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Pass the Pregnant Workers Fairness Act: Why The ADAAA Is Not Enough

More than a decade ago, the **Americans with Disabilities Act (“ADA”)** was amended by the **ADA Amendments Act (“ADAAA”)** to better implement the fundamental principle that physical or mental disabilities that can be reasonably accommodated without undue hardship to the employer should not force people out of work. When it comes to protecting pregnant employees, however, the ADA is not enough, even as amended by the ADAAA. Pregnancy is not considered a disability under the ADA, and as a result, employers may deny reasonable accommodations to employees who have a medical need for them because of pregnancy—like being permitted to drink water throughout the day or sitting on a stool rather than standing during a long shift. While some employees experiencing pregnancy complications have used the ADA to continue to work safely while pregnant, too many remain unprotected and at risk of losing their job or endangering their health or the health of their pregnancy.

The gaps left by the ADA, the ADAAA, and the Pregnancy Discrimination Act are why pregnant employees so desperately need the Pregnant Workers Fairness Act—to ensure that no one has to choose between their job and a healthy pregnancy.

The Americans with Disabilities Act and the ADA Amendments Act

The Americans with Disabilities Act was originally passed in 1990 to protect people with disabilities from discrimination in jobs, school, housing, and other aspects of public life. Although the law was intended to provide broad coverage against discrimination, a series of Supreme Court decisions¹ narrowed the scope of protection to such a large degree that Congress felt the need to remedy the situation. In 2008, Congress passed the ADAAA to expand and strengthen workplace protections for people with disabilities.

While 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, it has not been a panacea for pregnant workers facing discrimination. This is because the ADA still only applies to pregnancy-related *impairments*—and pregnancy itself is not considered an impairment.² Additionally, even when an employee has a pregnancy-related impairment, despite the expanded protections provided by the ADAAA, some courts have denied pregnant workers protection because their impairment is temporary or is not considered severe enough to inhibit a major life activity.³

The ADAAA Has Fallen Short for Pregnant Workers

Pregnancy is not a disability as a matter of law or logic, and as a result, courts have typically required plaintiffs seeking a pregnancy-related accommodation under the ADAAA to demonstrate that they have a significant pregnancy-related complication constituting a disability in order to proceed with a viable claim.⁴ This requirement leaves many pregnant workers who are not suffering from a complication—but who nevertheless need an accommodation—unprotected. For instance, a woman may need a bigger uniform or a new bullet-proof vest to accommodate her growing pregnancy. The need for a larger uniform is indicative of a normally progressing pregnancy, yet still requires accommodation. In other circumstances, pregnant workers may seek accommodations precisely because they wish to prevent pregnancy complications that are likely in the absence of accommodation—as when a worker with a normally progressing pregnancy seeks to avoid heavy lifting late in pregnancy, for example—yet courts have held that the ADAAA provides no right to such preventive accommodations.⁵

In other words, in cases where a pregnancy proceeds without any complications a pregnant worker will almost certainly be denied protections under the ADAAA because “[a] routine pregnancy is not considered a disability.”⁶

Even Serious Pregnancy-Related Complications Have Been Denied Accommodation Under the ADAAA

Since the passage of the ADAAA, courts have sometimes been willing to extend ADA accommodations to pregnant workers with significant pregnancy-related complications,⁷ but in the cases discussed below, courts have held that pregnancy-related complications do not constitute a disability even under the ADAAA’s expanded definition.

For example, in 2012 a court granted summary judgment against a woman who claimed that a series of post-pregnancy health complications she had experienced constituted a disability under the ADA. Although the court specifically noted that the ADAAA was designed to expand protection under the ADA, it relied on a series of pre-ADAAA decisions in holding that “temporary impairments, pregnancies, and complications arising from pregnancy are not typically considered disabilities.”⁸ In another case,⁹ a plaintiff who suffered from a severe form of morning sickness that can lead to dehydration and “interfere with a woman’s ability to work and perform daily activities”¹⁰

ELIZABETH SWANGER-METCALFE’S STORY

As an automotive worker, Elizabeth worked both on the prep floor, placing and maintaining decals on vehicles and cleaning car interiors, and in the “sand” room, preparing vehicles for painting, where employees were required to wear protective suits and ventilation hoods.¹¹ When she found out she was pregnant, Elizabeth was told by her doctor that she should request to work only in well-ventilated areas, among other restrictions. When she requested the accommodation from her employer, the employer told her “pregnancy is not a disability” and that she could choose to work in the sand room or go on unpaid leave.

Elizabeth brought a claim of pregnancy and disability discrimination against her employer. She argued that breathing constituted a “major life function” under the ADA and that breathing “debris filled air” would lead to serious pregnancy complications.¹² Nevertheless, the court dismissed her claim of disability discrimination because she was not suffering from any “pregnancy-related complications at the time she sought an accommodation.”¹³ In essence, the court told her that the ADA, even as amended by the ADAAA, required her to wait to seek protection until she developed a serious condition - putting her own health or her pregnancy at risk before she could get protection under the statute.

was told that she did not present sufficient evidence of a disability under the ADAAA because her pregnancy-related impairment did not substantially limit her major life activities.

The ADA and the 2008 ADA Amendments Act serve as a vital protection for individuals with disabilities. But time and time again, courts have held that these laws do not protect those pregnant workers who need temporary workplace accommodations. The gap in federal law is why we need the Pregnant Workers Fairness Act.

The Pregnant Workers Fairness Act will protect pregnant workers from discrimination by providing a right to reasonable workplace accommodations for limitations arising out of pregnancy, childbirth, or related medical conditions, to ensure that no one who is pregnant is forced to choose between ignoring her doctor’s advice and losing her job at a time when both her health and economic security are of critical importance.

- 1 See *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) overturned due to legislative action (2009); *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) overturned due to legislative action (2009).
- 2 Interpretive Guidance on Title I of the Americans With Disabilities Act, 29 C.F.R. § Pt. 1630, App. (2016) (“Other conditions, such as pregnancy, that are not the result of a physiological disorder are also not impairments. However, a pregnancy-related impairment that substantially limits a major life activity is a disability under the first prong of the definition. Alternatively, a pregnancy-related impairment may constitute a “record of” a substantially limiting impairment,” or may be covered under the “regarded as” prong if it is the basis for a prohibited employment action and is not “transitory and minor.”); see also, EEOC, Enforcement Guidance: Pregnancy Discrimination and Related Issues, https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm#11 (“Although pregnancy itself is not an impairment within the meaning of the ADA, and thus is never on its own a disability, some pregnant workers may have impairments related to their pregnancies that qualify as disabilities under the ADA, as amended.”)
- 3 *Llano v. New York City Health & Hosps. Corp.*, No. 13 CIV. 5820 RJS, 2014 WL 1302654, at *2 (S.D.N.Y. Mar. 31, 2014) (finding that because the plaintiff did “not allege that her nausea or complications were more than minor or lasted more than six months” that she did not state a claim under the ADA). See also *infra* note 4 (collecting cases).
- 4 See *Brown v. Aria Health*, No. CV 17-1827, 2019 WL 1745653, at *4 (E.D. Pa. Apr. 17, 2019) (rejecting plaintiff’s disability discrimination claim under the ADA because she did not “allege any pregnancy related complications”); *Swanger-Metcalf v. Bowhead Integrated Support Services, LLC*, No. 1:17-cv-2000, 2019 WL 149334, *11 (M.D. Pa. March 31, 2019) (“Plaintiff does not allege that she suffered from any pregnancy-related complications at the time she sought an accommodation. As a result, plaintiff’s claim of discrimination under the ADA fails because she has not alleged facts sufficient to support a reasonable inference that she is disabled under the ADA.”); *Arozarena v. Carpenter Co.*, No. 5:17-CV-05457, 2018 WL 2359143, at *2 (E.D. Pa. May 24, 2018) (dismissing complaint that alleged twice-weekly doctor’s visits as insufficient pregnancy-related complication to qualify under the ADA); *Lacount v. S. Lewis Sh Opco, LLC*, No. 16-CV-0545-CVE-TLW, 2017 WL 319217, at *3 (N.D. Okla. Jan. 20, 2017) (“[under the ADA] on the basis of her pregnancy, defendant could not regard plaintiff as having ‘a physical or mental impairment that substantially limits one or more of the major life activities’ because pregnancy is not a physical impairment.”); *Alger v. Prime Rest. Mgmt., LLC*, No. 1:15-CV-567-WSD, 2016 WL 3741984, at *8 (N.D. Ga. July 13, 2016) (acknowledging that plaintiff was put on bed rest for two weeks while pregnant but affirming that pregnancy-related complications did not constitute a disability); *Lang v. Wal-Mart Stores E., L.P.*, 2015 WL 1523094, at *2 (D.N.H. Apr. 3, 2015) (“[P]regnancy is not an actionable disability, unless it is accompanied by a pregnancy-related complication.”) (emphasis in original); *Oliver v. Scranton Materials, Inc.*, No. 3:14-CV-00549, 2015 WL 1003981, at *7 (M.D. Pa. Mar. 5, 2015) (dismissing disability discrimination claim under the ADA based on high risk pregnancy with triplets, but giving plaintiff leave to amend for further individualized assessment); *Llano v. New York City Health & Hosps. Corp.*, *supra* note 3 at *2 (finding that short-term pregnancy-related complications were not sufficient to satisfy the definition of disabled under the ADA); *Wonasue v. Univ. of Maryland Alumni Ass’n*, 984 F. Supp. 2d 480, 489-90 (D. Md. 2013) (holding that plaintiff’s “severe and unusual medical complications...that threatened her own and her baby’s health” were insufficient to establish a disability claim under the ADA); *Turner v. Eastconn Reg’l Educ. Serv. Ctr.*, No. 3:12-CV-00788 VLB, 2013 WL 6230092, at *9 (D. Conn. Dec. 2, 2013), *aff’d*, 588 F. App’x 41 (2d Cir. 2014) (“The case law makes clear that pregnancy without allegations of mental or physical complications therefrom is insufficient for a claim of ADA discrimination.”) (On appeal, plaintiff did not pursue argument that pregnancy itself constituted a disability.); *Sam-Sekur v. Whitmore Grp., Ltd.*, No. 11-CV-4938 JFB GRB, 2012 WL 2244325, at *8 (E.D.N.Y. June 15, 2012) (“Only in extremely rare cases have courts found that conditions that arise out of pregnancy qualify as a disability.”) (dismissing plaintiff’s ADA claims, but giving leave to replead her termination claim to more specifically link chronic gallbladder inflammation to pregnancy).
- 5 E.g., *Swanger-Metcalf v. Bowhead Integrated Support Services*, *supra* note 4, at *11 (“While Plaintiff argues that working in the sand room could have caused her to sustain pregnancy complications at some point in the future, [she did not suffer] from any pregnancy-related complications at the time she sought an accommodation.”); *LaCount v. S. Lewis SH OPCO, LLC*, *supra* note 4, at *3 (holding that lifting restriction imposed during pregnancy was not a physical impairment under the ADA).
- 6 *Brown v. Aria Health*, *supra* note 4, at *4 (rejecting plaintiff’s disability discrimination claim under the ADA because she did not “allege any pregnancy related complications”).
- 7 See, e.g., *Colas v. City of Univ. of New York*, No. 17CV4825NGGJO, 2019 WL 2028701, at *4 (E.D.N.Y. May 7, 2019) (finding that “leg muscle spasms, neck pain, fatigue and shortness of breath, episodes of cramping and contractions, ligament pain, back pain, along with joint pain, nausea and headaches” were sufficient “atypical pregnancy symptoms” to support a disability claim); *Mayorga v. Alorica, Inc.*, No. 12-21578-CIV, 2012 WL 3043021, at *6 (S.D. Fla. July 25, 2012) (denying motion to dismiss and finding that numerous pregnancy-related complications including several emergency room admissions and a breech presentation were sufficient under the “ADAAA’s lenient standards to establish a disability”); *Nayak v. St. Vincent Hosp. & Health Care Ctr., Inc.*, No. 1:12-CV-0817-RLY-MJD, 2013 WL 121838, at *2-3 (S.D. Ind. Jan. 9, 2013) (finding that pregnancy related complications lasting eight months, including 2 months beyond the end of the pregnancy, presented a plausible claim for disability discrimination under the ADA).
- 8 *Sam-Sekur v. Whitmore Grp., Ltd.*, *supra* note 4, at *8.
- 9 *Wonasue v. Univ. of Maryland Alumni Ass’n*, *supra* note 4, at 489-90.
- 10 Huma Farid, *Hyperemesis: (Way) Beyond Morning Sickness*, HARV. HEALTH BLOG (July 9, 2019, 10:30 AM), <https://www.health.harvard.edu/blog/hyperemesis-way-beyond-morning-sickness-2019070917269>.
- 11 *Swanger-Metcalf v. Bowhead Integrated Support Servs.*, *supra* note 4, at *11.
- 12 *Id.*
- 13 *Id.* (emphasis added)