

EMPLOYMENT

FACT SHEET

The Amended Americans with Disabilities Act Protects Many Pregnant Workers

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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. 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:

- Samantha works as a customer service representative. After she became pregnant, her doctor determined that her pregnancy was high-risk because she 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 the seventh month of her pregnancy, she begins experiencing episodes of pre-term labor, which are extremely painful and leave her unable to stand or walk. She needs a temporary light duty position that allows her to sit when necessary, like those that the department makes available for officers with on-the-job injuries.
- 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 recommended by her doctor and needs to take frequent bathroom 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

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

Under the ADAAA, 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.⁷ 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 ADAAA.⁸ 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.⁹ 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.¹⁰ Women experiencing episodic pregnancy complications, like recurrent severe nausea, may now qualify for direct coverage under the ADA.

Additionally, under the ADA amendments, an individual with a history of a substantially limiting impairment is also protected.¹¹ 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.

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

The ADAAA and implementing regulations instruct that “major life activity” should be read broadly.¹² 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.”¹³ The ADAAA added “interacting with others, . . . sleeping, . . . standing, lifting, bending, . . . reading, concentrating, thinking, [and] communicating.”¹⁴ 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.¹⁵

The ADA amendments also added “the operation of major bodily functions” to the definition of “major life activity.”¹⁶ This includes immune, digestive, respiratory, circulatory, endocrine, and reproductive functions.¹⁷ 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.¹⁸ 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 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 diabetes¹⁹ that substantially limits her endocrine function, or pregnancy-related carpal-tunnel²⁰ syndrome 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. These accommodations help ensure that women experiencing pregnancy-related impairments can continue to work and provide support to 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).
- 6 29 C.F.R. § 1630.2(h).
- 7 *Id.* at § 1630.2(j)(4).
- 8 *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.”).
- 9 *Id.* at § 1630.2(j)(1)(vii); 42 U.S.C. § 12102(4)(D).
- 10 *Id.* at § 1630, App. § 1630.2(j)(1)(vii).
- 11 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.”).
- 12 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).
- 13 42 U.S.C. § 12102(2)(A).
- 14 *Id.*; *see also* 49 C.F.R. § 37.3 (1991); *see also* 29 C.F.R. § 1630.2(i)(1)(i).
- 15 *Id.* at § 1630.2(i)(1)(i).
- 16 42 U.S.C. § 12102(2)(B).
- 17 42 U.S.C. § 12102(2)(B).
- 18 *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).
- 19 *See* 29 C.F.R. § 1630.2(j)(3)(iii) (nothing that diabetes substantially limits endocrine function).
- 20 *Id.* at § 1630.2(j)(1)(vii).