

EMPLOYMENT

FACT SHEET

The Amended Americans with Disabilities Act Protects Many Pregnant Workers

November 2014

The Americans with Disabilities Act Amendments Act of 2008 (ADAAA)¹ increased protections for workers with disabilities by expanding the law's coverage to include workers with temporary and less severe disabilities. While pregnancy itself is not a disability, this expansion means that employers must now provide reasonable accommodations for many workers who experience pregnancy-related impairments.

The Americans with Disabilities Act (ADA) prohibits employment discrimination (and other forms of discrimination) against people with disabilities and requires reasonable accommodations in the workplace, if an employer can provide them without undue hardship. A reasonable accommodation is an adjustment an employer makes in the employee's daily work that allows the employee with a disability to do his or her job.² To qualify for protection under the ADA, one must have a disability, defined as a physical or mental impairment that substantially limits a major life activity.³ Individuals who have a history of disability are also protected under the ADA.⁴

The ADAAA expanded the ADA's coverage by broadening the definition of "substantially limiting" and "major life activity" to include temporary impairments and less severe impairments that limit a wide variety of life activities and bodily functions. As a result, the universe of disabilities that employers are required to reasonably accommodate has expanded.

Under the amended ADA, many pregnancy-related impairments will now qualify as disabilities and employees with such impairments will be protected by the ADA.⁵ For example:

- The ADAAA expanded the ADA's coverage by broadening the definition of "substantially limiting" and "major life activity" to include temporary impairments and less severe impairments that limit a wide variety of life activities and bodily functions. As a result, the universe of disabilities that employers are required to reasonably accommodate has expanded.

Under the amended ADA, many pregnancy-related impairments will now qualify as disabilities and employees with such impairments will be protected by the ADA. For example:

- Samantha works as a customer service representative. After she became pregnant, her doctor determined that her pregnancy was high-risk because she had experienced complications during her previous pregnancies, including the development of gestational diabetes. She needs to take time off for bi-weekly prenatal visits to monitor the progress of her high-risk pregnancy.
- Adele works as a patrol officer in a local police department. She is on her feet and walking most of the day. In her sixth month of her pregnancy, she develops sciatica, which is extremely painful and often leaves her unable to stand or walk.

- Karen works in a clerical position at a medium-size company. She answers phones, sends correspondence, and organizes the calendar and meetings for a team of workers on her floor. When Karen became pregnant, she started suffering from severe morning sickness. She has to severely restrict her diet to only a few types of foods that she can tolerate, must periodically receive IV fluids to avoid dehydration, and needs to take frequent breaks to vomit.
- Mary is employed as a prison guard at a private prison. After she became pregnant, she developed recurring, severe urinary tract infections as a result of not drinking enough water and not going to the bathroom frequently enough. Her doctor warned her that urinary tract infections are very important to avoid because they can lead to kidney infections, which in turn can lead to pre-term labor and low birth weight. She needs to keep water with her at all times and remain hydrated.

For reasons described below, all of these women have pregnancy-related impairments that substantially limit major life activities under the expanded ADA and so are entitled to reasonable accommodations.⁶

Additionally, the ADA covers pregnant workers whose substantially limiting impairment is the result of an interaction between the pregnancy and an underlying disability.⁷ An individual with a history of a substantially limiting impairment is also protected.⁸ This means that women who experienced substantially limiting impairments during previous pregnancies are entitled to reasonable accommodations related to those past impairments, such as time off for extra prenatal monitoring appointments for a pregnant woman with a history of gestational diabetes.⁹ For example:

- Isabelle works as a financial analyst at a large publishing company. During her previous pregnancy, Isabelle experienced complications with gestational diabetes that led to a diagnosis of preeclampsia near the end of her sixth month of pregnancy. Isabelle's doctor prescribed bed rest and medications for the last two months of her pregnancy until delivery. Isabelle recently became pregnant again. Due to the complications from her previous pregnancy, she is required to visit her doctor regularly for monitoring. Because Isabelle experienced a substantially limiting impairment in her last pregnancy, she is covered by the ADA and must be given time off or other

schedule accommodations to attend her doctor appointments.

The ADA expanded what “substantially limit[s]” a major life activity under the law.

Under the ADA, less severe impairments are now considered to “substantially limit” major life activities and thus meet the definition of disability. For example, an individual who experiences shortness of breath and fatigue when walking reasonable distances, or an individual who experiences significant back or leg pain when standing for more than two hours, would now be substantially limited in major life activities, because the individual's ability to walk or stand is substantially less than the average person's ability to walk or stand.¹⁰ As a result, many more pregnancy-related impairments are now considered to substantially limit a major life activity.

An impairment lasting fewer than six months can be “substantially limiting” under the ADA.¹¹ This means that temporary impairments can now qualify for coverage under the ADA, including pregnancy-related impairments, which are generally by definition temporary.

Episodic impairments are now also considered disabilities under the ADA, if they would substantially limit a major life activity when active.¹² The Equal Employment Opportunity Commission (EEOC) offers examples of diseases such as hypertension, diabetes, asthma, and depression as episodic impairments that are substantially limiting when active.¹³ Women experiencing episodic pregnancy complications, like recurrent severe nausea, may now qualify for direct coverage under the ADA.¹⁴

The ADA expanded the definition of “major life activity.”

The ADA and implementing regulations instruct that “major life activity” should be read broadly.¹⁵ Prior to the 2008 amendments, the ADA defined major life activities to include “functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.”¹⁶ The ADA added “interacting with others, . . . sleeping, . . . standing, lifting, bending, . . . reading, concentrating, thinking, [and] communicating.”¹⁷ The amendments made explicit that activities not on the

list may also qualify as major life activities. The EEOC implementing regulations further specify that an employee would be considered to have a disability if she has an impairment that prevents her from working in a class of jobs, even if she remains able to work in other types of jobs.¹⁸

The ADA amendments also added “the operation of major bodily functions” to the definition of “major life activity.”¹⁹ This includes immune, digestive, respiratory, circulatory, endocrine, and reproductive functions.²⁰ Prior to this addition, workers had to prove that medical problems related to these systems or functions substantially limited their ability to undertake daily tasks.²¹ Many additional medical conditions are now disabilities under the ADA because they substantially limit one or more of the major systems or functions, and therefore by definition limit a major life activity.

These additions to the ADA include many activities and functions affected by pregnancy-related complications. For example, if an employee has a pregnancy-related impairment such as severe and ongoing back pain that substantially limits her ability to stand, lift, or bend, or substantially limits her ability to do her existing job and other jobs that require heavy lifting, she now meets the

definition of disability under the ADA. Similarly, if an employee has gestational diabetes²² that substantially limits her endocrine function, or pregnancy-related carpal-tunnel syndrome²³ that substantially limits her ability to do her job and similar jobs, or ongoing severe nausea that substantially limits her ability to digest food, she has a disability under the ADA.

The ADA protects many pregnant workers.

For all these reasons, pregnant workers who are experiencing pregnancy-related impairments have substantial legal protections. Since the passage of the ADAAA, pregnant workers are entitled to receive reasonable accommodations for the temporary complications and impairments that arise as a result of their pregnancies when these complications and impairments substantially limit a major life activity, so long as their employer can provide these accommodations without an undue hardship. These accommodations help ensure that women experiencing pregnancy-related impairments can continue to work and provide support their growing families, while protecting their health and the health of their pregnancies.

¹ 42 U.S.C. § 12101.

² 42 U.S.C. § 12101; see also EEOC, *Enforcement Guidance: Reasonable Accommodation and Undue Hardship under the ADA*, www.eeoc.gov/policy/docs/accommodation.html#N_3.

³ 42 U.S.C. § 12102(1).

⁴ 42 U.S.C. § 12102(1)(B).

⁵ The EEOC has stated that the definition of disability is to be construed broadly, in favor of expansive coverage. 29 C.F.R. § 1630, App. § 1630.2(j)(1)(i). See also EEOC, *Enforcement Guidance: Pregnancy Discrimination and Related Issues*, http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm#over (“While pregnancy itself is not a disability, pregnant workers and job applicants are not excluded from the protections of the ADA. Changes to the definition of the term “disability” resulting from enactment of the ADA Amendments Act of 2008 (ADAAA) make it much easier for pregnant workers with pregnancy-related impairments to demonstrate that they have disabilities for which they may be entitled to a reasonable accommodation under the ADA.”) [hereinafter *EEOC Enforcement Guidance*].

⁶ 29 C.F.R. § 1630.2(h).

⁷ See *id.* The EEOC provides the following example of an impairment covered by the ADA resulting from the interaction of a pregnancy and an underlying disability: Jennifer had been successfully managing a neurological disability with medication for several years. Without the medication, Jennifer experienced severe fatigue and had difficulty completing a full work day. However, the combination of medications she had been prescribed allowed her to work with rest during the breaks scheduled for all employees. When she became pregnant, her physician took her off some of these drugs due to risks they posed during pregnancy. Adequate substitutes were not available. She began to experience increased fatigue and found that rest during short breaks in the day and lunch time was insufficient. Jennifer requested that she be allowed more frequent breaks during the day to alleviate her fatigue. Absent undue hardship, the employer would have to grant such an accommodation. *EEOC Enforcement Guidance*, at http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm#amer.

⁸ EEOC, *Questions and Answers on the Final Rule Implementing the ADA Amendments Act of 2008*, http://www.eeoc.gov/laws/regulations/ada_qa_final_rule.cfm (“23. Is pregnancy a disability under the ADAAA? No. Pregnancy is not an impairment and therefore cannot be a disability. Certain impairments resulting from pregnancy (e.g., gestational diabetes), however, may be considered a disability if they substantially limit a major life activity, or if they meet one of the other two definitions of disability discussed.”); see also 29 C.F.R. § 1630, App. § 1630.2(k) (“An individual with a record of a substantially limiting impairment may be entitled, absent undue hardship, to a reasonable accommodation if needed and related to the past disability. For example, an employee with an impairment that previously limited, but no longer substantially limits, a major life activity may need leave or a schedule change to permit him or her to attend follow-up or “monitoring” appointments with a health care provider.”).

⁹ The EEOC provides the following example of what constitutes discrimination against a pregnant woman based on a history of disability:

A county police department offers an applicant a job as a police officer. It then asks her to complete a post-offer medical questionnaire and take a medical examination. On the questionnaire, the applicant indicates that she had gestational diabetes during her pregnancy three years ago, but the condition resolved itself following the birth of her child. The police department will violate the ADA if it withdraws the job offer based on this past history of gestational diabetes when the applicant has no current impairment that would affect her ability to perform the job safely.

EEOC Enforcement Guidance, at http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm#dissta.

¹⁰ 29 C.F.R. § 1630.2(j)(4).

¹¹ *Id.* at § 1630.2(j)(1)(ix). (“The six-month ‘transitory’ part of the ‘transitory and minor’ exception to ‘regarded as’ coverage in § 1630.15(f) does not apply to the definition of “disability” under paragraphs (g)(1)(i) (the ‘actual disability’ prong) or (g)(1)(ii) (the ‘record of’ prong) of this section. The effects of an impairment lasting or expected to last fewer than six months can be substantially limiting within the meaning of this section.”)

¹² *Id.* at § 1630.2(j)(1)(vii); 42 U.S.C. § 12102(4)(D).

¹³ *Id.* at § 1630, App. § 1630.2(j)(1)(vii).

¹⁴ See *EEOC Enforcement Guidance*, at http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm#dissta (listing pregnancy-related anemia, sciatica, carpal tunnel syndrome, gestational diabetes, abnormal heart rhythms, and nausea causing severe dehydration as examples of impairments that may cause pregnancy-related limitations, which may be covered by the ADA if they substantially limit a major life activity).

¹⁵ 42 U.S.C. § 12101(b)(4) (rejecting the Supreme Court’s narrow reading of “substantially” and “major” in the definition of disability under the ADA; see also 42 U.S.C. § 12102(4); 29 C.F.R. § 1630, App. § 1630.2(i)(2).

¹⁶ 42 U.S.C. § 12102(2)(A).

¹⁷ *Id.*; see also 49 C.F.R. § 37.3 (1991); see also 29 C.F.R. § 1630.2(i)(1)(i).

¹⁸ 29 C.F.R. § 1630.2(i)(1)(i).

¹⁹ 42 U.S.C. § 12102(2)(B).

²⁰ *Id.*

²¹ See, e.g., *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) (holding that the ADA only covers disabilities that have a “substantial effect” on an employee’s daily life); *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) (finding that the ADA does not cover disabilities that could be sufficiently corrected with medicine, eyeglasses, or other measures).

²² See 29 C.F.R. § 1630.2(j)(3)(iii) (nothing that diabetes substantially limits endocrine function).

²³ *Id.* at § 1630.2(j)(1)(vii).