

RIGHTS OF PREGNANT FARMWORKERS: DO THE EXISTING REGULATIONS PROTECT PREGNANT FARMWORKERS FROM EXTREME OR HAZARDOUS CONDITIONS?

I. INTRODUCTION

Maria Isabel Vasquez Jimenez was a 17-year-old pregnant farmworker who worked alongside many other farmworkers in a field full of grapes in Lodi, California.¹ On May 14, 2008, Jimenez continued pruning grapevines for nine hours in 95-degree heat after she was denied proper access to shade and water.² Jimenez collapsed and was taken to the hospital two hours later, where physicians concluded that her body temperature had exceeded 108 degrees.³ Jimenez and her unborn baby died two days later.⁴ The San Joaquin County Coroner said Jimenez suffered multi-organ hyper thermic injury caused by a heat stroke and the Division of Health and Safety (Cal/OSHA) later classified her death as heat-related.⁵

In 2008, a Florida judge approved a settlement that provided a lifetime of care for three-year-old Carlitos Candelario, after his parents filed suit alleging that the pesticides used caused him to be born without limbs.⁶ Prior to

¹ See *Pregnant Farmworker Dies After Being Denied Shade, Water; Family Calls for Action*, FOX NEWS (Jun. 05, 2008), <http://www.foxnews.com/story/2008/06/05/pregnant-farmworker-dies-after-being-denied-shade-water-family-calls-for-action.html>; See also *Teen Farmworker's Heat Death Sparks Outcry*, NPR VALLEY PUBLIC RADIO (Jun. 06, 2008), <https://www.npr.org/templates/story/story.php?storyId=91240378>.

² *Pregnant Farmworker Dies After Being Denied Shade, Water; Family Calls for Action* *supra* note 1; See also *Teen Farmworker's Heat Death Sparks Outcry*, *supra* note 1.

³ *Pregnant Farmworker Dies After Being Denied Shade, Water; Family Calls for Action*, *supra* note 1; See also *Teen Farmworker's Heat Death Sparks Outcry*, *supra* note 1.

⁴ *Pregnant Farmworker Dies After Being Denied Shade, Water; Family Calls for Action*, *supra* note 1; See also *Teen Farmworker's Heat Death Sparks Outcry*, *supra* note 1.

⁵ *Pregnant Farmworker Dies After Being Denied Shade, Water; Family Calls for Action*, *supra* note 1; See also *Teen Farmworker's Heat Death Sparks Outcry*, *supra* note 1.

⁶ See John Lantigua, *Why Was Carlitos Born This Way?*, MY PALM BEACH POST (Mar. 13, 2005), <http://www.mypalmbeachpost.com/news/carlitos/> (Stating Carlitos'

Carlitos's birth, two other pregnant migrant farmworkers had also given birth to children with various and massive birth defects.⁷ Similarly, three additional pregnant migrant farmworkers also had children born with severe birth defects.⁸ The mothers were also exposed to pesticides while working in the same field.⁹

Although there have been efforts implemented to protect pregnant farmworkers, these efforts do not provide adequate protection for pregnant farmworkers.¹⁰ Due to the lack of knowledge, awareness of rights, and fear of retaliation, pregnant farmworkers' voices are lost.¹¹ With limited progress, pregnant farmworkers continue to work in the same or similar conditions that are extreme, exhausting, and hazardous.¹² Therefore, improvement must be made to afford pregnant farmworkers more protection.¹³

This Comment will focus on a public policy argument that concerns the rights and/or rights to health and safety of pregnant migrant farmworkers.¹⁴ This Comment will thoroughly examine the protections that are afforded to pregnant farmworkers, which include the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), the Agricultural Worker Protection Standards (WPS), the California Occupational Safety and Health Act (Cal/OSHA), and the Pregnancy Discrimination Act.¹⁵ Part II of the Comment will address the history of the listed regulations that are currently in place.¹⁶ Part III will further discuss and examine how the various regulations fail to adequately protect pregnant farmworkers, who are constantly being exposed to extreme hazardous conditions on farms, which is harmful to the worker and to the fetus.¹⁷ This Comment will then conclude with proposed recommendations such as entertaining the idea of expanding the CARE Act and/or amending the

mother was pregnant and working in the field picking tomatoes where pesticides were used).

⁷ *See id.* (noting one of the children was diagnosed with Pierre Robin Syndrome and the other one died shortly thereafter, and it was difficult to identify the gender).

⁸ *Id.*

⁹ *Id.*

¹⁰ *See generally Teen Farmworker's Heat Death Sparks Outcry*, *supra* note 1. (noting that there have been regulations in place to prevent heat related illnesses).

¹¹ *See Women's Issues*, NATIONAL FARM WORKERS, <http://nfwm.org/education-center/farm-worker-issues/womens-issues> (last visited Nov. 14, 2017).

¹² *Id.*

¹³ *See generally id.* (Reasoning that women farmworkers are more vulnerable than men).

¹⁴ *See generally, Teen Farmworker's Heat Death Sparks Outcry*, *supra* note 1.

(Reasoning that pregnant farmworkers like Jimenez have the right to safety such as water breaks and shade as specified in the regulations).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

current regulations to provide further protection for pregnant farmworkers.¹⁸ In addition, this comment will also discuss alternatives to expand the CARE Act and/or amending the various regulations such as working with organized groups, like the United Farm Workers, to set regulations with employers and contractors through contractual agreements under the California Agriculture Labor Relations Act (CALRA).¹⁹

II. FACTUAL BACKGROUND

In a press conference, Gina McCarthy, the Environmental Protection Agency (EPA) Administrator stated, “[o]ur country depends on farmworkers every day to help put the food we eat on America’s dinner tables and they deserve fair, equitable working standards with strong health and safety protections.”²⁰ More than three million migrant and seasonal farmworkers are estimated to be in the United States.²¹

Farmworkers play a vital role in our community because their labor supports our billion-dollar agricultural industry.²² They work hard in extreme heat and dangerous conditions with little pay and protection in order to provide support for their families.²³ However, migrant and seasonal farmworkers are one of the

¹⁸ See generally *The Children’s Act for Responsible Employment (CARE Act) Would Help Protect Child Farmworkers*, THE CHILD LABOR COALITION, <http://stopchildlabor.org/?p=3521> (last visited Dec. 17, 2017) (reasoning that pregnant workers are just as vulnerable and exposed as child workers).

¹⁹ *Id.*; see generally Inga Kim, *The Rise of the UFW*, UNITED FARM WORKERS (Apr. 3, 2017), <http://ufw.org/the-rise-of-the-ufw>. (noting that UFW fights for the rights of farmworkers).

²⁰ Christina Herrick, *EPA Announces Children Under 18 Can No Longer Handle Pesticides*, GROWING PRODUCE (Sept. 29, 2015), <http://www.growingproduce.com/vegetables/epa-announces-children-under-18-can-no-longer-handle-pesticides>; See also *EPA Proposes Stronger Standards for People Applying the Pesticides with the Greatest Risk/ Improved Training and Minimum Age Requirements for Certified Applicators Will Help Protect People and the Environment*, EPA.GOV (Aug. 05, 2015), <https://www.epa.gov/newsreleases/epa-proposes-stronger-standards-people-applying-pesticides-greatest-risk-improved>.

²¹ EPA Announces Children Under 18 Can No Longer Handle Pesticides, *supra* note 20; See also *EPA Proposes Stronger Standards for People Applying the Pesticides with the Greatest Risk/ Improved Training and Minimum Age Requirements for Certified Applicators Will Help Protect People and the Environment*, *supra* note 20.

²² *Ag and Food Sectors and the Economy*, UNITED STATES DEPARTMENT OF AGRICULTURE ECONOMIC RESEARCH SERVICE, <https://www.ers.usda.gov/data-products/ag-and-food-statistics-charting-the-essentials/ag-and-food-sectors-and-the-economy> (last visited Nov. 14, 2017).

²³ *US Labor Law for Farmworkers*, FARMWORKER JUSTICE, <https://www.farmworkerjustice.org/advocacy-and-programs/us-labor-law-farmworkers> (last visited Nov. 14, 2017).

most isolated and vulnerable population groups in the United States.²⁴ As a result, they are exploited by employers and rarely seek help for themselves.²⁵

According to the Centers for Disease Control and Prevention, farmworkers die from heat-related illnesses twenty times greater than the entire United States national workforce.²⁶ In addition, up to 20,000 pesticide poisonings are reported by farmworkers every year.²⁷

Among those who endure extreme work conditions are some 400,000 women farmworkers.²⁸ While women farmworkers play a vital role in harvesting food, these individuals are the most exploited workers in the country because of their lack of knowledge, awareness of rights, and fear of retaliation.²⁹ As a result, women farmworkers are being abused and neglected.³⁰ Being the most exploited workers in the country, pregnant farmworkers are even more vulnerable and receive little protection.³¹

There are three basic areas of potential conflict between farm work and pregnancy.³² First, environmental conditions may make work dangerous to pregnant women, because of exposure to hazardous chemicals, gas, dust, fumes, radiation, infectious disease, or heat.³³ Second, certain physical movements can be difficult to perform or can endanger a woman or her fetus, such as standing for long periods of time, stooping over, climbing stairs or ladders, and lifting heavy objects.³⁴ Finally, certain job conditions like irregular hours, shift work, or psychological stress can have adverse effects on the fetus.³⁵

²⁴ *Id.*

²⁵ *Id.*

²⁶ See *Heat Stress*, ASSOCIATION OF FARMWORKER OPPORTUNITY PROGRAM, <http://afop.org/health-safety/heat-stress-prevention> (last visited Nov. 14, 2017).

²⁷ See David Bacon, José R. Padilla, *Protect Female Farmworkers*, NY TIMES (Jan. 19, 2016), <https://www.nytimes.com/2016/01/19/opinion/how-to-protect-female-farmworkers.html?mcubz=3>; See also *Women's Issues*, *supra* note 11.

²⁸ See generally *Women's Issues*, *supra* note 11.

²⁹ *Id.*

³⁰ Bacon, Padilla, *supra* note 27; See also *Women's Issues*, *supra* note 11.

³¹ Bacon, Padilla, *supra* note 27; See also *Women's Issues*, *supra* note 11.

³² See Jennifer Runkle, Joan Flocks, Jeannie Economos, J. Antonio Tovar-Aguilar, and Linda McCauley, *Occupational Risks and Pregnancy and Infant Health Outcomes in Florida Farmworkers*, US NATIONAL LIBRARY OF MEDICINE NATIONAL INSTITUTES OF HEALTH (Aug. 06, 2014), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4143835>.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

1. *Effects of Hazardous Conditions/Exposure to Extreme Heat/Temperature on Pregnant Women and Children*

As in the Jimenez story, exposure to excess heat at work could result in the likelihood or probability of a baby being born with birth defects or even miscarriage.³⁶ Pregnant individuals are more likely to suffer from heat exhaustion and heat stroke compared to others simply because they are pregnant.³⁷ Pregnant farmworkers are more likely to be exposed to extreme heat, because they work directly in the fields where temperatures can rise as high as 120 degrees.³⁸ As a result of working in extreme heat, the a pregnant individual's body temperature may rise higher than 39°C (102.2°F).³⁹ When this happens, the pregnant individual can suffer from heat exhaustion, heat stroke, or even death.⁴⁰ In addition, the mother is more likely to become dehydrated, which means she will not be able to cool herself as well through sweating.⁴¹ A mother's circulation helps protect the developing baby, but in very hot work environments or specific work situations a pregnant woman's core (internal body) temperature may rise.⁴² In some cases, this has been linked to birth defects and other reproductive problems.⁴³ Similarly, Jimenez and her fetus died as a result of working in extreme temperature.⁴⁴ If the information of the effects of extreme heat/temperature were readily available and known, Jimenez and her unborn child could still be with us today.⁴⁵

³⁶ *Pregnant Farmworker Dies After Being Denied Shade, Water; Family Calls for Action*, *supra* note 1; *See also Teen Farmworker's Heat Death Sparks Outcry*, *supra* note 1.

³⁷ *See generally Reproductive Health and the Workplace*, THE NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, <https://www.cdc.gov/niosh/topics/repro/heat.html> (last updated Aug.15, 2017) (reasoning is because her [pregnant individual] body must work harder to cool down both her body and that of her unborn baby).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ *See Reproductive Health and the Workplace*, *supra* note 37.

⁴⁴ *Pregnant Farmworker Dies After Being Denied Shade, Water; Family Calls for Action*, *supra* note 1; *See also Teen Farmworker's Heat Death Sparks Outcry*, *supra* note 1.

⁴⁵ *Pregnant Farmworker Dies After Being Denied Shade, Water; Family Calls for Action*, *supra* note 1; *See also Teen Farmworker's Heat Death Sparks Outcry*, *supra* note 1.

2. *Effects of Hazardous Conditions/Exposure to Pesticides on Pregnant Women and Children*

There is an estimated 5.1 billion pounds of pesticides applied to crops each year, and thousands of farmworkers experience the effects of acute pesticide poisoning.⁴⁶ Pesticide exposure leads to chronic health problems which include: cancer, infertility (and other reproductive problems), neurological disorders, respiratory conditions, and even death.⁴⁷

According to a Chamacos study, it concluded that very small amounts of pesticides may be harmful to the development of a child's brain.⁴⁸ The study included hundreds of pregnant women who lived in Salinas Valley, California, an agricultural mecca, that is sprayed with almost half-million pounds of organophosphates in the region per year.⁴⁹ The children were followed through age twelve to assess what impact pesticides had on their development.⁵⁰ The impact was quite dramatic, and the mothers were exposed to organophosphates during pregnancy.⁵¹ Being in contact with pesticides is harmful, especially during pregnancy because it may lead to miscarriages, preterm births, low birth weight, birth defects, and learning problems in children.⁵²

Unfortunately, Carlitos' story is a suitable example of the effects of pregnant farmworkers being exposed to pesticides in the workplace.⁵³ If Carlitos's mother was afforded the appropriate protection, there is a high possibility that he would not have incurred such significant birth defects.⁵⁴

⁴⁶ See Dr. John Mercola, *Bad News About Pesticides*, MERCOLA (Apr. 29, 2014), <https://articles.mercola.com/sites/articles/archive/2014/04/29/pesticide-exposure.aspx>.

⁴⁷ See *CHAMACOS Study*, BERKELEY CERCH, <http://cerch.berkeley.edu/research-programs/chamacos-study> (last visited Nov. 14, 2017); see also *Environmental Exposure*, BERKELEY CERCH, <https://cerch.berkeley.edu/resources/environmental-exposures> (last visited Nov. 14, 2017) (Acute poisoning includes, but not limited to: headaches, nausea, shortness of breath, or seizures); See also *Bad News About Pesticides*, *supra* note 46.

⁴⁸ See *CHAMACOS Study*, *supra* note 47; see also *Environmental Exposure*, *supra* note 47; See also *Bad News About Pesticides*, *supra* note 46.

⁴⁹ See *CHAMACOS Study*, *supra* note 47; see also *Environmental Exposure*, *supra* note 47; See also *Bad News About Pesticides*, *supra* note 46.

⁵⁰ See *CHAMACOS Study*, *supra* note 47; See also *Environmental Exposure*, *supra* note 47; see also *Bad News About Pesticides*, *supra* note 46.

⁵¹ See *CHAMACOS Study*, *supra* note 47; See also *Environmental Exposure*, *supra* note 47; see also *Bad News About Pesticides*, *supra* note 46.

⁵² See *CHAMACOS Study*, *supra* note 47; See also *Environmental Exposure*, *supra* note 47; see also *Bad News About Pesticides*, *supra* note 46.

⁵³ *Pregnant Farmworker Dies After Being Denied Shade, Water; Family Calls for Action*, *supra* note 1; See also *Teen Farmworker's Heat Death Sparks Outcry*, *supra* note 1.

⁵⁴ Lantigua, *supra* note 6.

A. Migrant and Seasonal Agricultural Worker Protection Act Enacted to Protect Farmworkers

There have been several efforts made to protect farmworkers.⁵⁵ One form of protection that was enacted is the MSPA.⁵⁶ MSPA is the main federal law that protects migrant and seasonal agricultural workers.⁵⁷ MSPA assists migrant and seasonal workers with social protections for transportation, housing, pay, and work-related protections to safeguard them against occupational hazards and ensure better working conditions.⁵⁸ Two main dangerous working conditions that MSPA tries to address are exposure to pesticides and exposure to extreme heat.⁵⁹ The terms of MSPA is broad and limited to the general population of migrant and seasonal agricultural workers as a whole.⁶⁰ MSPA lays down a foundation of basic rights to which farm workers are entitled.⁶¹

B. Agricultural Workers Protection Standard Enacted to Protect Farmworkers

The WPS is intended to reduce the risk of pesticide poisoning and injury among agricultural workers and pesticide handlers.⁶² The WPS offers protections to over 2 million farmworkers.⁶³

On November 2, 2015, the EPA revised the WPS to implement stronger protections for agricultural workers, handlers, and their families.⁶⁴ Each year, there is about 1,800 and 3,000 preventable occupational incidents involving pesticide exposure that occur on agricultural establishments.⁶⁵ The WPS revisions were intended to decrease the pesticide exposure incidents among farmworkers and their family members and became effective on January 2, 2017.⁶⁶ However, three new requirements went into effect on January 2, 2018: 1) pesticide safety training must cover the expanded content; 2) pesticide safety information (posters) must meet the revised standards; and 3) handlers

⁵⁵ See *US Labor Law for Farmworkers*, *supra* note 23.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Pesticide Worker Safety: Agricultural Worker Protection Standard (WPS)*, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, <https://www.epa.gov/pesticide-worker-safety/agricultural-worker-protection-standard-wps> (last visited Dec. 17, 2017).

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

must suspend applications if workers or other people are in the application exclusion zone.⁶⁷ Although new requirements have been added, the WPS still does not adequately protect pregnant farmworkers from pesticide sprayings.⁶⁸

C. The Cal/OSHA-Occupational Safety and Health Act Enacted to Protect Farmworkers

President Richard Nixon signed in to law the William-Steiger Occupational Safety and Health Act (OSHA) on December 29, 1970.⁶⁹ OSHA was developed to enforce safety and health standards for workers.⁷⁰ A provision of OSHA states that employers must provide employees with employment and a workplace that is free from recognized hazards to health and safety.⁷¹ Some examples of recognized hazards to health and safety are exposure to toxic chemicals, excessive noise levels, mechanical dangers, heat or cold stress, or unsanitary conditions.⁷² In addition, employees must also abide by the rules set forth regarding the employee's conduct.⁷³ Agriculture is covered under OSHA in areas of temporary labor camps, tractor roll-over protection, guarding of farm field equipment, storage of anhydrous ammonia, field sanitation, hazard communication, cadmium usage, and logging operations.⁷⁴

In 2005, California became the first state to implement health and safety regulations to protect individuals from heat illnesses.⁷⁵ Subsequently, in 2006, the Division of Health and Safety Cal/OSHA issued permanent heat illness prevention regulations to protect outdoor workers.⁷⁶ Under Heat Illness

⁶⁷ *Id.*

⁶⁸ *See generally id.* (Explaining that the updated WPS does not specifically mention pregnant women workers and noting that there are about 1,800 and 3,000 preventable occupational incidents involving pesticide exposure that occur on agricultural establishments each year).

⁶⁹ *The Job Safety Law of 1970: Its Passage was Perilous*, UNITED STATES DEPARTMENT OF LABOR, <https://www.dol.gov/general/aboutdol/history/osha> (last visited Dec. 17, 2017).

⁷⁰ *See id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *See generally Job Safety Law of 1970 supra* note 69.

⁷⁵ *Occupational Safety and Health Administration: Using the Heat Index: A Guide for Employers*, UNITED STATES DEPARTMENT OF LABOR, https://www.osha.gov/SLTC/heatillness/heat_index/ (last visited Dec. 17, 2017); *see also Pregnant Farmworker Dies After Being Denied Shade, Water; Family Calls for Action, supra* note 1; *See also Teen Farmworker's Heat Death Sparks Outcry, supra* note 1.

⁷⁶ *Occupational Safety and Health Administration: Using the Heat Index: A Guide for Employers, supra* note 75; *see also Pregnant Farmworker Dies After Being*

Prevention Regulation, employers must provide: water, and encourage workers to drink it; access to shade; training on how to recognize heat illnesses; and written reports showing compliance efforts.⁷⁷ California courts and Cal/OSHA enforcement officials take these regulations seriously, as evidenced by the Jimenez matter.⁷⁸

Since the death of Jimenez and twenty-three other suspected heat-related deaths, outrage was sparked in the farming community.⁷⁹ Regulations have been created and enforced by Cal/OSHA to require farms and contractors to give workers water breaks and access to shade.⁸⁰ The regulations are intended to protect approximately 450,000 seasonal workers who are working during the summer.⁸¹ However, Cal/OSHA has failed to implement specific regulations for pregnant farmworkers.⁸²

D. Pregnancy Discrimination Act: An Effort Enacted to Protect Pregnant Women Workers

In 1978, the Pregnancy Discrimination Act (PDA) was formed as an effort to protect pregnant women workers.⁸³ PDA is a federal statute that amended Title VII of the Civil Rights Act of 1964 in response to two Supreme Court cases, *Geduldig v. Aiello*, 417 U.S. 484, 94 S. Ct. 2485, 41 L. Ed. 2d 256 (1974) and *Gen. Elec. Co. v. Gilbert*, 429 U.S. 125, 127, 97 S. Ct. 401, 404, 50 L. Ed. 2d 343 (1976), which denied benefits to women whose disabilities resulted from pregnancy.⁸⁴

PDA was enacted to allow women to participate fully and equally in the workforce, without denying them the opportunity to participate in family life.⁸⁵

Denied Shade, Water; Family Calls for Action, *supra* note 1; *see also Teen Farmworker's Heat Death Sparks Outcry*, *supra* note 1.

⁷⁷ *Heat Illness Prevention*, STATE OF CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS, <http://www.dir.ca.gov/dosh/HeatIllnessInfo.html> (last visited Dec. 17, 2017).

⁷⁸ *Pregnant Farmworker Dies After Being Denied Shade, Water; Family Calls for Action*, *supra* note 1; *See also Teen Farmworker's Heat Death Sparks Outcry*, *supra* note 1.

⁷⁹ *Pregnant Farmworker Dies After Being Denied Shade, Water; Family Calls for Action*, *supra* note 1; *See also Teen Farmworker's Heat Death Sparks Outcry*, *supra* note 1.

⁸⁰ *Heat Illness Prevention*, *supra* note 77.

⁸¹ *Id.*

⁸² *Id.*

⁸³ Vanessa Griffith, *History of the Pregnancy Discrimination Act*, JURIST (Dec. 20, 2014), <http://www.jurist.org/feature/2014/12/background-for-pda.php>.

⁸⁴ *See Geduldig v. Aiello*, 417 U.S. 484, 94 S. Ct. 2485, 41 L. Ed. 2d 256 (1974); *Gen. Elec. Co. v. Gilbert*, 429 U.S. 125, 127, 97 S. Ct. 401, 404, 50 L. Ed. 2d 343 (1976); *see also* Griffith, *supra* note 83.

⁸⁵ Griffith, *supra* note 83.

“The PDA requires that a covered employer treat women affected by pregnancy, childbirth, or related medical conditions in the same manner as other applicants or employees who are similar in their ability or inability to work.”⁸⁶ The PDA covers the firing, hiring, promotions, and fringe benefits (such as leave and health insurance benefits).⁸⁷ “Pregnant workers are protected from discrimination based on current pregnancy, past pregnancy, and potential pregnancy.”⁸⁸ However, PDA only applies to pregnant working women who are in a company of fifteen or more.⁸⁹

Currently, an employer cannot fire, refuse to hire, demote, or take any other adverse action against a woman if pregnancy, childbirth, or a related medical condition was a motivating factor in the adverse employment action, even if the employer believes it is acting in the employee's best interest.⁹⁰

E. Children's Act for Responsible Employment Act of 2015: A Successful Effort Made to Protect Child Farm Workers

Over the years there has been efforts made to specifically protect child farmworkers from these hazardous conditions.⁹¹ The CARE Act, introduced by Representative Lucille Roybal Allard, is legislation that amended the Fair Labor Standards Act of 1938.⁹² The CARE Act aims to correct inequities in current labor law that currently allow children employed in agriculture to work longer hours, at younger ages, and in more hazardous conditions than children working in other sectors.⁹³ The CARE Act would essentially ban child farmworkers under the age of eighteen from working in hazardous conditions.⁹⁴ Similarly to children, pregnant farmworkers are just as vulnerable when faced with extreme working conditions, therefore the CARE Act should be extended, to some extent, to pregnant farmworkers.⁹⁵

⁸⁶ See *id.*; see also *Fact Sheet for Small Businesses: Pregnancy Discrimination*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, https://www.eeoc.gov/eeoc/publications/pregnancy_factsheet.cfm (last visited Dec. 17, 2017).

⁸⁷ See *Fact Sheet for Small Businesses: Pregnancy Discrimination*, *supra* note 86.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *The Children's Act for Responsible Employment (CARE Act) Would Help Protect Child Farmworkers*, *supra* note 18.

⁹² *The Children's Act for Responsible Employment (CARE Act)*, FIRST FOCUS CAMPAIGN FOR CHILDREN, <https://campaignforchildren.org/wp-content/uploads/sites/2/2011/06/CAREAct.pdf> (last visited Dec. 17, 2017).

⁹³ *The Children's Act for Responsible Employment (CARE Act) Would Help Protect Child Farmworkers*, *supra* note 18.

⁹⁴ *Id.*

⁹⁵ See generally *id.*

III. DISCUSSION AND PROPOSAL

A. Migrant and Seasonal Agricultural Worker Protection Act and the Protection for Pregnant Farmworkers

As discussed above, MSPA affords the protection of migrant farmworkers mainly in regard to hours, wages, and standard of living and transportation by allowing the Department of Labor to enter and inspect facilities to determine if there is compliance with the MSPA.⁹⁶ However, MSPA fails to protect pregnant farmworkers because it does not address the issues of extreme heat and hazardous conditions.⁹⁷

MSPA can further protect pregnant farmworkers by amending portions of the MSPA such as the standard of living conditions for the pregnant farmworkers.⁹⁸ As in Carlitos' story, the three mothers lived within the labor camps, where pesticide spraying lingered.⁹⁹ If MSPA were to provide alternative housing options where families can live a greater distance from the spraying, it will limit the pesticide exposure and associated risks to all workers.¹⁰⁰

B. Agricultural Workers Protection Standard and the Protection for Pregnant Farmworkers

As addressed above, the EPA has issued the WPS and a Certification of Pesticide Applicators Standard in order to protect the safety of workers potentially exposed to pesticides.¹⁰¹ The WPS requires employers to reduce workers' exposure to pesticide through work restrictions during application, exclusion from treated areas, pesticide use consistent with the label, and direction and information for supervisors and workers.¹⁰²

The WPS covers all pesticide use unless a specific exception or exemption exists.¹⁰³ These include exceptions for certain government pest control, application on livestock or in livestock areas, application on noncommercial plants, exemptions for farm owners and their family of some entry restrictions,

⁹⁶ *US Labor Law for Farmworkers*, *supra* note 23.

⁹⁷ *See generally id.* (Reasoning that MSPA limits its protection to migrant workers).

⁹⁸ *US Labor Law for Farmworkers*, *supra* note 23.

⁹⁹ *Pregnant Farmworker Dies After Being Denied Shade, Water; Family Calls for Action*, *supra* note 1; *see also* Lantigua, *supra* note 6.

¹⁰⁰ *US Labor Law for Farmworkers*, *supra* note 23.

¹⁰¹ *Pesticide Worker Safety: Agricultural Worker Protection Standard (WPS)*, *supra* note 62.

¹⁰² *Id.*

¹⁰³ *Id.*

certain notice and information requirements, and emergency assistance provisions.¹⁰⁴

The states generally enforce the safety requirements and licensing programs if they have met EPA approval.¹⁰⁵ State laws may also provide more stringent protections for workers.¹⁰⁶

After comparison of the revised WPS and the older version, the EPA's WPS still is inadequate in protecting pregnant farmworkers.¹⁰⁷ The WPS is insufficient in protecting pregnant farmworkers, because there are no reversions concerning the protection of pregnant farmworkers. The only sections that were revised were to restrict handlers and early-entry workers being on fields or handling such chemicals like pesticides.¹⁰⁸ As mentioned, the WPS requires employers to reduce workers' exposure to pesticide through work restrictions during application and strictly set forth a regulation protecting children farm workers by setting an age minimum requirement, but a pregnant farmworker's well-being was not put into consideration when the restrictions were made.¹⁰⁹

The WPS should be amended by adding in restrictions for pregnant farmworker.¹¹⁰ The WPS can add in restrictions under the handler's guidelines to prohibit pregnant farmworkers from handling such chemicals like pesticides.¹¹¹ In addition, it can limit the areas where pregnant farmworkers are allowed to go and work.¹¹² The WPS can also require employers to provide protective gear such as masks and gloves to prevent minimal to no exposure of the chemicals.¹¹³ In addition, states can create laws that may provide more stringent protections for workers.¹¹⁴ Therefore, by amending the WPS to include certain restrictions for pregnant farmworkers, it will afford pregnant farmworkers more protection.¹¹⁵

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Pesticide Worker Safety: Agricultural Worker Protection Standard (WPS)*, *supra* note 62.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Pesticide Worker Safety: Agricultural Worker Protection Standard (WPS)*, *supra* note 62.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

*C. The Cal/OSHA-Occupational Safety and Health Act and the
Protection for Pregnant Farmworkers*

OSHA assures safe and healthy working conditions through the enforcement of workplace standards, provision of research and information in the field of occupational safety and health, and aid to state programs that assure safe and healthful working conditions.¹¹⁶ Generally, employers must furnish employees with employment and workplaces free from recognized hazards that could cause death or serious injury and follow legal standards of occupational safety and health, and employees must follow all rules and regulations that apply to that employee's conduct.¹¹⁷

Cal/OSHA does not provide adequate protection for pregnant farmworkers or farmworkers as a whole, because preventative measures are not being enforced at the work place.¹¹⁸ This is due to the current Heat Illness Prevention Regulation only requiring the direct employers to take preventive measures for their employees.¹¹⁹ In other words, only the farm labor contractors are responsible, not the farm owners themselves for taking preventative measures to ensure the safety of farmworkers.¹²⁰ This statute leaves the farm owners, who may violate or may allow the safety regulations to be violated, free from liability.¹²¹ The same pressure the statute imposes on the farm labor contractors should be placed on the farm owners to ensure compliance with this vital regulation and to ensure adequate compensation for any violation.¹²²

Farm owners may be concerned that providing more shade or water will be costly.¹²³ However, the shade, water, and training requirements imposed by Heat Illness Prevention Regulation are not unduly burdensome or costly as shade and water are of nominal cost and free training is provided by the government.¹²⁴ The regulation already does provide some sort of protection; however, it is still inadequate to afford protection for pregnant farmworkers.¹²⁵ The regulation here should be amended to have provisions specifically for pregnant farmworkers such as giving them the option to work or not work

¹¹⁶ *The Job Safety Law of 1970: Its Passage was Perilous*, supra note 69.

¹¹⁷ *Id.*

¹¹⁸ *Occupational Safety and Health Administration: Using the Heat Index: A Guide for Employers*, supra note 75.

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ See generally *id.* (stating that the regulation does provide protection for farmworkers in extreme heat conditions).

during these extreme exposures, allowing for more frequent breaks, more accommodations such as protective gear and ample water supply.¹²⁶

As evidenced in the Jimenez story, if employers implemented heat related illness prevention methods such as providing water breaks and shade, Jimenez and her unborn child would not have suffered from a fatal heat related injury.¹²⁷ Therefore, the regulation here should be amended to have provisions specifically for pregnant farmworkers such as giving them the option to work or not work during these extreme exposures, allowing for more frequent breaks, more accommodations such as protective gear and ample water supply.¹²⁸

D. Pregnancy Discrimination Act: An Effort Enacted to Protect Pregnant Women Workers

The Pregnancy Discrimination Act (PDA) prohibits sex discrimination based on pregnancy, childbirth, or related medical conditions.¹²⁹ The Act also states that women affected by pregnancy, childbirth, or other related medical conditions are to be treated equally with respect to all employees for all employment related purposes.¹³⁰

The PDA protects pregnant women in a way that allows women to participate fully and equally in the workforce, without denying them the opportunity to also participate in family life.¹³¹ However, the PDA does not require employers to offer maternity leave for pregnant farmworkers nor does it offer other accommodations to allow them to work without risking their life or the life of their fetus.¹³² As evidenced in the Jimenez story, if her employer were to make accommodations for her, such as allowing frequent breaks, water breaks, or alternative duties, Jimenez and her unborn child may not have had a heat related injury.¹³³

¹²⁶ *Id.*

¹²⁷ *Pregnant Farmworker Dies After Being Denied Shade, Water; Family Calls for Action*, *supra* note 1.

¹²⁸ *Id.*

¹²⁹ *See Fact Sheet for Small Businesses: Pregnancy Discrimination*, *supra* note 86; *See also* Griffith, *supra* note 83.

¹³⁰ *See Fact Sheet for Small Businesses: Pregnancy Discrimination*, *supra* note 86; *See also* Griffith, *supra* note 83.

¹³¹ *See Fact Sheet for Small Businesses: Pregnancy Discrimination*, *supra* note 86; *See also* Griffith, *supra* note 83.

¹³² *See Fact Sheet for Small Businesses: Pregnancy Discrimination*, *supra* note 86; *See also* Griffith, *supra* note 83.

¹³³ *See Fact Sheet for Small Businesses: Pregnancy Discrimination*, *supra* note 86; *See generally* *Teen Farmworker's Heat Death Sparks Outcry*, *supra* note 1.

(acknowledging that there are protections in place for farmworkers, but there can be more accommodations made for pregnant workers).

As previously mentioned, the PDA only gives pregnant women protection against retaliation for when leave occurs, however it can be inferred that the legislator's intent in creating the PDA was due to a generalized awareness that pregnant women are more vulnerable than those who are not with child.¹³⁴ Many studies have shown that pregnant women are more likely to have some kind of medical complication during the pregnancy, which causes them to not be able to work at certain times.¹³⁵ The legislator's intent can be thoroughly carried out in offering pregnant women more protection if the PDA were to be amended to expand the definition of "light duty" accommodation.¹³⁶ Currently, the PDA broadly defines "light duty" accommodation as directing pregnant workers to only lift certain amount of pounds or work behind a desk.¹³⁷ Also, the act only applies to pregnant working women who are in a company of fifteen employees or more.¹³⁸ The PDA should expand the term of "light duty" to include some sort of protection for pregnant farmworkers.¹³⁹ The PDA should extend "light duty" to include working areas where it will not be hazardous to the mother and the unborn child.¹⁴⁰ For instance, "light work" in agricultural work can mean inspecting the produce, or packaging the produce.¹⁴¹ Therefore, PDA would give pregnant farmworkers another form of protection if it were to be amended.¹⁴²

¹³⁴ See generally *Fact Sheet for Small Businesses: Pregnancy Discrimination*, *supra* note 86. (reasoning that employers have to provide light duty to pregnant workers because of their condition).

¹³⁵ See *Fact Sheet for Small Businesses: Pregnancy Discrimination*, *supra* note 86.

¹³⁶ *Id.*

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.*

E. Extension of the CARE Act

Although there have been efforts implemented to protect pregnant farm workers, these efforts have not adequately provided such protection nor have they improved the working conditions or environment for pregnant farm workers.¹⁴³ Due to the lack of knowledge, awareness of rights, fear of retaliation, pregnant farm workers' voices are lost.¹⁴⁴ With zero to limited progression, pregnant farm workers continue to work in the same or similar conditions that are extreme and exhausting.¹⁴⁵

Over the years there has been efforts made to specifically protect children farmworkers from these hazardous conditions; however, there is a lack of protection for pregnant farmworkers under this Act.¹⁴⁶ The CARE Act should extend to pregnant farmworkers, potentially banning pregnant farmworkers from working in hazardous conditions, because just like the children's lives, the life of a mother and the unborn child is just as important.¹⁴⁷

The CARE Act should not necessarily ban pregnant farmworkers from entering harmful work conditions, but extend its protection to pregnant farmworkers, giving pregnant farmworkers another avenue to not work in hazardous conditions.¹⁴⁸

The CARE Act would protect approximately 400,000 children who are repeatedly exposed to the deadly chemicals and other hazardous conditions.¹⁴⁹ Farmworkers bearing children deserve just as much protection as children themselves.¹⁵⁰

A problem with extending the CARE Act is that banning women from working in the fields during pregnancy can be arguably be a form of discrimination which may violate the PDA.¹⁵¹ However, this comment is not

¹⁴³ See Griffith, *supra* note 83.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ See generally *The Children's Act for Responsible Employment (CARE Act) Would Help Protect Child Farmworkers*, *supra* note 18. (Noting that this Act specifically protects children and not pregnant workers).

¹⁴⁷ See generally *Reproductive Health and the Workplace*, *supra* note 37. (reasoning is because her [pregnant individual] body must work harder to cool down both her body and that of her unborn baby, which means the pregnant women are just as vulnerable).

¹⁴⁸ See generally *id.* (noting that the Act bans children under the age of 18 years old from participating in hazardous working conditions).

¹⁴⁹ *The Children's Act for Responsible Employment (CARE Act) Would Help Protect Child Farmworkers*, *supra* note 18.

¹⁵⁰ See generally *Reproductive Health and the Workplace*, *supra* note 37. (reasoning is because her [pregnant individual] body must work harder to cool down both her body and that of her unborn baby, which means the pregnant women are just as vulnerable).

¹⁵¹ See *Fact Sheet for Small Businesses: Pregnancy Discrimination*, *supra* note 86.

suggesting that we ban pregnant workers from working where there is exposure to extreme and hazardous conditions, but afford pregnant women with another option for protection.¹⁵² In reality, to implement a ban would be impartial and people need to work.¹⁵³ We would be in violation of the PDA if we keep pregnant farmworkers away from work, therefore more accommodations should be made to save employers from litigation and to keep farmworkers healthy.¹⁵⁴

IV. RECOMMENDATIONS & OUTCOME (ALTERNATIVES)

As proposed above, amending the regulations that are currently in effect would be a sufficient way to afford pregnant farmworkers more protection in the work place and there could be a substantial amount of money that could be saved in avoiding lawsuits.¹⁵⁵ Also discussed, the expansion of the CARE Act of 2015 may be a bit complex and take a substantial amount of time to pursue, but as an alternative pregnant farmworkers may turn to organized groups and/or unions to help bargain with employers and contractors for more protection and accommodation for pregnant farmworkers.¹⁵⁶ Working with a union such as the United Farm Workers of America (UFW), would allow for greater protection almost immediately in that the UFW works with farmworkers to set regulations with employers and contractors through contractual agreements under the CALRA.¹⁵⁷

The UFW, was founded in 1962 by Cesar Chavez, is the nation's first successful and largest farmworkers union, which is currently active in ten states.¹⁵⁸ The UFW continues to organize in major agricultural industries across the nation.¹⁵⁹ Recent years have witnessed dozens of key UFW union contract victories, among them the largest are strawberry, rose, winery, vegetable, dairy, and mushroom farms in California and the nation.¹⁶⁰ Many recent UFW sponsored laws and regulations aide farmworkers; in California, the first state regulation in the United States prevents further heat deaths of farm workers.¹⁶¹

¹⁵² See generally *id.* (reasoning that pregnant workers shall be treated the same as other workers in the same capacity or ability or inability to work).

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ See generally Kim, *supra* note 19. (noting that UFW fights for the rights of farmworkers).

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Kim, *supra* note 19.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

The UFW has progressed tremendously in helping farmworkers.¹⁶² There may be room for the UFW to help pregnant farmworkers gain more protection through contract provisions that offer pregnant farmworkers accommodations such as additional water breaks/breaks, light work duties, offering protective gear, and having pregnant women stay a certain amount of distance away from harmful chemicals.¹⁶³ Therefore, this alternative may be a good solution that can be implemented quickly in protecting pregnant farmworkers, so farmworkers like Jimenez or babies like Carlitos will have a chance at life.¹⁶⁴

V. CONCLUSION

This comment was aimed to discuss a public policy argument that concerns the rights and/or right to health and safety entitled to migrant women farmworkers, specifically pregnant migrant farm workers.¹⁶⁵ This Comment thoroughly examined the protections that are afforded to pregnant farmworkers, which include the MSPA, the WPS, the Cal/OSHA, and the PDA.¹⁶⁶ Although there are some protections in place for pregnant farmworkers, those protections are very limited or inadequate to ensure the appropriate health and safety rights.¹⁶⁷ These existing attempts of protection failed to realize that there are extreme conditions that a worker endures on farms, which is harmful for the pregnant worker and as well as the fetus.¹⁶⁸ Therefore, the existing laws do not provide adequate protections for pregnant farm workers.¹⁶⁹

As recommended, an alternative to amending the various regulations and expanding the CARE Act of 2015, pregnant farmworkers may work with the United Farm Workers, to set regulations with employers and contractors through contractual agreements, as another option to protect themselves and their unborn babies.¹⁷⁰

¹⁶² *Id.*

¹⁶³ *Id.*

¹⁶⁴ *See id*; *see also Pregnant Farmworker Dies After Being Denied Shade, Water; Family Calls for Action*, *supra* note 1; *See also Teen Farmworker's Heat Death Sparks Outcry*, *supra* note 1.

¹⁶⁵ *See generally Teen Farmworker's Heat Death Sparks Outcry*, *supra* note 1.

(reasoning that pregnant farmworkers like Jimenez have the right to safety such as water breaks and shade as specified in the regulations).

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ Kim, *supra* note 19.

As said by Arturo Rodriguez, President of the UFW, “Farmworkers like Jimenez are not agricultural implements to be used and discarded.¹⁷¹ They are important human beings.¹⁷² Important to their loved ones, important, because of the work they perform in feeding all of us.”¹⁷³

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¹⁷¹ *Pregnant Farmworker Dies After Being Denied Shade, Water; Family Calls for Action*, *supra* note 1; *See also Teen Farmworker's Heat Death Sparks Outcry*, *supra* note 1.

¹⁷² *Pregnant Farmworker Dies After Being Denied Shade, Water; Family Calls for Action*, *supra* note 1; *See also Teen Farmworker's Heat Death Sparks Outcry*, *supra* note 1.

¹⁷³ *Pregnant Farmworker Dies After Being Denied Shade, Water; Family Calls for Action*, *supra* note 1; *See also Teen Farmworker's Heat Death Sparks Outcry*, *supra* note 1.

¹⁷⁴ J.D. Candidate, San Joaquin College of Law, 2019. This comment would not have been possible without the love and support of my family, partner, friends, colleagues, and those who believe in me. I would like to give special thanks to my faculty advisor, Professor Denise Kerner and my mentor, Jennifer Nguyen-Bui for their guidance, patience, and their all-around brilliance during the entire process of this comment. I would like to extend my appreciation and gratitude to the entire SJALR Editorial Board for their mentorship and valuable advice throughout this process. My heart is overwhelmed with appreciation from the love, support, and belief that I have received.