sports a Challenging Combination for Female Professional Athletes*, AP NEWS (May 29, 2023, 15:56 ET), <https://apnews.com/article/female-athletes-pregnancy-hammon-hamby-wnba-62ce78e7d3e1b547c885ae341d229027> [<https://perma.cc/2EA2-SFKK>].

them to return quickly after childbirth.”² Unfortunately, it appears that pregnancy is “the kiss of death” to a woman’s athletic career.³

This Article proceeds in four remaining parts. Part I explains the doctrinal framework of relevant civil rights laws before analyzing discrimination in the American workplace through the lens of the “motherhood penalty,” which is discussed in greater detail in Part II. Part III then examines the role of labor law and the specific applications of collective bargaining within women’s professional sports leagues. Finally, Part IV proposes a multi-pronged strategy to eliminate pregnancy discrimination in professional sports through social factors, research, and access to accommodations, all of which may serve to lay the groundwork for legal and systemic change.

I. CIVIL RIGHTS FOR PREGNANT WOMEN

A. *From Judicial Exclusion to Legislative Reform*

The Supreme Court of the United States decided two seminal cases prior to the enactment of the Pregnancy Discrimination Act (“PDA”)⁴—*Geduldig v. Aiello* and *General Electric v. Gilbert*—which Congress ultimately took issue with, and pushed through legislation to correct.⁵ In *Geduldig*, the Court held that excluding pregnancy from disability benefits did not constitute sex discrimination under the Fourteenth Amendment.⁶ Similarly, in *General Electric*, the Court found that an employer’s disability plan excluding pregnancy-related conditions did not violate Title VII of the

² Olivia Howe, *Mum’s the Word – How Elite Mothers are Shaking Up the Sporting World*, ATHLETE MEDIA GRP. (Sep. 10, 2020), <https://athletemediaco.uk/article/mums-the-word-how-elite-mothers-are-shaking-up-the-sporting-world/> [https://perma.cc/4C38-RM2T].

³ *Id.*

⁴ 42 U.S.C. § 2000e-2 (1991).

⁵ Barbara DiTullio, *Slow & Uneven Progress: The Pregnancy Discrimination Act at 35*, WOMEN’S L. PROJECT (Oct. 31, 2015), <https://www.womenslawproject.org/2013/10/31/slow-uneven-progress-the-pregnancy-discrimination-act-at-35/> [https://perma.cc/7E79-D94V]; see also *General Elec. Co. v. Gilbert*, 429 U.S. 125, 146–47 (Brennan, J., dissenting) (“[T]oday’s holding not only repudiates the applicable administrative guideline promulgated by the agency charged by Congress with implementation of the Act, but also rejects the unanimous conclusion of all six Courts of Appeals that have addressed this question.”).

⁶ *Geduldig v. Aiello*, 417 U.S. 484, 494–95 (1974).

Civil Rights Act of 1964.⁷ These cases revealed the Court's unwillingness to extend protection to pregnant female employees in the workforce. Such decisions prompted Congress to intervene, ultimately enacting the PDA to correct this narrow interpretation of Title VII and extend explicit protections to pregnant employees.⁸ In doing so, the PDA effectively overturned the Court's reasoning by legislatively asserting that discrimination on the basis of pregnancy does indeed constitute unlawful sex discrimination under Title VII.

The PDA is contained within the Civil Rights Act of 1964, Title VII.⁹ "Discrimination in employment because of sex and on the basis of sex, which is further defined as on the basis of pregnancy, childbirth, or related medical conditions," constitutes unlawful sexual discrimination under Title VII.¹⁰ This amendment was passed by Congress, and signed into law by President Jimmy Carter in 1978 to address the fact that there were no specific federal laws protecting pregnant women from workplace discrimination.¹¹ Indeed, other laws such as Title VII of the Civil Rights Act of 1964 offered limited protection for pregnant women.¹² At the time, Title VII protection entailed only a prohibition on discrimination "because of sex," which courts interpreted not to include pregnancy.¹³ Thus, this permitted employers to exclude pregnancy-related conditions from otherwise

⁷ Gen. Elec. Co. v. Gilbert, 429 U.S. 125, 127–28, 132–33, 135–38 (1976).

⁸ See A bill to amend title VII of the Civil Rights Act of 1964 to prohibit sex discrimination on the basis of pregnancy, S.995, 95th Cong. (1978). More recently, The Pregnant Workers Fairness Act ("PWFA") deemed it unlawful for a covered employer to "not make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee," absent a showing of undue hardship to the employer. 42 U.S.C. § 2000gg-1(i) (2022). Still, however, these accommodations do not go as far as providing support for the mother after pregnancy.

⁹ Civil Rights Act of 1964, Pub. L. No. 88–352, § 701, 78 Stat. 253.

¹⁰ Noa Dalzell, *Dearica Hamby's Pregnancy Discrimination Lawsuit Against the WNBA's Aces, Explained*, SB NATION (Aug. 13, 2024), <https://www.sbnation.com/wnba/2024/8/13/24218924/dearica-hamby-discrimination-pregnancy-lawsuit-las-vegas-aces-wnba-becky-hammon-sparks-explained> [https://perma.cc/S2BN-5DHA].

¹¹ Admin-science, *Understanding the Historical Context and Significance of the Pregnancy Discrimination Act—Shining a Light on the Past and Paving the Way for a More Equal Future*, PREGNANCY ARCHIVE: BLOG (Feb. 26, 2024), <https://pregnancyarchive.com/blog/understanding-the-historical-context-and-significance-of-the-pregnancy-discrimination-act-shining-a-light-on-the-past-and-paving-the-way-for-a-more-equal-future> [https://perma.cc/4L6C-QWYW].

¹² *Id.*

¹³ See Barbara DiTullio, *supra* note 5.

comprehensive benefits schemes, allowing differential treatment of pregnant workers without triggering liability.¹⁴ These gaps in federal protection helped catalyze a convergence of organizing efforts among working women, labor advocates, and civil rights groups.¹⁵ The passage of the PDA was thus a product of this collective advocacy, demonstrating that organized action can reform “workplace culture and practices for pregnant workers.”¹⁶

More recently, the Pregnant Workers Fairness Act expanded federal protections by requiring covered employers to provide reasonable accommodations for known limitations related to pregnancy, childbirth, or medical conditions, absent undue hardship.¹⁷ This requirement is affirmative in nature and differs from the PDA framework because it imposes a proactive duty on employers to modify workplace conditions, rather than merely prohibiting differential treatment.¹⁸

B. The Pregnancy Discrimination Act: Scope and Coverage

The PDA aims to ensure that an employer treats “pregnant women and women who may become pregnant . . . the same as other employees.”¹⁹ This implicates core principles of labor and employment law by embedding pregnancy within Title VII’s broader anti-discrimination framework and reshaping both the interpretation and enforcement of work place equality

¹⁴ See *Gen. Elec. Co. v. Gilbert*, 429 U.S. 125, 127–28, 132–33, 135–38 (1976) (holding exclusion of pregnancy-related disabilities from employee benefits did not violate Title VII).

¹⁵ See H.R. Rep. No. 117-27(I), at 11–13 (2021) (describing judicial exclusion of pregnancy from Title VII and the resulting push for reform).

¹⁶ Kenneth Quinnell, *Pathway to Progress: The Pregnancy Discrimination Act of 1978*, AFL-CIO (Apr. 15, 2021), <https://aflcio.org/2021/4/15/pathway-progress-pregnancy-discrimination-act-1978> [<https://perma.cc/9ETA-LFZW>].

¹⁷ 42 U.S.C. §§ 2000gg (2022).

¹⁸ See Press Release, U.S. Equal Employment Opportunity Commission, EEOC Issues Final Regulation on Pregnant Workers Fairness Act (Apr. 15, 2024), <https://www.eeoc.gov/newsroom/eeoc-issues-final-regulation-pregnant-workers-fairness-act> [<https://perma.cc/67CH-W5XM>].

¹⁹ Congressional Research Service, *Pregnancy and Labor: An Overview of Federal Laws Protecting Pregnant Workers*, CRS REPORT (June 17, 2021), https://www.congress.gov/crs_external_products/R/PDF/R46821/R46821.1.pdf [<https://perma.cc/99YC-ED5U>]; see 42 U.S.C. § 2000e(k) (Pregnancy Discrimination Act, Pub. L. 95-555, 1978) (clarifying that discrimination “because of sex” includes pregnancy, childbirth, or related conditions, enacted in response to Supreme Court rulings narrowly interpreting Title VII); H.R. Rep. No. 95-948, at 3–4 (1978).

standards.²⁰ Accordingly, the PDA raises a structural question: to what extent do employers have a duty to accommodate pregnant employees?²¹ This Article aims to answer that question through the lens of women's professional sports.

The statute prohibits employers from “basing employment decisions such as hiring, firing, promotion, or compensation on an employee's pregnancy or related medical condition.”²² To that end, the PDA further “prohibits employers from treating pregnancy less favorably than other medical conditions.”²³ Not only is pregnancy placed on the same level as other medical conditions,²⁴ but it also cannot serve as grounds for discrimination.²⁵ To avoid potential discrimination lawsuits, employers in the private or public sector with fifteen or more employees must comply with the statute's requirements.²⁶

Additionally, female employees are covered under these anti-discrimination laws, whereas independent contractors are not.²⁷ This distinction creates a significant structural vulnerability for professional female athletes, as leagues may classify players as employees in some contexts and independent contractors in others²⁸—especially in relation to marketing,

²⁰ U.S. EQUAL EMP. OPPORTUNITY COMM'N, EEOC Notice No. 915.003, ENFORCEMENT GUIDANCE ON PREGNANCY DISCRIMINATION AND RELATED ISSUES (June 25, 2015), <https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues> [<https://perma.cc/Q4QS-N9GV>].

²¹ See generally *Pregnancy Discrimination Act: Compliance Tips*, LEXISNEXIS PRAC. GUIDANCE (Apr. 29, 2024), <https://plus.lexis.com/api/permalink/a7161033-ab74-46b8-94fe-c6e70f743b21/?context=1530671> [<https://perma.cc/T8EH-2FB9>].

²² 42 U.S.C. § 2000e(k).

²³ *Id.*; *Newport News Shipbuilding & Dry Dock Co. v. EEOC*, 462 U.S. 669, 684 (1983).

²⁴ 42 U.S.C. § 2000e(k).

²⁵ *Id.*

²⁶ *Id.* § 2000e(b).

²⁷ See Patrick J. Lamparello & Noa Baddish, *Title VII Compliance Issues*, LEXISNEXIS PRAC. GUIDANCE (Apr. 30, 2024), <https://plus.lexis.com/api/permalink/b7d3f384-5d02-4126-99e7-e7cd546d91c7/?context=1530671> [<https://perma.cc/Z8MA-YBCU>] (explaining that independent contractors are not covered under Title VII, and therefore, are not covered under the PDA—employers do not count them for the purposes of Title VII compliance issues); see *Alberty-Velez v. Corporacion de P.R. para la Difusion Publica*, 361 F.3d 1, 3 (1st Cir. 2004) (affirming lower court's decision that plaintiff, as an independent contractor, was “not covered by Title VII or the [relevant] anti-discrimination laws”).

²⁸ See, e.g., *These 3 Factors Distinguish Employees From Contractors*, INC. (Sep. 15, 2015), <https://www.inc.com/jessica-mah/the-3-factors-that-distinguish-employees-from-contractors.html> [<https://perma.cc/WR77-EZ3Q>] (“In both the NFL and the NCAA, franchises are facing questions over whether some athletes are employees, contractors, or unpaid intern student athletes.”).

endorsement, and promotional activities.²⁹ Courts analyzing whether a worker qualifies as an employee often apply the “economic realities” test, which considers factors such as the employer’s degree of control over the worker, the worker’s economic dependence on the employer, and the permanence of the relationship.³⁰ Professional athletes arguably satisfy many of these factors because teams and leagues exercise substantial control over training schedules, travel obligations, game participation, media appearances, and conduct requirements.³¹ However, the dual classification of athletes raises questions under federal common law agency principles regarding whether leagues can simultaneously maintain extensive control over players while denying them statutory protections in certain commercial contexts.³² This issue becomes particularly significant for athlete-mothers, whose pregnancies may affect league marketing decisions, sponsorship opportunities, and participation status, as illustrated in Dearica Hamby’s case,³³ which will be addressed later in this Article. Thus, the classification of professional athletes is not merely a contractual or organizational issue; it directly impacts whether athletes can invoke the protections afforded by the PDA.

When employers fail to comply with the aforementioned PDA requirements, employees seeking relief must generally first file a charge with the Equal Employment Opportunity Commission (“EEOC”), typically within 180 days or 300 days, depending on the jurisdiction.³⁴ While this administrative

²⁹ See Women’s National Basketball Association Collective Bargaining Agreement, at 13 (2020), <https://wnbpa.com/wp-content/uploads/2020/01/WNBA-WNBPA-CBA-2020-2027.pdf> [<https://perma.cc/UB4Y-C7T8>] [hereinafter “WNBA CBA”] (defining WNBA Marketing and Promotional Agreement and what players are entitled to do and restricted to do).

³⁰ 29 C.F.R. § 795.110(b)(1)–(6) (2024).

³¹ See *Employee Status in Sport*, HCRLAW (June 26, 2019), <https://www.hcrlaw.com/news-and-insights/employee-status-in-sport/> [<https://perma.cc/8LQB-2JZW>] (“[C]lubs will have a large degree of control over their players’ day to day activities, such as training and competition schedules; degree of control is a key indicator of employee status.”).

³² See Leanne O’Leary, Maximillian Selmann, Vanja Smokvina, *Elite Athletes and Worker Status*, 54 INDUS. L.J. 248, 249–50, 275–76 (2025) (discussing how sports organizations often exercise substantial control over athletes’ participation and services while contractually excluding them from employee status, thereby denying them access to statutory labor protections).

³³ Complaint and Jury Demand, *Hamby v. WNBA, LLC*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 1.

³⁴ *What You Can Expect After You File a Charge*, U.S. EQUAL EMP. OPPORTUNITY COMM’N, <https://www.eeoc.gov/what-you-can-expect-after-you-file-charge> [<https://perma.cc/A6RY-S6W8>] (last visited Apr. 30, 2026).

process is a prerequisite to filing suit under Title VII or the Americans with Disabilities Act (“ADA”),³⁵ it may pose unique challenges for athletes. For example, the time-sensitive nature of athletic careers—often defined by short seasons, performance windows, and limited contract durations—may render the EEOC’s months-long investigation process impractical.³⁶ Additionally, athletes may be disincentivized from pursuing claims due to concerns about reputational harm, reduced playing time, or jeopardizing future contract opportunities within a relatively insular industry.³⁷ So, although procedural avenues for relief exist, practical barriers may limit their accessibility and effectiveness in the athletic context.

These enforcement limitations are particularly significant because they place greater emphasis on employer-side compliance. For employers, the implementation of the PDA provided shifts in conducting compliance within Title VII. Prior to the PDA’s enactment, “federal law did not expressly address the discriminatory treatment of pregnant workers.”³⁸ With this legislation, employers may be subject to higher compliance costs associated with adhering to the new rules.³⁹ At the same time, employers are now provided with clear standards governing discrimination against pregnant workers, including detailed guidance on how to implement anti-discrimination practices in the workplace.⁴⁰ Specifically, if a professional team declines to renew a pregnant athlete’s contract or removes her from a roster without providing accommodations comparable to those afforded to other injured players, then

³⁵ See 42 U.S.C. § 2000e(k).

³⁶ See generally *Northwestern Univ.*, 362 NLRB 1350 (2015).

³⁷ See Michael Z. Green, *Retaliatory Employment Arbitration*, 35 BERKELEY J. EMP. & LAB. L. 201, 205 (2014) (“EEOC became involved . . . employer responses create a chilling effect that deters employees from further filing of discrimination charges.”).

³⁸ APRIL J. ANDERSON, CONG. RSCH. SERV., R46821, PREGNANCY AND LABOR: AN OVERVIEW OF FEDERAL LAWS PROTECTING PREGNANT WORKERS (2023).

³⁹ See generally *HR Compliance Issues: Challenges Impacting Employers in 2025*, VANTAGE POINT BENEFIT ADM’RS (Jan. 29, 2026), <https://vantagepointbenefit.com/hr-compliance-issues-challenges-impacting-employers-in-2025/> [<https://perma.cc/6CJG-S7C2>]; Staff Management, *The Cost of Compliance: Minimising Risks in 2025*, HR:4UK (Jan. 8, 2025), <https://hr4uk.com/blogs/the-cost-of-compliance-minimising-risks-in-2025/> [<https://perma.cc/FEX9-SLHX>].

⁴⁰ See 42 U.S.C. § 2000e-2(a)(1) (“It shall be an unlawful employment practice for an employer . . . to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin . . .”).

the team could expose itself to liability under the PDA, regardless of whether the athlete pursues legal remedy.⁴¹

C. Case Law and Legal Frameworks

The burden-shifting framework articulated in *McDonnell-Douglass v. Green* provides the foundational structure for proving employment discrimination,⁴² making it critical to the Court's analysis in *Young v. United Parcel Service, Inc.*, a recent pregnancy discrimination case that exposed foundational issues in labor and employment law.⁴³ Under the first step of the framework, the plaintiff, Green, established a prima facie case by showing he was a member of a protected class, qualified for his job position, and was rejected for reemployment despite the employer continuing to hire others with similar qualifications.⁴⁴ In response, McDonnell-Douglass asserted a legitimate, nondiscriminatory reason for its decision: Green had participated in a "stall-in" protest against the company.⁴⁵ The burden shifted back to Green to show this stated reason was in fact pretextual, pointing to evidence that the employer's explanation was not consistently applied and that similarly-situated individuals were treated more favorably.⁴⁶ Based on the evidence presented, the Court found that the employee had indeed illustrated a prima facie case of discrimination.⁴⁷ The Court also stated that the employer offered a legitimate, nondiscriminatory reason for its actions.⁴⁸ Therefore, the case was remanded to ensure the employee received a fair trial to show that the employer's actions were, in fact, pretext for racial discrimination.⁴⁹

⁴¹ See U.S. Equal Emp. Opportunity Comm'n, *Enforcement Guidance on Pregnancy Discrimination and Related Issues*, No. 915.003 (June 25, 2015), <https://www.eeoc.gov/laws/guidance/enforcement-guidance-pregnancy-discrimination-and-related-issues> [<https://perma.cc/MY8M-5U9L>] (explaining that adverse employment actions, including termination or other unfavorable treatment based on pregnancy, violate the PDA).

⁴² *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

⁴³ *Young v. United Parcel Service, Inc.*, 575 U.S. 206 (2015).

⁴⁴ *McDonnell Douglas*, 411 U.S. at 802.

⁴⁵ *Id.* at 802–03.

⁴⁶ *Id.* at 805.

⁴⁷ *Id.* at 802.

⁴⁸ *Id.* at 802–03.

⁴⁹ *Id.* at 804.

This three-step burden-shifting framework remains the standard for proving employment discrimination.⁵⁰

Applying the *McDonnell-Douglas* burden-shifting framework, the *Young* Court brought the PDA into the spotlight.⁵¹ The plaintiff, Peggy Young, sued her employer, United Parcel Service (“UPS”), because it refused to accommodate her pregnancy-related lifting restrictions.⁵² The Court held a pregnant employee can establish a *prima facie* case of discrimination if she can demonstrate that her employer provided accommodations to other employees “similar in their ability or inability to work.”⁵³

Here, Young showed that UPS denied her a light-duty accommodation despite providing such accommodations to other employees, who were similarly unable to perform certain job functions, including those injured on the job, those with disabilities under the Americans with Disabilities Act (“ADA”), and those who had lost Department of Transportation certifications.⁵⁴ The Court emphasized that pregnant workers do not enjoy a “most-favored-nation status,”⁵⁵ but clarified that when an employer denies an accommodation to a pregnant employee while accommodating others, it must articulate “a legitimate, non-discriminatory reason” for the refusal, beyond mere financial or convenience considerations.⁵⁶ Plaintiffs may rebut this reason by showing that the employer’s stated justification is insufficient or by demonstrating that a substantial percentage of non-pregnant employees receive accommodations while a similar proportion of pregnant employees do not.⁵⁷

To compare, a pregnant-athlete plaintiff could establish a *prima facie* case of discrimination by showing that she disclosed her pregnancy, experienced an adverse roster or contract decision, and was treated differently from similarly situated non-pregnant players, such as those recovering from injury, on medical leave, or returning from surgery. Under this comparative approach, a league or team that routinely provides accommodations to injured or recovering players would likewise be expected to offer reasonable accommodations to pregnant athletes unless it can articulate a legitimate, non-discriminatory reason for the differential treatment.

⁵⁰ See *Sprowl v. Mercedes-Benz U.S. Int’l, Inc.*, 815 Fed. Appx. 473 (11th Cir. 2020), *petition for cert. denied* (No. 20-790).

⁵¹ *Young v. United Parcel Service, Inc.*, 575 U.S. 206, 206 (2015).

⁵² *Id.* at 211.

⁵³ *Id.* at 229.

⁵⁴ *Id.* at 211–15.

⁵⁵ *Id.* at 221–22.

⁵⁶ *Id.*

⁵⁷ *Id.* at 229–30.

II. THE MOTHERHOOD PENALTY

A. *Discrimination in the Workplace*

Despite the protections afforded by the PDA and the doctrinal frameworks governing pregnancy discrimination, legislative reform and legal remedies have been insufficient approaches to reducing pregnancy discrimination.⁵⁸ The reality is that such discrimination persists in the workplace.⁵⁹ A recent article in *The New York Times* outlines the reality of the “motherhood penalty” for women employed across a range of industries—from retailers like Walmart to pharmaceutical giants like Merck.⁶⁰ This reality reflects a broader pattern: when women get pregnant, they are often “knocked off the professional ladder.”⁶¹ Scholarship in both law and labor economics has long documented that pregnancy and motherhood significantly alter workplace outcomes, as women are often perceived as less committed or competent and face measurable wage penalties.⁶² For example, one study found that “each child [a woman has] chops 4 percent off a woman’s hourly wages,” while “[m]en’s earnings increase by 6 percent when

⁵⁸ See, e.g., Ellie Samuel, *The Past, Present, and Future of Pregnancy in the Workplace*, PORTSIDE (Jan. 30, 2024), <https://portside.org/2024-01-30/past-present-and-future-pregnancy-workplace> [<https://perma.cc/5XRG-4SFG>] (“[W]hen pregnant workers bring charges with the EEOC, 74% result in ‘no monetary benefit or required workplace change.’”); Dina Bakst, *Peggy Young’s Victory Is Not Enough*, U.S. NEWS (Mar. 26, 2015), <https://www.usnews.com/opinion/economic-intelligence/2015/03/26/peggy-young-supreme-court-victory-is-not-enough-for-pregnant-workers> [<https://perma.cc/R5AK-33Y2>].

⁵⁹ Claire Savage & Alexandra Olson, *New Rules for Pregnant Workers Fairness Act Include Divisive Accommodations for Abortion*, AP NEWS (Apr. 15, 2024), <https://apnews.com/article/pregnant-workers-fairness-act-abortion-d2a25371e-09a20734803b1b9cce53c85> [<https://perma.cc/P5EN-AAAC>] (noting that EEOC adjudicates roughly “2,000 to 4,000” pregnancy discrimination complaints annually, many involving denied workplace accommodations, and that a study found courts permitted employers to deny accommodations in approximately “two-thirds of cases decided after the 2015 Supreme Court” ruling under the PDA).

⁶⁰ Natalie Kitroeff & Jessica Silver-Greenberg, *Pregnancy Discrimination Is Rampant Inside America’s Biggest Companies*, N.Y. TIMES (Feb. 8, 2019), <https://www.nytimes.com/interactive/2018/06/15/business/pregnancy-discrimination.html>, [<https://perma.cc/N9Q4-4VTV>].

⁶¹ *Id.*

⁶² Joan C. Williams, Robin Devaux, Danielle Fuschetti, et al., *A Sip of Cool Water: Pregnancy Accommodation After the ADA Amendments Act*, 32 YALE L. & POL’Y REV. 97, 102–03 (2013).

they become fathers.”⁶³ The Institute for Women’s Policy Research further demonstrates that these disparities compound over time, finding that “[the] motherhood penalty is responsible for nearly 80 percent of the gender pay gap, [which] widens as women age and are more likely to have children.”⁶⁴ Similarly, a study by The Century Foundation revealed that “[e]ach child under five years old is projected to reduce the [annual] earnings of a typical mother by 15 percent.”⁶⁵

These economic patterns inform how courts evaluate discrimination claims, particularly where employers characterize pregnancy-related decisions as neutral business judgments.⁶⁶

B. *Pregnancy Discrimination in Professional Sports: Dearica Hamby*

The most recent victim of the ‘motherhood penalty’ in professional sports is three-time WNBA All-Star Dearica Hamby.⁶⁷ Hamby started her WNBA career in 2015 when she was selected in the first round by the San Antonio Stars.⁶⁸ Hamby was named Sixth Woman of the Year for two consecutive seasons⁶⁹ and continued to maintain a career marked by consistent double-digit scoring and strong rebounding.⁷⁰ In June of 2022, Hamby signed a two-year extension with her former team, the Las Vegas Aces (hereinafter “the Aces”).⁷¹ This two-year extension included housing accommodation

⁶³ Kitroeff & Silver-Greenberg, *supra* note 60.

⁶⁴ Miranda Peterson, *Motherhood is Hard – Pay Penalties Make It Harder*, INST. FOR WOMEN’S POL’Y RSCH. (Aug. 7, 2024), <https://iwpr.org/motherhood-is-hard-pay-penalties-make-it-harder/> [<https://perma.cc/C2TF-SX6V>].

⁶⁵ Julie Kashen & Jessica Milli, *The Build Back Better Plan Would Reduce the Motherhood Penalty*, CENTURY FOUND. (Oct. 8, 2021), <https://tcf.org/content/report/build-back-better-plan-reduce-motherhood-penalty/> [<https://perma.cc/2NRB-FG5K>].

⁶⁶ Judith G. Greenberg, *The Pregnancy Discrimination Act: Legitimizing Discrimination Against Pregnant Women in the Workforce*, 50 ME. L. REV. 225, 226 (1998).

⁶⁷ See generally Complaint and Jury Demand, *Hamby v. WNBA, LLC*, et. al, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 1.

⁶⁸ *Dearica Hamby Career Statistics*, ESPN, https://www.espn.com/wnba/player/stats/_id/2566106/dearica-hamby [<https://perma.cc/3H4S-VAJC>]; *Los Angeles Sparks Roster: Dearica Hamby*, WNBA, <https://www.wnba.com/player/204324/dearica-hamby?os=f&ref=app> [<https://perma.cc/9CY5-V8JP>].

⁶⁹ WNBA, *Sixth Woman of the Year Award*, <https://www.wnba.com/history-sixth-woman-of-the-year> [<https://perma.cc/QMB9-UKNX>].

⁷⁰ See *Dearica Hamby Career Statistics*, *supra* note 68.

⁷¹ *Aces Sign Dearica Hamby to Contract Extension*, L.V. ACES (June 29 2022), <https://aces.wnba.com/news/aces-sign-dearica-hamby-to-contract-extension> [<https://perma.cc/GKM2-MCPR>].

for Hamby and her family, among other benefits.⁷² In July of 2022, Hamby discovered she was pregnant.⁷³ Soon after, on August 6, Hamby informed head coach Becky Hammon.⁷⁴ Once her pregnancy was confirmed a few days later by her doctor, Hamby notified the Aces' general manager, Natalie Williams.⁷⁵ Hamby publicly announced that she was pregnant at the end of September 2022 while celebrating the Aces' championship win—and that, she says, is when the tides turned.⁷⁶ Following the public announcement, Hamby was told “she must vacate the team-provided housing.”⁷⁷ Coach Hammon accused Hamby of failing to take “proper precautions not to get pregnant,” questioned her commitment to the team, and accused her of not taking her workouts seriously.⁷⁸ Hammon also asserted that signing the extension contract meant she “implicitly agreed she would not get pregnant again.”⁷⁹ Then, Hamby's situation changed abruptly—she was told her “time with the Aces [was] up” and was traded to the Los Angeles Sparks in January 2023.⁸⁰ Stunned and frustrated by the turn of events, Hamby asked the WNBA to investigate.⁸¹ The internal investigation officially commenced in February 2023.⁸² Concluding the investigation in May 2023, the WNBA found that the Aces had retaliated against Hamby.⁸³

1. The Lawsuit

In response to her employer's conduct, which Hamby contends violated civil rights protections, she filed a federal lawsuit against the Aces and the WNBA in August 2024 alleging intimidation and discrimination over her pregnancy.⁸⁴

⁷² Complaint and Jury Demand ¶ 29, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 1.

⁷³ *Id.* ¶ 31.

⁷⁴ *Id.* ¶ 32.

⁷⁵ *Id.* ¶¶ 33–34.

⁷⁶ *Id.* ¶¶ 35–37.

⁷⁷ *Id.* ¶ 39.

⁷⁸ *Id.* ¶¶ 41, 45.

⁷⁹ *Id.* ¶ 46.

⁸⁰ *Id.* ¶¶ 48–49.

⁸¹ *Id.* ¶ 51.

⁸² *Id.* ¶ 52.

⁸³ *Id.* ¶¶ 56–57.

⁸⁴ Michael Voepel, *Sparks' Dearica Hamby Sues WNBA, Aces Alleging Discrimination*, ESPN (Aug. 12, 2024), https://www.espn.com/wnba/story/_/id/40839309/sparks-dearica-hamby-sues-wnba-aces-alleging-discrimination [https://perma.cc/DLQ3-28KA].

i. Hamby's Claims and Supporting Arguments

Cause of Action One: Discrimination by the Aces

Hamby's first cause of action against the Aces is discrimination based on sex, a violation of Title VII and Nevada state law.⁸⁵ To succeed in a claim alleging discrimination based upon sex, a plaintiff must establish "direct or circumstantial evidence of discrimination" or use the *McDonnell Douglas* burden-shifting test.⁸⁶ The first step under *McDonnell* is for the plaintiff to establish a *prima facie* case, asserting they are a member of a protected class.⁸⁷ Here, Hamby satisfies this requirement by alleging discrimination on the basis of pregnancy,⁸⁸ a protected characteristic under the PDA.⁸⁹ Public and private employers with fifteen or more workers⁹⁰ are subject to the laws under Title VII; accordingly, both the WNBA and the Aces are bound to the legal obligation "to provide . . . a fair non-discriminatory work environment and employment opportunities."⁹¹ Indeed, per the PDA, employers shall not discriminate in employment on the basis of sex, including pregnancy.⁹² Hamby alleges that the Defendant's decision to trade her after signing the contract extension "was motivated by [her] announcement that she was pregnant."⁹³ When asked if Hamby was getting traded due to her pregnancy, Hammon answered: "What do you want me to do?"⁹⁴ These statements are offered to show a negative bias toward Hamby's status as a pregnant woman and support allegations that her employer engaged in discriminatory actions, suggesting differential treatment from similarly situated players who were not pregnant.⁹⁵

Hamby claims that she suffered embarrassment from these conversations and the trade inflicted emotional distress and anxiety on her.⁹⁶ According to

⁸⁵ Complaint and Jury Demand ¶¶ 66–79, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 1.

⁸⁶ *Hittle v. City of Stockton*, 101 F. 4th 1000, 1012 (9th Cir. 2024).

⁸⁷ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973).

⁸⁸ Complaint and Jury Demand ¶ 67, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 1.

⁸⁹ *Id.*

⁹⁰ 2 U.S.C. § 2000e(b).

⁹¹ Complaint and Jury Demand ¶ 68, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 1.

⁹² *Id.* ¶ 69.

⁹³ *Id.* ¶ 70.

⁹⁴ *Id.* ¶ 47.

⁹⁵ *Id.* ¶¶ 41–44, 46

⁹⁶ *Id.* ¶¶ 73–74.

Hamby, such a rapid change in employment also harmed her financial security and professional reputation. Hamby lost promotional and endorsement opportunities; the relocation from Nevada to California subjected her to a higher cost of living; joining a new team meant she could not participate in back-to-back WNBA championships; and her reputation among her peers was damaged.⁹⁷

Under the second step of the *McDonnell* framework, the burden shifts to the defendants to articulate a legitimate, non-discriminatory reasons for the challenged employment action.⁹⁸ The Aces contend that Hamby “cannot adequately allege her trade to the Los Angeles Sparks constituted a sufficient adverse employment action”⁹⁹ and that she failed to identify specific individuals responsible for the alleged conduct.¹⁰⁰ Similarly, the WNBA argues that it was not Hamby’s joint employer and therefore cannot be held liable for any harms allegedly suffered.¹⁰¹

Third, the burden shifts back to Hamby to demonstrate that the defendants’ stated reasons were merely pretextual.¹⁰² Hamby asserts that the WNBA functioned as a joint employer¹⁰³ and that the harms she suffered were directly tied to the employment actions taken following her pregnancy announcement.¹⁰⁴ In support of this argument, Hamby again points to Hammon’s indication that Hamby’s contract extension was conditioned on an implicit understanding that she would not become pregnant and to her deflective response to whether Hamby’s pregnancy motivated the trade.¹⁰⁵

Cause of Action Two: Retaliation by the Aces

Hamby’s second cause of action is retaliation by the Aces under Title VII and Nevada law.¹⁰⁶ Retaliation is antagonistic behavior from employers that can include actions like “induc[ing] claimant to drop her

⁹⁷ *Id.* ¶¶ 71–72.

⁹⁸ *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802–03 (1973).

⁹⁹ Las Vegas Aces Motion to Dismiss at 13:14–15, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 12.

¹⁰⁰ *Id.* at 6:15–16; 12:5–6.

¹⁰¹ WNBA’s First Motion to Dismiss at 9:6–12, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 14.

¹⁰² *McDonnell Douglas*, 411 U.S. at 804.

¹⁰³ Complaint and Jury Demand ¶ 13, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 1.

¹⁰⁴ *Id.* ¶ 70.

¹⁰⁵ *Id.* ¶¶ 46–47.

¹⁰⁶ *Id.* ¶ 81.

claim”¹⁰⁷ and requires proof that, but for the employer’s alleged wrongful action or actions, the retaliation would not have occurred.¹⁰⁸ Hamby argues that the Aces retaliated against her after bringing her complaints to the Women’s National Basketball Players Association (“WNBPA”).¹⁰⁹ Hamby asserts multiple examples where the Aces allegedly retaliated against her due to her pregnant status. These include “(1) issuing a directive to Las Vegas Aces players and staff to cease communication with [Hamby]; (2) making a false public statement, through its General Manager, Natalie Williams, on a radio show that implied [Hamby], and the Las Vegas Aces, were aware of [her] pregnant status since June 2022; and (3) attempting to wrongfully obtain confidential medical records from [Hamby] after informing her she was no longer a member of the Las Vegas Aces.”¹¹⁰ All these actions (and potentially more, as the list is non-exhaustive) were taken, according to Hamby, to punish her and ultimately “dissuade a reasonable worker from complaining about discrimination or otherwise engaging in protected activity.”¹¹¹

Cause of Action Three: Retaliation by WNBA

Hamby’s last cause of action is retaliation by the WNBA under Title VII and Nevada law.¹¹² Hamby publicly posted on social media about the trade, stating her disappointment and contentions with the Aces’ behavior, and engaged with the WNBPA’s representative to bring forth an investigation regarding the discrimination.¹¹³ Yet, this was met with alleged retaliatory behavior by the WNBA because it: (1) provided no meaningful redress to Hamby, (2) failed to interview key witnesses, (3) failed to take any steps to deter future wrongdoing, (4) failed to impose any proper remedial measures, and (5) refused to extend Hamby’s League Marketing Contract.¹¹⁴ Hamby argues this conduct and failure to act was intended to punish and dissuade her from complaining about the discrimination.¹¹⁵

¹⁰⁷ Heuer v. Weil-McLain, 203 F.3d 1021, 1023 (7th Cir. 2000).

¹⁰⁸ Univ. of Tex. Sw. Med. Ctr. v. Nassar, 570 U.S. 338, 360 (2013).

¹⁰⁹ Complaint and Jury Demand ¶¶ 81, 51, Hamby v. WNBA, LLC, et. al, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 1.

¹¹⁰ *Id.* ¶¶ 81(a)–(d).

¹¹¹ *Id.* ¶ 84.

¹¹² *Id.* ¶ 92.

¹¹³ *Id.* ¶ 50.

¹¹⁴ *Id.* ¶¶ 93–99.

¹¹⁵ *Id.* ¶¶ 84.

ii. *Defendants' Motion to Dismiss and Counter-Arguments*

The WNBA disputed Hamby's arguments about joint-employer status.¹¹⁶ Under federal law, joint-employer status typically turns on whether an entity exercises significant control over the terms and conditions of employment, including hiring, supervision, and discipline, or whether the worker is economically dependent on that entity.¹¹⁷ Hamby worked for the WNBA in marketing as an independent contractor.¹¹⁸ The WNBA relies on Hamby's classification to argue that it lacked the requisite control, asserting that it did not control the details of her work¹¹⁹ and therefore did not exercise the level of authority necessary to establish a joint-employer relationship. The WNBA emphasized that each franchise is privately-owned and that players are employed solely by their respective teams.¹²⁰ Also, the WNBA argued that Hamby failed to state a plausible retaliation claim, as she did not identify specific actions or omissions by the WNBA that caused her harm.¹²¹ The federal judge agreed, and the WNBA was dismissed as a defendant from the litigation.¹²²

That said, the NLRB's joint-employer framework for professional sports is not straightforward. It provides that joint-employer status may arise where an entity exercises direct or indirect control over essential terms and conditions of employment.¹²³ Although WNBA franchises maintain formal control

¹¹⁶ WNBA's First Motion to Dismiss 9: 6-12, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 14.

¹¹⁷ See 29 C.F.R. § 103.40; see also NLRB Joint-Employer Standard Final Rule, <https://www.nlr.gov/about-nlr/what-we-do/the-standard-for-determining-joint-employer-status-final-rule> [<https://perma.cc/X2NU-JQ9N>] (describing how authority to control essential employment terms is the touchstone of joint-employer status).

¹¹⁸ Marketing Agreement between Dearica Hamby and the WNBA (Aug. 18, 2022).

¹¹⁹ WNBA's First Motion to Dismiss at 13-15, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 14.

¹²⁰ *Id.* at 2; Michael McCann, *WNBA, Aces Push for Dismissal of Dearica Hamby's Lawsuit*, SPORTICO (Nov. 10, 2024), <https://www.sportico.com/law/analysis/2024/wnba-aces-defenses-hamby-lawsuit-1234804485/> [<https://perma.cc/K7RV-DAPB>].

¹²¹ WNBA's First Motion to Dismiss at 7, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 14.

¹²² Order (1) Granting in Part Defendant Las Vegas Basketball L.P.'s Motion to Dismiss; (2) Granting Defendant WNBA, LLC's Motion to Dismiss; (3) Denying Plaintiff Dearica Hamby's Motion for Leave to Amend Complaint; and (4) Denying Motion for Leave to File Brief as Amici, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 65.

¹²³ National Labor Relations Board, *The Standard for Determining Joint-Employer Status – Final Rule* (Oct. 27, 2023), <https://www.nlr.gov/about-nlr/what-we-do/>

over player contracts, the league exerts significant influence through league-wide governance structures, including specific collective bargaining provisions like salary regulations, eligibility requirements, and disciplinary authority.¹²⁴

The Aces also moved for dismissal, arguing that Hamby's alleged harms were not clearly connected to a specific term or condition of her employment.¹²⁵ And, Hamby did not identify who in the Aces organization engaged in the "retaliatory conduct."¹²⁶ In 2025, the motion was denied in an order noting that Hamby's claims were sufficiently pleaded.¹²⁷

2. Resolution and Potential Repercussions

As of December 11, 2025, the Aces and Hamby agreed to settle their portion of the lawsuit.¹²⁸ The parties filed a motion to dismiss with prejudice.¹²⁹

Hamby's courage to speak out against pregnancy discrimination illustrates how important these discussions are for employment law in the context of "pregnant pro[fessional] athletes[,] . . . their teams[,] and league[s]."¹³⁰ It also highlights the legal question of "whether a player trade can cause an

the-standard-for-determining-joint-employer-status-final-rule [<https://perma.cc/5VFH-Q7Z2>]. *But see* Max Kutner, *DOL Unveils Joint Employer Rule Proposal*, LAW360 (Apr. 22, 2026 09:00 ET), <https://www.law360.com/employment/articles/2460691> [<https://perma.cc/K396-XYNL>] (describing the Department of Labor's proposed four-factor framework for determining vertical joint-employer status based on control over hiring, supervision, compensation, and employment records).

¹²⁴ See WNBA CBA art. VII (Salary Cap Structure), art. III (Player Eligibility and Draft Rules), art. XIII (Grievance and Arbitration Procedures).

¹²⁵ Las Vegas Ace's First Motion to Dismiss at 2, *Hamby v. WNBA, LLC*, et. al, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 12.

¹²⁶ *Id.* at 4, 5.

¹²⁷ Order (1) Granting in Part Defendant Las Vegas Basketball L.P.'s Motion to Dismiss, at 1; (2) Granting Defendant WNBA, LLC's Motion to Dismiss; (3) Denying Plaintiff Dearica Hamby's Motion for Leave to Amend Complaint; and (4) Denying Motion for Leave to File Brief as Amici, *Hamby v. WNBA, LLC*, et. al, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 65.

¹²⁸ Associated Press, *Dearica Hamby, Aces Drop Lawsuit over Pregnancy Discrimination*, ESPN (Dec. 12, 2025), https://www.espn.com/wnba/story/_/id/47289537/dearica-hamby-aces-drop-lawsuit-pregnancy-discrimination [<https://perma.cc/95WG-RAYM>].

¹²⁹ *Id.*

¹³⁰ Michael McCann, *Hamby's Lawsuit Could Change How Pro Teams Handle Pregnancies*, SPORTICO (Aug. 19, 2024), <https://www.sportico.com/law/analysis/2024/hamby-wnba-lawsuit-legal-analysis-1234793871/> [<https://perma.cc/5MGB-HKNE>].

injury the law ought to protect.”¹³¹ Although Hamby’s case is unlike those of pregnant women in the traditional workforce, the recent Supreme Court case of *Muldrow v. City of St. Louis, Missouri* may be instructive.¹³² In *Muldrow*, the Court held “that a female officer sufficiently alleged sex discrimination under Title VII after she was transferred from one job to another, even though her pay and rank were unchanged.”¹³³ Further, the Court asserted that though an employee must show “‘some harm’ . . . the harm need not be significant.”¹³⁴

Under this standard, Hamby’s allegations likely satisfy Title VII’s injury requirement because the trade imposed tangible professional and personal consequences beyond merely changing teams.¹³⁵ With such a lessened standard, “Hamby’s trade to a new team — which undoubtedly necessitated various life changes — is likely to state a claim against the Aces even if her pay was not affected.”¹³⁶

Though the complaint paints a “bleak picture of employment for” an athlete-mother, “Hamby [was not] fired, denied a raise, passed over for a promotion, downgraded in influence or exiled to another company office.”¹³⁷ So, settling the case was likely the best option. However, the absence of a judicial ruling leaves several significant legal questions unresolved for future plaintiffs. Because the case was settled before a court could fully apply Title VII and the PDA in the context of professional athletics, uncertainty remains regarding whether a player trade constitutes actionable employment harm¹³⁸ and how the Supreme Court’s reasoning in *Muldrow* applies to professional athletes,¹³⁹

¹³¹ *Id.*

¹³² 601 U.S. 346 (2024).

¹³³ Chris Deubert, *Hamby Pregnancy Lawsuit Against WNBA, Aces Presents Many Legal Issues*, FORBES (Aug. 14, 2024), <https://www.forbes.com/sites/chrisdeubert/2024/08/14/hamby-pregnancy-lawsuit-against-wnba-aces-presents-many-legal-issues/> [<https://perma.cc/4TWH-RCY3>] (quoting *Muldrow*, 601 U.S. at 347).

¹³⁴ *Id.* (quoting *Muldrow*, 601 U.S. at 347).

¹³⁵ Complaint and Jury Demand ¶¶ 71–74, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 1.

¹³⁶ Deubert, *supra* note 133.

¹³⁷ See McCann, *supra* note 130.

¹³⁸ Sara Coello, *Dearica Hamby’s Pregnancy Allegations: What Do Laws, WNBA CBA Say?*, ESPN (Jul 11, 2023, 12:32 ET), https://www.espn.com/wnba/story/_/id/37990199/dearica-hamby-pregnancy-allegations-do-laws-wnba-cba-say [<https://perma.cc/7F62-F2BZ>] (explaining the varied interpretations of unclear law and differing context of employment actions in traditional workforce and professional athletics, especially with the *Hamby* case).

¹³⁹ See *Muldrow Case Recalibrates Title VII “Significant Harm” Standard*, CROWELL & MOORING LLP: CLIENT ALERT (Apr. 24, 2024), <https://www.crowell.com/en/insights/client-alerts/muldrow-case-recalibrates-title-vii-significant-harm-standard>

and especially athlete-mothers, whose careers are uniquely tied to team placement, public reputation, and endorsement opportunities.¹⁴⁰ The settlement also leaves unanswered the extent to which professional sports leagues, like the WNBA, may be considered joint employers for the purposes of Title VII liability.¹⁴¹

Additionally, given the WNBA's surge in popularity, the league has a strong incentive to avoid litigation that could impede its momentum. With that, "the Aces have become one of the league's leading teams, led by Hammon[,] who has previously garnered interest as a potential NBA head coach."¹⁴² As sports and entertainment attorney Chris Deubert observes, Hamby's claimed damages, particularly emotional distress, would require invasive questioning, and Hamby likely does not want to open herself up to such emotional exhaustion when she is in her "best season yet."¹⁴³

As a result, while Hamby's cause brought national attention to pregnancy discrimination in professional sports,¹⁴⁴ future athlete-plaintiffs may continue to face uncertainty regarding the scope of legitimate protections available to them.

[<https://perma.cc/RK7P-PXGS>] (explaining that the Supreme Court's decision in *Muldrow v. City of St. Louis* lowered the threshold for actionable Title VII discrimination claims by rejecting prior "significant harm" requirements and may allow more plaintiffs to survive motion to dismiss and summary judgment, particularly in cases involving transfers and loss of professional opportunities).

¹⁴⁰ See Talston Scott, Sydney V.M. Smith, Francine E. Darroch & Audrey R. Giles, *Selling v. Supporting Motherhood: How Corporate Sponsors Frame the Parenting Experiences of Elite and Olympic Athletes*, 11 COMM'C'N & SPORT J. 1181, 1184–86, 1189–90 (2023) (asserting that athlete-mothers' careers depend on sponsorship and visibility, and that pregnancy has historically led to reduced opportunities and perceived athletic devaluation).

¹⁴¹ See generally Order (1) Granting in Part Defendant Las Vegas Basketball L.P.'s Motion to Dismiss; (2) Granting Defendant WNBA, LLC's Motion to Dismiss; (3) Denying Plaintiff Dearica Hamby's Motion for Leave to Amend Complaint; and (4) Denying Motion for Leave to File Brief as Amici, *Hamby v. WNBA, LLC, et. al*, No. 2:24-cv-01474 (D. Nev. Aug. 12, 2024), ECF No. 65.

¹⁴² See Deubert, *supra* note 133 (quoting *Muldrow v. City of St. Louis, Missouri*, 601 U.S. 346, 347 (2024)).

¹⁴³ *Id.*

¹⁴⁴ See Michael Voepel, *Sparks' Dearica Hamby Sues WNBA, Aces Alleging Discrimination*, ESPN (Aug. 12, 2024), https://www.espn.com/wnba/story/_/id/40839309/sparks-dearica-hamby-sues-wnba-aces-alleging-discrimination [<https://perma.cc/DLQ3-28KA>].

III. THE IMPACT OF COLLECTIVE BARGAINING AGREEMENTS ON LABOR AND EMPLOYMENT RIGHTS OF FEMALE ATHLETES

A. *Collective Bargaining Agreements in Professional Sports Leagues*

A collective bargaining agreement (“CBA”) is defined as “an agreement negotiated between a labor union and an employer that sets forth the terms of employment for the employees who are members of that labor union.”¹⁴⁵ Such an agreement serves as a crucial piece of negotiating power between the major ‘players’: the labor union, employer, and employees. For a traditional labor union, the CBA often “include[s] provisions regarding wages, vacation time, working hours, working conditions, and health insurance benefits.”¹⁴⁶

The governing body and statute that enforce these areas related to union activities and collective bargaining are the National Labor Relations Board (“NLRB”) and the National Labor Relations Act (“NLRA”), respectively. The NLRA not only requires employers to “collectively bargain in good faith over wages, hours, and other key employment matters,”¹⁴⁷ but also extends protections to non-unionized employees in “protected concerted activities.”¹⁴⁸ Importantly, the NLRA also operates as a preemptive force: under doctrines such as *Garmon* and *Machinists* preemption, which may displace state and certain federal claims where the conduct at issue is either arguably protected or prohibited by the Act, or where it concerns areas left to the free play of economic forces.¹⁴⁹ The preemption framework raises a particularly under-explored tension in the context of unionized professional athletes:¹⁵⁰ where

¹⁴⁵ *All About Unions*, WORKPLACE FAIRNESS, <https://www.workplacefairness.org/labor-unions/> [<https://perma.cc/6YQA-NUP8>].

¹⁴⁶ *Id.*

¹⁴⁷ *What Employers Need to Know About the Current State of the NLRB*, FISHER PHILLIPS (Feb. 5, 2025), <https://www.fisherphillips.com/en/news-insights/what-employers-need-to-know-about-the-current-state-of-the-nlr.html> [<https://perma.cc/762Y-QBNV>].

¹⁴⁸ *Id.*

¹⁴⁹ See *San Diego Bldg. Trades Council v. Garmon*, 359 U.S. 235, 244–45 (1959); *Lodge 76, Int’l Ass’n of Machinists & Aerospace Workers v. Wis. Emp’t Relations Comm’n*, 427 U.S. 132, 140 (1976).

¹⁵⁰ See generally Ryan T. Smith and Michael J. Frantz, *Timeout! NLRB General Counsel Says Student-Athletes Are Employees Who Can Unionize*, FRANTZ WARD: LABOR & EMPLOYMENT NAVIGATOR (Oct. 4, 2021), <https://www.laboremploymentlawnavigator.com/2021/10/timeout-nlr-general-counsel-says-student-athletes-are-employees-who-can-unionize/> [<https://perma.cc/5V5Z-H8QA>] (discussing

a pregnant athlete's adverse roster or employment decision may simultaneously be characterized as both an unfair labor practice under the NLRA and a violation of federal anti-discrimination law, such as Title VII, the question becomes which statutory regime governs, and on what basis.¹⁵¹ Courts have long grappled with the extent to which statutory anti-discrimination claims can proceed with collectively bargained relationships,¹⁵² but the interaction between labor law preemption and civil rights protections in professional sports remains underdeveloped in the case law and scholarship.¹⁵³ NLRA preemption is not merely a background doctrine but a potential key for assessing jurisdictional overlap and doctrinal priority when labor relations and statutory equality guarantees collide. At the same time, arbitration agreements further complicate this landscape by channeling workplace disputes away from public adjudication and into private resolution.¹⁵⁴ This often limits employees' ability to pursue statutory claims in court.¹⁵⁵

While the NLRB continues its mission to protect workers by representation petitions and union elections, regional director decisions in representation cases, and unfair labor practice changes, the interaction between NLRA protections, federal preemption doctrines, and enforceable arbitration

Northwestern football unionization in collegiate sports and underscores uncertainty and unresolved doctrinal space regarding labor law).

¹⁵¹ See *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 49–51 (1974); see generally Michigan Law Review, *Title VII and NLRA: Protection of Extra-Union Opposition to Employment Discrimination*, 72 MICH. L. REV. 313 (1973) (examining the jurisdictional tension arising when Title VII and NLRA grievance procedures are simultaneously available to a unionized employee).

¹⁵² See *Gardner-Denver*, 415 U.S. at 59–60 (holding Title VII claims are not foreclosed by prior arbitration under a CBA); *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 260–72 (2009) (limiting the decision in *Gardner-Denver* by finding that a provision in a CBA requiring arbitration of employment claim under the Age Discrimination Act of 1967 was enforceable).

¹⁵³ See *Brown v. Pro Football, Inc.* 518 U.S. 231, 236–37, 250 (1996) (reflecting the Court's acknowledgment that federal labor policy can displace or limit the application of external legal regimes, contributing to an unresolved tension between labor law preemption and other statutory protections); Abigail Bono, *Professional Athlete's Maternity Rights – The Dearica Hamby Lawsuit*, BROOKLYN SPORTS & ENTERTAINMENT LAW BLOG (Oct. 28, 2025), <https://sports-entertainment.brooklaw.edu/sports/professional-athletes-maternity-rights-the-dearica-hamby-lawsuit/> [https://perma.cc/HSX9-ZU4S] (“CBA . . . provisions in tension with federal pregnancy protections [create] [a]mbiguities as to the application of [labor] laws.”).

¹⁵⁴ See *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 334–45 (2011); 9 U.S.C. § 2 (2023).

¹⁵⁵ See *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991).

clauses¹⁵⁶ may limit the availability of parallel civil claims and shape the legal remedies available to athletes like Hamby.

Professional athletes likewise benefit from a CBA. In a professional sports league, “the owners wield substantial power both individually and as a group” and professional athletes have formed unions to curb such power.¹⁵⁷ The unions “devise” CBAs to ensure the rights of athletes are protected.¹⁵⁸ Like a union in the traditional workforce, CBAs for professional athletes generally include provisions regarding wages, hours, working conditions, employee grievances, medical benefits, and retirement plans.¹⁵⁹

However, professional athletes’ CBAs discuss provisions that would be irrelevant for a member of the traditional workforce. For example, revenue sharing does not occur between traditional employees and employers. Additionally, wages for professional athletes depend on the structure of the given league and any relevant antitrust exemptions the league may have.¹⁶⁰ Indeed, while a salary cap—like limiting an associate attorney to \$100,000 per year regardless of additional work—might appear to resemble a restraint on trade, such caps have generally survived antitrust scrutiny in sports when collectively agreed upon and tied to league structure.¹⁶¹ As such, there are protections afforded by the non-statutory labor exemption, which shields certain restraints on competition that are the product of bona fide collective bargaining.¹⁶² As articulated by the Court, the exemption applies where the challenged restraint primarily affects the parties to the collective bargaining relationship, concerns a mandatory subject of bargaining (like wages), and

¹⁵⁶ See, e.g., *Epic Systems Corp. v. Lewis*, 584 U.S. 497 (2018) (holding that mandatory arbitration agreements requiring individualized proceedings are enforceable); *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247 (2009) (finding that a provision in a CBA requiring arbitration of employment claim under the Age Discrimination Act of 1967 was enforceable).

¹⁵⁷ *Collective Bargaining Agreements in Sports Leagues & Their Legal Scope*, JUSTIA, <https://www.justia.com/sports-law/collective-bargaining-agreements-in-sports-leagues/> [<https://perma.cc/Z482-C4BF>].

¹⁵⁸ *Id.*

¹⁵⁹ See *All About Unions*, *supra* note 145.

¹⁶⁰ *Collective Bargaining Agreements in Sports Leagues & Their Legal Scope*, *supra* note 157.

¹⁶¹ For a more in-depth analysis and discussion of the Sherman Act and salary caps, see GABE FELDMAN, *THE OXFORD HANDBOOK OF AMERICAN SPORTS LAW* CHAPTER 11: COLLECTIVE BARGAINING AND PROFESSIONAL SPORTS (Michael A. McCann ed., 1 ed. 2018).

¹⁶² See *NLRB v. Katz*, 369 U.S. 736, 743 (1962); *Clarett v. Nat’l Football League*, 369 F.3d 124, 130 (2d Cir. 2004).

is the result of arm's-length negotiation within a valid CBA.¹⁶³ In the professional sports context, courts have consistently recognized that salary caps fit squarely within this framework, as they are central to the collective negotiation of wages and competitive balance.¹⁶⁴ Simply put, if the salary cap is negotiated and bargained for in good faith in a CBA, it is not a violation of antitrust law, whereas in a traditional workforce context it would be.¹⁶⁵

B. Comparative Case Studies

Professional athletes and sports leagues are not immune to the motherhood penalty. In response, many female athletes have been outspoken about motherhood and pregnancy while maintaining their careers.¹⁶⁶ Their advocacy has contributed to changes in CBAs for female athletes in various leagues. The National Women's Soccer League ("NWSL"),¹⁶⁷ the Professional Women's Hockey League ("PWHL"),¹⁶⁸ and the WNBA¹⁶⁹ each offer illustrations of the different protections afforded to athletes by CBAs; some including protective measures to address the motherhood penalty and others lacking such a shield.

1. Professional Women's Hockey League

The PWHL has one of the most player-friendly, dynamic, and forward-looking CBAs.¹⁷⁰ Three sections emphasize the protections afforded to female

¹⁶³ See *Brown v. Pro Football, Inc.*, 518 U.S. 231, 250 (1996).

¹⁶⁴ *Id.* at 236–37.

¹⁶⁵ See *Katz*, 369 U.S. at 743; *Clarett*, 369 F.3d at 130.

¹⁶⁶ Examples include, but are not limited to, Serena Williams, Allyson Felix, and Alex Morgan.

¹⁶⁷ Collective Bargaining Agreement Between The National Women's Soccer League Players Association and National Women's Soccer League (2022), https://www.nwslplayers.com/_files/ugd/84dade_c1592001e8774f81b8346c2b13e6a5f4.pdf [<https://perma.cc/Q3EX-S9WH>] [hereinafter "NWSL CBA"].

¹⁶⁸ Melissa Burgess, *Highlights and Comparables of the PWHLPA Collective Bargaining Agreement*, VICTORY PRESS (July 8, 2023), <https://victorypress.org/2023/07/08/highlights-comparables-of-the-pwhlpa-collective-bargaining-agreement/> [<https://perma.cc/AH4A-8GD8>].

¹⁶⁹ WNBA CBA, *supra* note 31.

¹⁷⁰ See Maitreyi Anantharaman, *The First CBA in Women's Hockey Is a Picture of the Future, and a Story of the Past*, DEFECTOR: WOMEN'S HOCKEY (Jan. 11, 2024), <https://defector.com/womens-hockey-pwhl-pwhpa-labor-cba> [<https://perma.cc/JG9V-TK7X>].

athletes with respect to their choices in becoming mothers: salary, traveling and lodging, and insurance.¹⁷¹ For salary, the “base . . . including benefits, will continue for PWHL players in the event of pregnancy.” Nursing accommodations are also to be provided, and “any benefits-eligible player who births or adopts, or whose partner births, a child during the season will be entitled to up to eight weeks paid leave, or the remainder of the player’s base salary for that season, whichever is lesser.”¹⁷² For traveling and lodging, rooms will have up to two players per room, but players traveling “with a child under three years old will be provided a single room.”¹⁷³ Finally, for insurance, “the PWHL will maintain a group life insurance policy with a face policy amount of at least \$55,000 per benefits-eligible player. At their expense, players can add their spouses and dependent children.”¹⁷⁴

2. National Women’s Soccer League

The NWSL anti-harassment policy and CBA include provisions relating to pregnancy.¹⁷⁵ First, the anti-harassment policy bars the league from discriminating against players in “pregnancy (including lactation, childbirth, or related medical conditions) . . .”¹⁷⁶ Players may report discriminatory conduct by text, email, call, writing to the NWSL Human Resources Manager, or by email or call to the joint investigative team comprised of NWSL and their players association (“NWSLPA”).¹⁷⁷

Additionally, the CBA contains four provisions relevant to pregnancy: team-provided housing, salary, nursing accommodations, and parental leave.¹⁷⁸ NWSL can opt-in to team-provided housing, and if the players have “a child or children residing with them” they are afforded, at the least,

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ NWSL Policy to Prevent and Eliminate Workplace Discrimination, Harassment, and Bullying, https://images.nwslsoccer.com/image/private/t_q-good/prd/eqf8onxvjcmkqmt5ubmn.pdf [<https://perma.cc/6BUP-48BT>]; NWSL CBA, *supra* note 167.

¹⁷⁶ See NWSL Policy to Prevent and Eliminate Workplace Discrimination, Harassment, and Bullying, *supra* note 175; NWSL CBA, *supra* note 167.

¹⁷⁷ NWSL Policy to Prevent and Eliminate Workplace Discrimination, Harassment, and Bullying, *supra* note 175; NWSL CBA, *supra* note 167.

¹⁷⁸ NWSL CBA, *supra* note 167, §§ 9.2, 9.5, 9.8–9.11.

two-bedrooms.¹⁷⁹ For salary, § 9.8 states that a player who “cannot render the services required . . . as a result of the Player’s pregnancy” are entitled to receive their entire base salary, “and any NWSL provided insurance,” for the duration of the Player’s inability—or the remaining term of her standard player agreement—meaning that the NWSL not only upholds safety standards for pregnant players but also guarantees financial security during periods when they are unable to play.¹⁸⁰ The CBA also ensures private, comfortable nursing accommodations for players who are nursing.¹⁸¹ The league specifies that they understand “that a bathroom is not an acceptable accommodation.”¹⁸² Finally, “any player who births or adopts a child during the NWSL League Season shall be entitled” to up to eight weeks of the player’s base salary or the “remaining term” of the player’s contract.¹⁸³

The PWHL’s CBA and NWSL’s CBA each represent diligent bargaining by a players’ association on behalf of its members, leading to several safeguards related to pregnancy. What makes this financially plausible is that the leagues embed cost-mitigation mechanisms, like salary-cap relief, guaranteed contracts, and revenue-sharing structures,¹⁸⁴ ensuring pregnancy-related protections can coexist with competitive balance and sustainable league economics.¹⁸⁵ Indeed, the agreements reflect a broader alignment between player protections and league growth, where improved work conditions are treated as vital to long-term sustainability rather than as secondary considerations.

3. Women’s National Basketball Association

In 2020, the WNBA adopted a CBA which provided a salary increase for the league’s highest-paid players and changes to free agency.¹⁸⁶ The provisions related to salary and parental leave are especially relevant here.¹⁸⁷ Annual base pay for the league’s highest-paid player increased from \$117,500 to

¹⁷⁹ *Id.* § 9.5.

¹⁸⁰ *Id.* § 9.8.

¹⁸¹ *Id.* § 9.10

¹⁸² *Id.*

¹⁸³ *Id.* § 9.11.

¹⁸⁴ See Professional Women’s Hockey League Collective Bargaining Agreement § 6 (2023), https://assets-global.website-files.com/64d22f9c3617ad42d10d32f1/64ed721629f3b2cfe84c7a54_PWHL-CBA-thpwhlcom.pdf [<https://perma.cc/F7YZ-RPFN>] [hereinafter “PWHL CBA”]; NWSL CBA, *supra* note 167, § 7.4.

¹⁸⁵ See PWHL CBA § 9.7; NWSL CBA, *supra* note 167, § 9.8.

¹⁸⁶ WNBA CBA, *supra* note 169.

¹⁸⁷ *Id.* art. VII §§ 1–4; *id.* art. X § 2.

\$215,000, the league's top players may earn cash compensation in excess of \$500,000,¹⁸⁸ and the 2020 salary cap is increased to \$1.3 million, up from \$996,100 in 2019.¹⁸⁹ Players receive full salary while on maternity leave, an annual childcare stipend of \$5,000, and guarantee of two-bedroom apartments for players with children.¹⁹⁰

Despite these positive accommodations, WNBA players maintained that they did not fully address their concerns. Players pointed to issues including a hard salary cap, lack of revenue sharing, inadequate travel resources and facilities, and insufficient family provisions.¹⁹¹ Thus, in October 2024, the WNBA players opted out of the CBA¹⁹² in pursuit of what they characterized as 'transformational change'¹⁹³ Alongside seeking a greater share of the league-generated revenue,¹⁹⁴ players raised concerns regarding "working conditions" and ensuring long-term benefits for ". . . generations to come."¹⁹⁵ Dearica Hamby's case has become a leverage point for players in bargaining with the WNBA.¹⁹⁶ Players cite ambiguities in how the league's arbitration provision intersects with statutory discrimination claims and the WNBA's policy under the 2020 CBA, as well as the risks of inadequate protections

¹⁸⁸ *WNBA and WNBPA Reach Tentative Agreement On Groundbreaking Eight-Year Collective Bargaining Agreement*, WNBA (Jan. 14, 2020, 09:00 ET), <https://www.wnba.com/news/wnba-and-wnbpa-reach-tentative-agreement-on-groundbreaking-eight-year-collective-bargaining-agreement> [<https://perma.cc/HRB9-CWA4>].

¹⁸⁹ WNBA CBA, *supra* note 169, art. V § 8(a). For a discussion of the WNBA's salary history, see Kevin Pelton, *Road to \$1M Paydays: How WNBA Salaries Evolved with Each CBA*, ESPN (Feb. 4, 2026, 9:15 ET), https://www.espn.com/wnba/story/_/id/47813218/wnba-cba-collective-bargaining-agreement-negotiations-salary-cap [<https://perma.cc/6U8H-8FVN>].

¹⁹⁰ WNBA CBA, *supra* note 169, art. X §§ 2(a), 7; *id.* art. XI § 1(a).

¹⁹¹ Kendra Andrews and Alexa Philippou, *What We're Hearing On the WNBA's CBA Negotiations*, ESPN (Oct. 22, 2025), https://www.espn.ph/wnba/story/_/id/46675630/wnba-cba-updates-negotiations-latest [<https://perma.cc/P6KE-B9GJ>].

¹⁹² *Id.*; Jack Maloney, *Lynx's Napheesa Collier Says WNBA Players are Prepared for Possibility of Lockout amid CBA Negotiations*, MSN (Mar. 12, 2025), <https://www.msn.com/en-us/sports/other/lynxs-napheesa-collier-says-wnba-players-are-prepared-for-possibility-of-lockout-amid-cba-negotiations/ar-AA1AJ73B> [<https://perma.cc/A84X-WHQY>].

¹⁹³ Maloney, *supra* note 192.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ See Bella DiPalermo, *Pregnancy, Power, and Procedure: The WNBA Arbitration Clause Meets its Limits*, ARBITRATION BRIEF (Jan. 16, 2026), <https://thearbitrationbrief.com/2026/01/16/pregnancy-power-and-procedure-the-wnba-arbitration-clause-meets-its-limits/> [<https://perma.cc/8965-AGDL>].

for pregnant athletes and mothers within professional sport leagues.¹⁹⁷ This issue has implications for future players not only in the WNBA but also for female athletes in other leagues.¹⁹⁸ Because the resolution of these disputes may shape how professional sports leagues balance collectively bargained procedures with independent statutory protections, the Hamby controversy could influence the scope of pregnancy and motherhood protections available to these female athletes.

IV. ELIMINATING THE MOTHERHOOD PENALTY

The motherhood penalty remains inevitable in women's sports. Professional soccer player Jess McDonald has been outspoken about balancing her life as an athlete and a mother by sharing how she has juggled parenting and preparing for and playing in the Fédération Internationale de Football Association ("FIFA") Women's World Cup while taking her seven-year-old son with her to these events.¹⁹⁹ Olympic runners Allyson Felix and Kate Goucher have also spoken out, specifically against Nike, "for slashing their pay and then dropping them for becoming pregnant."²⁰⁰

Tennis star Serena Williams was also penalized for taking medical leave due to her pregnancy.²⁰¹ In tennis, players are ranked according to how well

¹⁹⁷ Lindsay Graham, *The Landscape of Pregnancy Discrimination in Women's Sports Following Hamby v. WNBA*, JEFFREY S. MOORAD SPORTS L.J. (Nov. 11, 2025), https://www.villanova.edu/villanova/law/academics/sportslaw/commentary/mslj_blog/2025/The_Landscape_of_Pregnancy_Discrimination_in_Womens_Sports.html [<https://perma.cc/GQP2-XECW>].

¹⁹⁸ *Id.*

¹⁹⁹ Ronald Blum, *Working Mom; McDonald Balances World Cup, 7-year-old Son*, AP NEWS (June 23, 2019), <https://apnews.com/working-mom-mcdonald-balances-world-cup-7-year-old-son-6eb7496b1bce47ee80272f8750a18d2b> [<https://perma.cc/6CYD-98RL>]; Anna Furman, *Pregnancy and Sports a Challenging Combination for Female Professional Athletes*, AP NEWS (May 29, 2023), <https://apnews.com/article/female-athletes-pregnancy-hammon-hamby-wnba-62ce78e7d3e1b547c885ae341d229027> [<https://perma.cc/KB5L-VK4J>]; Abdullah Imran, *Adam Silver Drops '11th Hour' Update on WNBA CBA Negotiations*, CLUTCH POINTS (Feb. 15, 2026), <https://clutchpoints.com/wnba/wnba-stories/adam-silver-drops-11th-hour-update-on-wnba-cba-negotiations> [<https://perma.cc/QP9U-6BJU>].

²⁰⁰ Blum, *supra* note 199; Furman, *supra* note 199; Imran, *supra* note 199; Scott, Smith, Darroch & Giles, *supra* note 140, at 1185.

²⁰¹ Liz Clarke, *After Outcry Over Serena Williams's Rankings, WTA Alters Rules for Moms Returning to Competition*, WASH. POST (Dec. 18, 2018), <https://www.washingtonpost.com/sports/2018/12/18/after-outcry-over-serena-williams-rankings-wta-alters-rules-moms-returning-competition/> [<https://perma.cc/KGL2-GW55>].

they perform, which is “the key factor in determining [players’] seeding at Grand Slams and major events.”²⁰² Williams’s rank plunged from number one to number four-hundred fifty-one after she decided to take medical leave due to her pregnancy, as the Women’s Tennis Association (“WTA”) at that time did not pause or protect ranking points during extended absences.²⁰³ The WTA subsequently faced major backlash as athletes, fans, and others voiced objections regarding Williams’ punishment.²⁰⁴ Such an uproar caused the WTA to change their rules regarding ranking when players return to the tour post-pregnancy—ultimately designing rules that made it easier, and more accessible, for women to return to competition.²⁰⁵ These new rules allow a player to “freeze her ranking” if she is “out of competition due to pregnancy or a medical condition.”²⁰⁶ A player who is out for at least one year may use her “special ranking” for up to twelve tournaments within a one-year period.²⁰⁷ Players who step away due to pregnancy or a medical condition have three years to use their special ranking (calculated from the child’s birth in cases of pregnancy) while those absent due to adoption, surrogacy, or legal guardianship have two years.²⁰⁸

Alternatively, for several sports, governing bodies expressly allow athletes to retain quota spots or competition eligibility after maternity leave,

²⁰² *Id.*

²⁰³ *Id.*; Courtney Nguyen, *2019 WTA Rule Changes: WTA Introduces Special Seeding, Shot Clock*, WTA (Dec. 17, 2018); <https://www.wtatennis.com/news/1437655/2019-wta-rule-changes-wta-introduces-special-seeding-shot-clock> [<https://perma.cc/4XAZ-AGW7>].

²⁰⁴ Clarke, *supra* note 201.

²⁰⁵ *Id.*

²⁰⁶ Nguyen, *supra* note 203.

²⁰⁷ *Id.*

²⁰⁸ *Id.* The Special Ranking Rule is intended to make returning to competition easier for players coming back after pregnancy, starting a family, or a medical leave. *See id.* Its legal sufficiency under civil rights and labor protections remains an open question. On one hand, the rule serves as a model for other professional sports leagues to elevate their policies with anti-discrimination principles embodied in statutes like the PDA. It also demonstrates practical value by enabling athletes to reenter tournaments without forfeiting their pre-leave competitive standing, thereby preserving earning potential and career longevity. Yet, the Rule may be critiqued as an incomplete remedy: it addresses ranking consequences but does not directly guarantee compensation, roster security, or broader workplace accommodations contemplated under CBAs. *See* Women’s Tennis Association Official Rulebook § VIII.C (2025), <https://photoresources.wtatennis.com/wta/document/2025/01/06/50dleafae678-4081-bfa8-5576f670f801/2025-WTA-Rulebook-1-5-2025-.pdf> [<https://perma.cc/VE3X-PQ68>].

even if they miss an entire season.²⁰⁹ For example, the International Bobsleigh and Skeleton Federation guarantees that an athlete who sits out a season due to pregnancy “will be granted that quota spot . . . when coming back,” with the spot tied to the athlete rather than reallocated through the ordinary qualification process.²¹⁰ A similar model has been formalized by FIFA’s mandatory maternity regulations, which require minimum maternity leave, guaranteed return-to-play rights, and medical and reintegration policies.²¹¹ These examples mirror minimum labor standards, embedding baseline protections such as job security, protected leave, and return-to-work rights in order to better support and retain athlete-mothers.

The reforms discussed in this Article work in tandem to address the motherhood penalty in professional sports and may emerge through multiple avenues. First, this Part identifies non-legal reforms that could reduce the impact of the penalty and influence legal outcomes by increasing athlete-mothers’ ability to assert their rights. This Part then prescribes three institutional avenues for legal change—congressional influence, legal and quasi-legal mechanisms, and internal league governance and collective bargaining—that may help advance and reinforce broader efforts to eliminate pregnancy discrimination in professional sports.

A. Non-Legal Reforms

1. Social Change: Female Parental Visibility

Female parental visibility is the recognition and acknowledgement of mothers as well as their roles in society, including in work contexts and public life.²¹² Male athletes, though many are fathers, do not face the same barriers and stressors as their female counterparts.²¹³ This is not because fatherhood is

²⁰⁹ See Margie H. Davenport et al., *Advancing Gender Equity in Sport: A Scoping Review of International Sport Federation Policies for Pregnant, Postpartum and Parenting Elite Athletes*, 59 BRIT. J. SPORTS MED. 1096, 1099–1100 (2025).

²¹⁰ *IBSF Paves the Way for Female Athletes to Return to Competition After Maternity Leave*, IBSF (Oct. 19, 2020), <https://www.ibsf.org/en/news/detail/ibsf-paves-the-way-for-female-athletes-to-return-to-competition-after-maternity-leave> [https://perma.cc/TYR2-CEX7].

²¹¹ Daniel Gonzalez Guerrero, *Right to Maternity in Sports: How Does it Work at FIFA*, LATIN AM. POST (Apr. 3, 2023), <https://latinamericanpost.com/sports/right-to-maternity-in-sports-how-does-it-work-at-fifa/> [https://perma.cc/67NL-WQ5F].

²¹² See Howe, *supra* note 2.

²¹³ Scott, Smith, Darroch & Giles, *supra* note 140, at 1189.

particularly visible or socially valorized, but because societal expectations and structural norms do not penalize men for balancing professional and parental responsibilities.²¹⁴ For female athletes, this bifurcation of pre-motherhood and post-motherhood forces judgment upon them based solely on that distinction.²¹⁵ Instead, they should be supported and seen for their dual identity.²¹⁶ This is not to suggest that women should be treated *apart* from motherhood altogether; as intersectional scholars have noted, ignoring the real implications of a protected status can undermine substantive equality.²¹⁷ As Zoe Gillings-Brier, four-time Olympic snowboarder,²¹⁸ stated: “[i]f we want more young girls to get into sport we need them to know it’s not sport or motherhood, that you can do both.”²¹⁹ Thankfully, “elite mothers” have slowly but surely gained “visibility” in their work and public life contexts.²²⁰ This includes media attention, like that of the 2012 London Olympic Games as observed by McGannon in her study of Olympic athlete mothers.²²¹

Alex Morgan, U.S. Women’s National Team legend and two-time World Cup Champion, is the epitome of an “elite mother.” During her career, she was not only a star on the soccer field, but a fierce advocate for athlete mothers in the public eye.²²² Specifically, Morgan pushed for better parental leave, travel accommodations, and childcare support in professional

²¹⁴ See generally Wei-hsin Yu & Yuko Hara, *Motherhood Penalties and Fatherhood Premiums: Effect of Parenthood on Earnings Growth*, 58 DEMOGRAPHY 247, 267–70 (2021) (discussing the disparity in earnings between women when they become mothers and men when they become fathers, reflecting differential societal and economic treatments of parental roles).

²¹⁵ See Howe, *supra* note 2.

²¹⁶ *Id.*

²¹⁷ See, e.g., Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1241–45 (1991) (critiquing colorblind approaches in racial discrimination for obscuring structural and intersectional harms).

²¹⁸ Zoe Gillings, WIKIPEDIA, https://en.wikipedia.org/w/index.php?title=Zoe_Gillings&oldid=1234621939 [<https://perma.cc/U4SN-CCEJ>].

²¹⁹ Howe, *supra* note 2.

²²⁰ Scott, Smith, Darroch & Giles, *supra* note 140, at 1183.

²²¹ Kerry R. McGannon, Christine A. Gonsalves, Robert J. Schinke & Rebecca Busanich, *Negotiating Motherhood and Athletic Identity: A Qualitative Analysis of Olympic Athlete Mother Representations in Media Narratives*, 20 PSYCH. SPORT & EXERCISE 51, 51–59 (Sep. 2015), <https://doi.org/10.1016/j.psychsport.2015.04.010> [<https://perma.cc/ZY7S-Z5NF>].

²²² Mara Santilli, *Soccer Star Alex Morgan Has Retired from Competition – Both On and Off the Field*, SELF (Sep. 4, 2025), <https://www.self.com/story/alex-morgan-bobbie-postpartum> [<https://perma.cc/LXA8-AX4J>].

soccer.²²³ Through her advocacy, Morgan “played a pivotal role” in influencing the 2022 NWSL CBA, which included improved conditions for mothers traveling with children.²²⁴ Despite retiring in 2024, she continues to work on campaigns, like There’s No Scoreboard in Motherhood, that normalize postpartum recovery and center families in athlete narratives.²²⁵

Improving female parental visibility is the approach that most squarely addresses social norms perpetuating the motherhood penalty. Supporting athlete-mothers’ “dual identity” has resulted in positive outcomes including “pride, motivation, resilience, and enjoyment for their sport.”²²⁶ Recognizing an elite female athlete’s dual identity can aid in protecting the spirit of their sports and more importantly, the well-being of athlete-mothers across the world.

2. Research Insights for Evidence-Based Return-to-Sport Guidelines

Second, greater medical and social-scientific research on a female athlete’s ability to return to sport postpartum can improve the effectiveness of interventions. As rower Jill Moffatt poignantly notes, “[i]t is interesting that in Canada, especially with the Summer Olympics, women are winning 76% to 77% of the medals compared to men . . . [a]nd yet we’re so far behind in terms of being able to support athletes across their athletic career before pregnancy and then afterwards if they continue on in their sports.”²²⁷ Indeed, Moffatt’s observation highlights a broader disconnect: despite the extraordinary contributions of female athletes, professional sport still lacks sufficient research, resources, and institutional support for pregnancy and postpartum athletic participation.²²⁸

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ See generally Scott, Smith, Darroch & Giles, *supra* note 140; Boden Joel Tighe, Susan L. Williams, Courtney Porter & Melanie Hayman, *Barriers and Enablers Influencing Female Athlete Return-to-Sport Postpartum: A Scoping Review*, 57 BRIT. J. SPORTS MED. 1, 8 (2023), <https://bjsm.bmj.com/content/57/22/1450> [<https://perma.cc/Z72M-4VKE>].

²²⁷ Teddy Katz, *MOMentum Building for Athlete Moms on the Road to Paris 2024*, CAN. OLYMPIC COMM. (May 10, 2024), <https://olympic.ca/2024/05/10/momentum-building-for-athlete-moms-on-the-road-to-paris-2024/> [<https://perma.cc/H8V3-CQY4>].

²²⁸ See Jenna Schulz, Jane Thornton & The Conversation, *New Research Upends Common Thoughts on Motherhood and Elite Athletic Performance*, INVERSE (Aug. 4, 2024), <https://www.inverse.com/health/new-research-upends-common-thoughts-on-motherhood-and-elite-athletic-performance> [<https://perma.cc/6PBV-NQLG>].

Research in prior decades has shown a decline in women's participation in sport "after they give birth,"²²⁹ while more recent studies show a greater number of women returning to high-level sport after giving birth.²³⁰ Only a handful have analyzed return-to-sport ("RSP") guidelines for elite female athletes, but limitations in scope affect their practical value.²³¹ Of note, one study addresses injury risk and potential long-term health impacts, while also understanding the larger societal structure and pressures placed upon elite female athletes.²³² RSP frameworks, the study suggests, should include "assessment of strength, endurance and functional abilities, but also emphasize the importance of mental readiness."²³³ This integrated approach is rare in existing literature, which often isolates physiological outcomes from the social and institutional contexts in which postpartum athletes train and compete.²³⁴ The inclusion of both medical and structural considerations produces more holistic and actionable insights.

Expanded research on successful post-partum returns to sport for athlete-mothers can generate the evidence needed to mitigate health challenges and support sustained postpartum.

²²⁹ Scott, Smith, Darroch & Giles, *supra* note 140, at 1182 (citing M. Deborah Bialeschki, Sarah Michener, *Re-entering Leisure: Transition Within the Role of Motherhood*, 26 J. LEISURE RSCH. 57–74 (1994)); Yvette D. Miller & Wendy J. Brown, *Determinants of Active Leisure for Women With Young Children—An 'Ethic of Care' Prevails*, 27 LEISURE SCIS. 405–20 (2005); Farah R. Palmer & Sarah I. Leberman, *Elite Athletes at Mothers: Managing Multiple Identities*, 12 SPORT MGMT. REV. 241–254 (2009); Helene Thomsson, *Yes, I Used to Exercise, But: A Feminist Study of Exercise in the Life of Swedish Women*, 31 J. LEISURE RSCH. 35–56 (1999).

²³⁰ Scott, Smith, Darroch & Giles, *supra* note 140, at 1182; International Olympic Committee, *Factsheet: Women in the Olympic Movement* (June 27, 2025), <https://stillmed.olympics.com/media/Documents/Olympic-Movement/Factsheets/Women-in-the-Olympic-Movement.pdf> [<https://perma.cc/82DN-GB3U>].

²³¹ Schulz, Thornton & Conversation, *supra* note 228 ("We found most studies stated that return to activity could start once 'medically safe' around six weeks postpartum, but this term was generally left undefined. . . . Only 11 out of 36 studies had specific return-to-sport guidelines, and only six studies considered the importance of mental health.").

²³² Scott, Smith, Darroch & Giles, *supra* note 140, at 1190.

²³³ Schulz, Thornton & Conversation, *supra* note 228; *see generally* Davenport et al., *We're Not Superhuman, We're Human: A Qualitative Description of Elite Athletes' Experiences of Return to Sport After Childbirth*, 53 SPORTS MED. 269, 276 (July 28, 2022).

²³⁴ Jana Nolte et al., *Elite and Sub-elite Athletes and Pregnancy: Training, Performance, Health and Psychological Aspects Across the Pre-, Peri-, and Postnatal Stages: A Scoping Review*, 12 SPORTS MED. – OPEN 25 (Mar. 9, 2026), <https://doi.org/10.1186/s40798-026-01000-5> [<https://perma.cc/9M2K-HE45>].

3. Access to Accommodations & Social Support

Further, enhancing on-the-ground accommodations and resources available to female athletes can make a meaningful difference. The success of this approach turns on the practical implementation of athlete-mother protections in their day-to-day training and competition environments. Ensuring that athlete-mothers have access to return-to-play protocols, childcare, and individualized medical, performance-related, and scheduling accommodations²³⁵ can mitigate challenges that might otherwise exclude athlete-mothers or lead to reductions in performance. Athlete-mothers report more positive postpartum returns when such supports are in place,²³⁶ underscoring that meaningful changes require practical infrastructure to protect athlete-mothers in ways that facilitate safe, supported, and successful reentry into professional sport. One study illustrated that “more than half” of the athlete-mothers return to “at least their pre-pregnancy performance level, and some will even exceed it.”²³⁷ One 2022 study tracked the performance of elite female runners before and after pregnancy, finding that “a whopping 46% improved performances post-pregnancy.”²³⁸ With that, “when athlete[-mothers] have strong social supports and childcare[,]” they feel less “stress placed on performance outcomes” and are able to reap the benefits of “the forced break [which] may have both mental and physical benefits.”²³⁹

These ideas can help serve as a guide for the types of support that need to be increased for athlete-mothers. Such encouragement coupled with

²³⁵ Schulz, Thornton & Conversation, *supra* note 228; see generally Brooke McGregor, Richard McGrath, Janette Young & Carmel Nottle, *A Scoping Review of the Experiences of Elite Female Athletes Concerning Pregnancy and Motherhood*, 27 *SPORT IN SOC'Y* 1221 (2024); Chloe M. Hewitt, M. Karent Campbell, Yun-Hee Choi & Jane S. Thornton, *Exploring the Postpartum Return to Sport and Performance in Canadian Elite Athletes*, 7 *FRONTIERS IN SPORTS & ACTIVE LIVING* (Oct. 7, 2025).

²³⁶ Schulz, Thornton & Conversation, *supra* note 228; see also McGregor, McGrath, Young & Nottle, *supra* note 235; Hewitt, Campbell, Choi & Thornton, *supra* note 235.

²³⁷ Francine Darroch et. al., *Effect of Pregnancy in 42 Elite to World-Class Runners on Training and Performance Outcomes*, 55 *MED. & SCI SPORTS & EXERCISE* 93, 96–97 (2022); Jorunn Sundgot-Borgen et al., *Elite Athletes Get Pregnant, Have Healthy Babies and Return to Sport Early Postpartum*, *BMJ OPEN SPORT & EXERCISE MED.* (Nov. 21, 2019), <https://bmjopensem.bmj.com/content/5/1/e000652> [<https://perma.cc/E58A-HE87>].

²³⁸ David Roche, *Groundbreaking New Study on Pregnancy and Athletic Performance*, *TRAIL RUNNER* (Aug. 30, 2022), <https://www.trailrunnermag.com/training/trail-tips-training/pregnancy-and-performance/> [<https://perma.cc/89KB-U9ET>].

²³⁹ Darroch et al., *supra* note 237, at 96–97.

exercise during pregnancy creates healthier moms and babies, making the 'win' inter-generational.²⁴⁰

Scott, Smith, Darroch & Giles further outline the importance of empowering athlete-mothers, advocating for changes in contractual agreements specific to pregnancy and postpartum recovery, as well as parental leave to ensure they and their children are protected.²⁴¹ It has been frequently reported that "negative contractual changes" occur when a female athlete becomes pregnant.²⁴² For example, following the high-risk birth of her daughter, eleven-time Olympic medalist and mother of two, Allyson Felix noted that Nike wanted to decrease her pay by seventy percent, "despite all [her] victories" when she was in the process of renegotiation.²⁴³ Felix reported that Nike's proposed terms included reduced compensation tied to performance expectations, alongside contract provisions that historically have included morality clauses.²⁴⁴ In the context of pregnancy and childbirth, such clauses risk penalizing athletes for conditions that are both medically necessary and legally protected. Unfortunately, Allyson Felix is not alone. Many elite female athletes experience financial penalization "by their corporate sponsors" because of their choice "to start families."²⁴⁵ Even more, "vague and ambiguous" language coupled with "industry-standard non-disclosure" clauses lead to female athletes without advocates and ultimately, them facing "arbitrary" punishment.²⁴⁶

This unfortunate situation presents opportunities for proactive labor and employment attorneys and other economic justice advocates to play instrumental roles. Navigating the moving parts of a contract alongside the current

²⁴⁰ Mary Gearin, *Serena Williams: Can Having a Baby Actually Improve Athletic Performance in the Long Run?* AUSTL. BROAD. CORP. (Sep. 6, 2018), <https://www.abc.net.au/news/2018-09-07/serena-williams-why-some-athletes-stronger-after-pregnancy/10208896> [<https://perma.cc/RFM3-QTFR>].

²⁴¹ See generally Scott, Smith, Darroch & Giles, *supra* note 140; see also *Model Sponsorship Contract Provisions for Pregnancy and Parental Leave* (2021), & MOTHER, <https://static1.squarespace.com/static/5e165f2eb132690ddad7ee9f/t/618ae94f71bccc305ea1c587/1636493647440/Model+Sponsorship+Contract+Provisions.pdf> [<https://perma.cc/6CLZ-XP9E>].

²⁴² Scott, Smith, Darroch & Giles, *supra* note 140, at 1189.

²⁴³ *Id.*

²⁴⁴ Jenna West, *Allyson Felix: Nike Contract Talks at 'Standstill' After Request for Maternity Protections*, SPORTS ILLUSTRATED (May 22, 2019), <https://www.si.com/olympics/2019/05/22/allyson-felix-nike-contract-maternity-protection> [<https://perma.cc/K55D-L2WY>].

²⁴⁵ Scott, Smith, Darroch & Giles, *supra* note 140, at 1182.

²⁴⁶ *Id.* at 1189.

exploitation and depreciation of athlete-mothers is a hard task. Nevertheless, the legal framework surrounding pregnancy protections in professional sport can and should evolve to better support athlete-mothers. This objective can be advanced through the inclusion of pregnancy-protective sponsorship clauses and the elimination of ambiguous morality and performance reduction provisions. Additionally, guaranteed compensation during pregnancy and postpartum recovery, when secured through collective bargaining, provides meaningful protection for athlete-mothers – so the idea of motherhood becomes a point of contractual power, rather than vulnerability.

Despite limited resources to help “athlete-mothers navigate family planning and their careers,”²⁴⁷ there is one illustrative initiative that is making a statement: MOMemtum. This group, led by multiple Olympic athletes like “Canadian rower Jill Moffatt, runner Melissa Bishop-Nriagu, wrestler Erica Wiebe, basketball player Erica Gavel” as well as “two other[s] who almost missed the Tokyo Games due to pregnancy and postpartum policies, basketball player Kim Gaucher and boxer Mandy Bujold”²⁴⁸ aid “elite Olympic and Paralympic athletes with their family planning needs” as they prepare for the Games.²⁴⁹ The athlete-mothers propelled MOMemtum by first improving advocacy and research, being “one of 15 non-profit projects awarded an OLY Canada Legacy Grant in February by the Canadian Olympic Committee.”²⁵⁰ This grant helps sustain and expand their advocacy and research initiatives. This alignment between lived experience, targeted programming, and external funding underscore both the practical impact of their focus on investing in education, safety, and mentorship to improve support for athlete-mothers. Due to their advocacy, the Olympic Village now provides a nursery, located at its center,²⁵¹ and “hotel rooms to their athletes for breastfeeding during the games.”²⁵² This is a case study not only to instill hope, but also one that should inspire greater investment and attention to support motherhood in professional sports.²⁵³

²⁴⁷ Schulz, Thornton & Conversation, *supra* note 228.

²⁴⁸ *Id.*

²⁴⁹ Katz, *supra* note 227.

²⁵⁰ *Id.*

²⁵¹ Schulz, Thornton & Conversation, *supra* note 228.

²⁵² *Id.*

²⁵³ *Id.*

B. *Legal Avenues for Reform*

1. Congressional Influence

Unfortunately, the structure of the federal legislative processing, including bicameral approval requirements, creates significant barriers to the enactment of reform. In addition, competing claims on political capital frequently relegate women's rights to a lower position within legislative priorities.²⁵⁴ Private leagues also present a structural hurdle, as they have long resisted government intervention.²⁵⁵ This is because major leagues often operate as self-governing private entities with significant economic and political influence.²⁵⁶ Historically, these leagues have used strong lobbying power to shape federal policy and maintain autonomy from regulation,²⁵⁷ so efforts to enact stronger statutory protections for athlete-mothers face substantial structural resistance.²⁵⁸

²⁵⁴ See generally Edith M. Lederer, *Women's Rights are Under Attack 30 years After Leaders Adopted a Blueprint for Equality, UN says*, AP WORLD NEWS (Mar. 6, 2025, 16:59 ET), <https://apnews.com/article/un-women-girls-equality-beijing-conference-rights-b009715ff605ccf47f1b72865c7a27e7> [<https://perma.cc/ZC2U-WBAC>]; Colleen Goko, *World Bank Report Highlights 'Shockingly Large' Gap Between Gender Equality Laws and Enforcement*, REUTERS (Feb. 24, 2026), <https://www.reuters.com/sustainability/world-bank-report-highlights-shockingly-large-gap-between-gender-equality-laws-2026-02-24/> [<https://perma.cc/6XST-JNZQ>].

²⁵⁵ For example, the increased steroid testing in athletes early 2000's and the congressional hearings, that followed, pushing for federal law regulating drug testing was highly opposed by the public. See Full Committee Hearing: Steroids in Baseball (Mar. 17, 2005), <https://oversightdemocrats.house.gov/legislation/hearings/committee-holds-hearing-on-steroids-in-baseball> [<https://perma.cc/99VJ-FSYN>].

²⁵⁶ Marc Edelman, *In Defense of Sports Antitrust Law: A Response to Law Review Articles Calling for the Administrative Regulation of Commercial Sports*, 72 WASH. & LEE L. REV. ONLINE 210, 211–12 (2015).

²⁵⁷ *Id.*; see *How Lobbyists Advocated For Your Favorite Sports League*, DORN POL'Y GRP. (Sep. 29, 2020), <https://dornpolicygroup.com/how-lobbyists-advocated-for-your-favorite-sports-league> [<https://perma.cc/QM7Y-UFPG>]; Dylan Sinn, Adam Zielonka, Connor Hoyt & Michael Brice-Saddler, *Pro Sports Leagues, Teams Spend Millions Lobbying Washington*, CAP. NEWS SERV. (Dec. 18, 2017), <https://cnsmaryland.org/2017/12/18/pro-sports-leagues-teams-spend-millions-lobbying-washington/> [<https://perma.cc/6S66-59UA>].

²⁵⁸ See Nathaniel Grow, *Regulating Professional Sports Leagues*, 72 WASH. & LEE L. REV. 573 (2015) (arguing that the existing dominant regulatory framework (antitrust) doesn't effectively limit league power, implying that legislative or regulatory protection for athletes would face similar systemic resistance).

However, these obstacles do not foreclose the possibility of reform. Encouraging legislators to pass a bill regarding increased support for athlete-mothers and working mothers is one vehicle to stimulate change. Creating new legislation that maintains the benefits of the PDA, PWFA and other related amendments under Title VII but implements the above resources and access to them would outline an action plan ready for implementation. Congress could effectuate this by amending the PDA to explicitly cover professional athletes and clarify its application to sponsorship and endorsement relationships. Alternatively, Congress could enact sport-specific worker protections that require minimum pregnancy and postpartum accommodations in professional athletics. Such legislation could also mandate baseline standards for return-to-play protocols, guaranteed access to childcare, and individuals medical, performance-related, and scheduling accommodations during pregnancy and postpartum recovery. Congress could incentivize compliance through federal grants to support research and implementation of evidence-based postpartum research programs, while conditions certain funding or league-related benefits on adherence to these standards. Establishing federal laws around this topic would not only foster a more supportive attitude towards the challenges faced by mothers but also enhance the tangible resources and protections available to female athletes during pregnancy. Even more, legislation would likely gain bipartisan support,²⁵⁹ as many Democrats are pro-union and pro-worker and many Republicans are pro-life and pro-family.²⁶⁰

²⁵⁹ See, e.g., Pregnant Workers Fairness Act, H.R. 2694, 117th Cong. (2021) (introduced by bipartisan group of Representatives, including Rep. John Katko (R-NY) and Rep. Jamie Herrera Beutler (R-WA) alongside Democrats, to strengthen workplace protections for pregnant workers); *Bipartisan Group Reintroduce Bill to Strengthen Protections for Pregnant Workers*, EDUC. & WORKFORCE COMM. DEMOCRATS (Feb. 16, 2021), <https://democrats-edworkforce.house.gov/media/press-releases/bipartisan-group-reintroduce-bill-to-strengthen-protections-for-pregnant-workers> [<https://perma.cc/96XQ-UUC9>].

²⁶⁰ See PEW RESEARCH CENTER, FROM BUSINESSES AND BANKS TO COLLEGES AND CHURCHES: AMERICANS' VIEWS OF U.S. INSTITUTIONS 9 (2024), https://www.pewresearch.org/wp-content/uploads/sites/20/2024/02/PP_2024.02.01_institutions_REPORT.pdf [<https://perma.cc/LK6X-AT93>]; *Public Opinion on Abortion*, PEW RSCH. CTR. (Mar. 12, 2026), <https://www.pewresearch.org/religion/fact-sheet/public-opinion-on-abortion/> [<https://perma.cc/8RS2-J5H6>].

2. Legal and Quasi-Legal Influence

Many times, if not properly educated or involved in the discussion, athletes may not recognize unfavorable terms of a contract until after it has been executed.²⁶¹ Athlete-mothers are particularly vulnerable to this dynamic, as disparities in bargaining power often shape both employment and sponsorship agreements.

While labor law,²⁶² contract law,²⁶³ and constitutional protections²⁶⁴ offer some safeguards, they are insufficient to address the structural imbalances inherent in elite sports contracting.²⁶⁵ Many athlete agreements are negotiated in contexts with limited transparency, high economic stakes, and significant asymmetry in bargaining power,²⁶⁶ leaving athletes with little meaningful ability to challenge unfavorable terms *ex ante*.

Litigation offers a pathway for shaping and expanding these protections. Strategic civil rights claims under Title VII, as well as challenges under statutes like the PDA and PWFA, can help clarify boundaries of permissible conduct and expose discriminatory practices embedded in contractual arrangements.²⁶⁷

²⁶¹ GLOBALAW, SPORTS LAW TASKFORCE: PROTECTING & EMPOWERING ATHLETES (2025), <https://media.globalaw.net/Globalaw%20Sports%20Law%20Taskforce%2006242025.pdf> [https://perma.cc/4J34-NURR].

²⁶² See Leanne O'Leary, Maximillian Seltmann & Vanja Smokvina, *Elite Athletes and Worker Status*, 54 INDUS. L. J. 248, 249 (2024) (noting that elite athletes often fall outside traditional employment traditional law protections).

²⁶³ See Rajeeb Kumar, *Power Imbalances and Fairness in Standard Form Contracts: A Critical Analysis of Professional Sports Agreements*, 3 LAWFOYER INT'L J. DOCTRINAL LEGAL RSCH. 184, 184 (2025).

²⁶⁴ See, e.g., Sam C. Ehrlich & Neal C. Ternes, *Putting the First Amendment in Play: Name, Image, and Likeness Policies and Athlete Speech*, 45 COLUM. J. L. & ARTS 47, 47 (2021) (explaining constitutional free speech protections are often constrained when athletes' rights conflict with league or institutional policies, illustrating limits of constitutional safeguards in shaping employment or contractual rights).

²⁶⁵ See Marc Edelman, Michael A. McCann & John T. Holden, *The Collegiate Employee-Athlete*, 1 UNIV. OF ILL. L. REV. 1, 53 (2024) (discussing structural imbalances in bargaining power between athletes and leagues and the limits of traditional legal protections).

²⁶⁶ Kumar, *supra* note 263.

²⁶⁷ See Joanna L. Grossman, *Expanding the Core: Pregnancy Discrimination Law as It Approaches Full Term*, 52 IDAHO L. REV. 825, 860 (2016) (discussing how litigation under Title VII and the PDA has pushed courts to give effect to Congressional intent).

Within this broader framework, attorneys and sports agents play a critical role. By encouraging attorneys and sports agents to proactively identify potentially discriminatory provisions, advising clients on their rights under applicable statutes, and preserving claims where appropriate for future litigation, they help address the motherhood penalty. In doing so, attorneys can be advocates and more present for athlete-mothers in negotiations of their player contracts as well as in sponsorship deals. This would not only better prepare advocates and athlete-mothers at the contract stage but also position them to challenge unlawful or inequitable terms when they arise.

3. Internal Governance and Collective Bargaining

Finally, internal influences from the teams and leagues themselves could aid in support for athlete-mothers, particularly through the collective bargaining process. Under a CBA, the players' union and the league negotiate terms governing compensation, working conditions, and player benefits, with both sides ultimately required to reach mutual agreement for the CBA to take effect.²⁶⁸ So, players' unions can bargain for specific provisions like pregnancy accommodations, return-to-play protocols, and childcare support, while league ownership can shape outcomes by proposing contract terms, setting policy priorities, and signaling willingness to enforce rules.²⁶⁹ Importantly, this process is not purely adversarial. For example, policies that support pregnancy and postpartum recovery can extend athletes' careers, reduce injury risk, and enhance long-term player availability—outcomes²⁷⁰ that may benefit teams and leagues financially.²⁷¹ At the same time, the bargaining process reflects an inherent balancing act between the union and the leagues:

²⁶⁸ *All About Unions*, *supra* note 145.

²⁶⁹ *See Collective Bargaining Agreements in Sports Leagues & Their Legal Scope*, *supra* note 157.

²⁷⁰ *See* Kat M. Crossley et al., *Female, Woman and/or Girl Athlete Injury Prevention (FAIR) Practical Recommendations: International Olympic Committee Consensus Meeting Held in Lausanne Switzerland*, 59 *BRITISH J. SPORTS MED.* 1546 (2025) (noting that improved female athlete health management, including pregnancy and postpartum care, is linked to reduced injury risk and sustained elite performance across athletic careers).

²⁷¹ *See, e.g.*, Sören Dallmeyer et al., *Monetising Misfortune: The Financial Consequences of Injuries in Professional Football Teams*, 11 *BMJ OPEN SPORT & EXERCISE MEDICINE* 1, 5 (2024) (“The substantial indirect costs associated with player injuries highlight the economic value of investing in effective injury prevention and management strategies.”)

while the union can advocate for specific terms, leagues must agree to their inclusion.²⁷² This is ever-present in the WNBA's current bargaining issues. If the players' union and the league fail to reach an agreement, it could lead to a labor dispute, influencing the negotiation landscape, and introduce uncertainty and shifting leverage between the parties.²⁷³

CONCLUSION

The PDA served as a monumental shift in the way pregnant workers were treated and the culture around working mothers. As the Act expanded Title VII's discrimination provision, it required pregnant employees to be treated the same as others with similar ability or inability to work.²⁷⁴ More recently, the Supreme Court's decision in *Young* clarified that employers may be liable when they provide accommodations to some nonpregnant workers with work limitations while denying comparable accommodations to pregnant workers, ultimately establishing a burden-shifting framework in pregnancy-accommodation litigation.²⁷⁵ Within the sports industry, however, enforcement largely depends on traditional labor and employment mechanisms like CBAs and administrative oversight by the EEOC rather than sport-specific statutory protections. Recent CBAs, like those at the PWHL and NWSL, reflect meaningful progress.²⁷⁶ Yet the fight for better provisions related to paid parental leave, roster protection, and health benefits continues with WNBA CBA negotiations ongoing at the time of this Article.²⁷⁷ Critically, there needs to be change in the industry, and the approach should be multi-faceted. This Article recommends congressional action to strengthen and clarify pregnancy

²⁷² See *Collective Bargaining Agreements in Sports Leagues & Their Legal Scope*, *supra* note 157.

²⁷³ *WNBA Could Lose Leverage as CBA Negotiations Stall*, SPORTS BUSINESS JOURNAL: LEAGUE AND GOVERNING BODIES (Jan. 22, 2026), <https://www.sports-businessjournal.com/Articles/2026/01/22/wnbpa-could-lose-leverage-as-cba-negotiations-stall/> [<https://perma.cc/TAM3-2RXH>] (“[T]he union’s ‘upper hand at the bargaining table is slipping’ [and] . . . [a] lockout or strike . . . ‘poses economical risks for the WNBA.’”); see Doha Madani, *WNBA Players’ Union Votes to Authorize Strike as Deadline for New Contract Approaches*, NBC N.Y. (Dec. 18, 2025), <https://www.nbcnewyork.com/news/sports/wnba/wnba-players-union-votes-authorize-strike-cba-deadline/6432978/> [<https://perma.cc/WQF3-28D6>].

²⁷⁴ 42 U.S.C. § 2000e-2.

²⁷⁵ *Young v. United Parcel Service, Inc.*, 575 U.S. 206, 240–24 (2015).

²⁷⁶ Anantharaman, *supra* note 170.

²⁷⁷ FELDMAN, *supra* note 161.

accommodation mandates; legal and quasi-legal reforms through attorney and agent guidance; and internal change in social norms, implementation of research-based practices, and improved access to accommodations. Such an approach should be reinforced by professional sports teams, leagues, and the public to ensure that athlete-mothers are not forced to choose between professional participation and pursuing motherhood. Indeed, the end goal: shut down the motherhood penalty.