

# United States Senate

WASHINGTON, DC 20510

November 20, 2018

Mr. Bradley Jacobs  
Chief Executive Officer  
XPO Logistics, Inc.  
Five American Lane  
Greenwich, Connecticut 06831

Dear Mr. Jacobs,

We write to express our deep concern over a recent investigation by *The New York Times* documenting inhumane working conditions in your Memphis, Tennessee warehouses – conditions that may have contributed to the miscarriages of a number of pregnant warehouse workers.<sup>1</sup> The article alleges that at least six workers at a warehouse that completes supply chain contracting for Verizon Wireless have suffered a miscarriage related to the strenuous work requirements and unconscionable conditions at the facility. While some of the reported miscarriages at the Memphis warehouse indeed predate XPO Logistics' (XPO) 2014 acquisition of the Memphis warehouses, the abominable conditions and antiquated policies at these workplaces have reportedly continued to this day. As a federal contractor that received over \$85 million in taxpayer dollars in Fiscal Year 2018 (FY18), we urge you to immediately provide more information on this report and outline changes that will be made to improve working conditions and protect your employees throughout the country.

Women should never – while pregnant or at any time during parenthood – be forced to choose between having a child and continuing to work to put food on the table. Despite this, an untold number of pregnant women in America have been passed over for promotions, fired, denied reasonable work accommodations, or have been otherwise discriminated against at the hands of employers because they are pregnant or experiencing a pregnancy-related medical condition. For many, this inexcusable discrimination leads to lost paychecks, unemployment, retaliation, or job changes. For others, like Chastity Bee, Erica Hayes, Tasha Murrell, and Ceeadria Walker, warehouse employees who miscarried after being denied reasonable work accommodations, this discrimination also led to major health complications and the loss of a pregnancy.

Working while pregnant is generally considered safe by the American College of Obstetricians and Gynecologists (ACOG). However, in some cases, work that involves heavy lifting, excessive bending, or prolonged standing without breaks may exacerbate the risk of health complications during pregnancy – especially high-risk pregnancies.<sup>2</sup> As the U.S. Equal Employment Opportunity Commission (EEOC) has made clear, the Pregnancy Discrimination Act requires employers to treat pregnant employees the same as “other persons not so affected but similar in their ability or inability to work.”<sup>3</sup> Moreover, if a pregnancy-related condition constitutes a disability, the Americans with Disabilities Act requires that

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<sup>1</sup> Jessica Silver-Greenberg and Natalie Kitroeff, “Miscarrying at Work: The Physical Toll of Pregnancy Discrimination,” *The New York Times* (New York, NY), Oct. 21, 2018,

<https://www.nytimes.com/interactive/2018/10/21/business/pregnancy-discrimination-miscarriages.html>.

<sup>2</sup> Mayo Clinic Staff, “Working during pregnancy: Do’s and don’ts,” *Mayo Clinic* (Rochester, MN), Apr. 15, 2017, <https://www.mayoclinic.org/healthy-lifestyle/pregnancy-week-by-week/in-depth/pregnancy/art-20047441>.

<sup>3</sup> U.S. Equal Employment Opportunity Commission, “Pregnancy Discrimination,” <https://www.eeoc.gov/eeoc/publications/fs-preg.cfm> (accessed Nov. 19, 2018).

condition be reasonably accommodated.<sup>4</sup> A federal contractor is prohibited from denying accommodations to pregnant workers when it provides, or is required by its policy or by other relevant laws to provide, accommodations to other employees with similar limitations.<sup>5</sup> And 23 states explicitly grant pregnant employees the right to reasonable accommodations at work.<sup>6</sup>

As you know, the published job description of material handlers working in XPO warehouses describe the very occupational hazards and requirements that can present risks to some pregnant workers: workers at minimum are required to frequently lift objects ranging from 50-75 pounds. Specifically, material handlers in a number of XPO locations are expected to be “lifting objects of various shapes, sizes, and weights; bending, stooping, squatting, twisting, pushing and pulling, standing, sitting, or walking for long periods of time.”<sup>7</sup> According to ACOG, in instances where high-risk work or medically complicated situations threaten the health and safety of a woman and her pregnancy, “work accommodations often can allow for continued safe employment.”<sup>8</sup> Workplace accommodations can ensure that women are guaranteed pay, benefits, and job protection throughout the course of pregnancy with minimal risks to her pregnancy.

At XPO’s warehouse, pregnant women like Ceedria Walker reportedly made every effort to follow ACOG’s recommendations to protect both their jobs and the health of their pregnancies. They identified that their tasks at work could put their pregnancies at risk, spoke with their physicians, brought doctor’s notes asking for reasonable accommodations, and pleaded with supervisors to allow them to continue working in an environment that protects their health and safety. Despite following medical recommendations, they were reportedly forced by XPO to continue to work in dangerous conditions in order to keep their jobs and suffered unthinkable consequences.

Providing reasonable accommodations for pregnant women is not only morally and medically right, it is in many instances legally required. Moreover, providing accommodations has proven to be a low-cost way to increase productivity. According to the National Women’s Law Center (NWLC), “[o]nly about 1.5 percent of workers give birth each year, and only a fraction of those workers would require accommodations, most of them minor and temporary.”<sup>9</sup> NWLC also cites a survey by the Job Accommodation Network that found providing accommodations to employees with disabilities came at no cost to a majority of employers. For those who did incur costs, they were minimal – a one-time cost of \$500 or less.<sup>10</sup> Given this – and the fact that pregnancy is temporary and the costs incurred, if any, would be even less than those for workers with permanent disabilities – it is inexplicable that XPO, a company

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<sup>4</sup> U.S. Equal Employment Opportunity Commission, “Questions and Answers about the EEOC’s Enforcement Guidance on Pregnancy Discrimination and Related Issues,” [https://www.eeoc.gov/laws/guidance/pregnancy\\_qa.cfm](https://www.eeoc.gov/laws/guidance/pregnancy_qa.cfm) (accessed Nov. 19, 2018).

<sup>5</sup> 41 C.F.R. § 60-20.5(c).

<sup>6</sup> “Pregnancy Accommodations in the States,” *National Women’s Law Center*, June 1, 2018, <https://nwlc.org/resources/pregnancy-accommodations-states/>.

<sup>7</sup> “Material Handler – 1<sup>st</sup> Shift,” *XPO Logistics*, Nov. 2, 2018, <https://jobs.xpo.com/US/job/Everett-Material-Handler-1st-Shift-WA-98204/516634400/>.

<sup>8</sup> American College of Obstetricians and Gynecologists, “Employment considerations during pregnancy and the postpartum period,” *Obstetrics & Gynecology*, 131, no. 4 (2018); e115–23, accessed Nov. 19, 2018, <https://www.acog.org/Clinical-Guidance-and-Publications/Committee-Opinions/Committee-on-Obstetric-Practice/Employment-Considerations-During-Pregnancy-and-the-Postpartum-Period#29>.

<sup>9</sup> “Accommodating Pregnant Workers is Good for Business,” *National Women’s Law Center*, July 13, 2017, <https://nwlc.org/resources/business-case-accommodating-pregnant-workers/>.

<sup>10</sup> “Accommodating Pregnant Workers is Good for Business,” *National Women’s Law Center*, July 13, 2017, <https://nwlc.org/resources/business-case-accommodating-pregnant-workers/>.

with a revenue of over \$15 billion in 2017,<sup>11</sup> including over \$85 million in FY18 from federal contracts, found it unreasonable to provide accommodations for these women.

It has never been more important for America's largest companies to exhibit resolute leadership by protecting workers and protecting women. In light of this latest disturbing report that chronicles XPO turning a blind eye to pregnant workers, we urge XPO to reevaluate its priorities with its workforce and make immediate changes to its current, allegedly deleterious workplace practices. As such, we respectfully ask that you provide written answers to the following questions by December 4, 2018.

1. To the best of your knowledge, how many employees in XPO's workforce reported that they were pregnant during the last year? Since XPO's acquisition of the New Breed Logistics' Memphis, Tennessee warehouses, how many material handlers, or employees have reported that they were pregnant?
2. Does XPO provide any accommodations for workers who are temporarily disabled, whether because of on-the-job injuries or otherwise? If so, what accommodations are available for workers who are temporarily disabled? Does XPO view pregnancy in any case as a temporary disability? Does XPO have a policy, written or otherwise, that addresses the treatment of workers who are temporarily disabled?
3. Have you ever made accommodations for a pregnant employee? If so, please describe these cases.
4. Are there any specific policies at XPO addressing accommodations of any kind for pregnant employees? Please describe how many accommodations XPO has made for pregnant workers and the nature of the accommodations. Have you made any of these accommodations in states where there were not already existing protections in place for pregnant workers?
5. Provided that 1.5 percent of women in the workplace give birth each year, what is the estimated cost of adapting a company-wide policy that would protect XPO's pregnant employees from discrimination and afford them reasonable accommodation when their pregnancy necessitates, if you do not already have one?
6. Workers at XPO facilities in Tennessee have also made a number of sexual harassment and sex discrimination complaints about the company to the EEOC.<sup>12</sup> What is the current status of these complaints? Has XPO conducted any internal investigation related to these complaints, or any other worker complaints related to working conditions? What is the status, if any, of these investigations?
7. Please describe any training or other instruction that you mandate or offer to managers, supervisors, and/or workers regarding any policies related to accommodations for pregnant workers. How often does this training take place? What other steps do you take to ensure that your policies related to accommodations for pregnant workers are implemented, observed, and enforced?

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<sup>11</sup> "XPO Logistics Announces Fourth Quarter and Full Year 2017 Results," *XPO Logistics*, Feb. 7, 2018, [https://www.xpo.com/sites/default/files/Q4\\_Press\\_release\\_0/XPO\\_4Q17\\_Press\\_Release\\_Final\\_PDF.pdf](https://www.xpo.com/sites/default/files/Q4_Press_release_0/XPO_4Q17_Press_Release_Final_PDF.pdf).

<sup>12</sup> Amanda Holpuch, "Eight women allege sexual harassment at XPO Logistics warehouse in Memphis," *The Guardian* (New York, NY), May 23, 2018, <https://www.theguardian.com/us-news/2018/may/23/eight-women-allege-sexual-harassment-at-xpo-logistics-warehouse-in-memphis>.

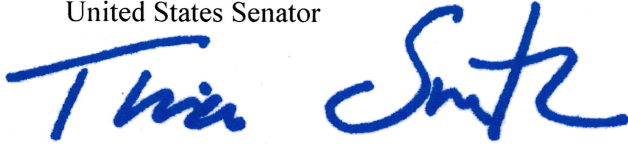
Sincerely,



RICHARD BLUMENTHAL  
United States Senator



ELIZABETH WARREN  
United States Senator



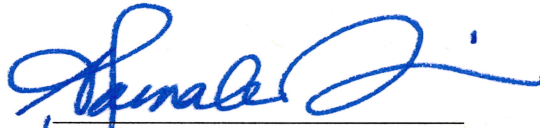
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