Current laws are forcing pregnant workers to make an impossible choice between their paycheck and a healthy pregnancy. The solution, the federal Pregnant Workers Fairness Act, is Long Overdue.

Why is the Pregnancy Discrimination Act inadequate for pregnant workers in need of accommodations?

The Pregnancy Discrimination Act (PDA) of 1978 bans discrimination against pregnant workers and specifies that pregnant workers should be treated the same as those who are “similar in ability or inability to work.” This standard places a unique burden on pregnant workers to identify someone else in the workplace who was provided accommodations in order to obtain their own medically necessary accommodation, a burden not placed on workers with disabilities.

Unsurprisingly, this burden is nearly impossible to meet. According to a recent report, “Long Overdue,” by A Better Balance, two-thirds of workers lost their pregnancy accommodation cases post-Young v. UPS — a Supreme Court case many hoped would provide clarity but unfortunately did not. The majority of these losses can be traced to courts’ rejection of women’s comparators or inability to find a comparator.

Women in jobs ranging from nursing to law enforcement and in both the public and private sector were denied accommodations because courts found they could not produce evidence of other similar employees who had been provided accommodations. These cases also spanned the nation, with women denied accommodations everywhere from Michigan to Tennessee to Pennsylvania to Oklahoma.

Cassandra Adduci worked part-time at a warehouse in Tennessee and requested a temporary re-assignment after her doctor told her she should lift no more than 25 pounds. Though the employer had a “Temporary Return to Work” program and Adduci provided the court with a spreadsheet of 261 employees that the company provided with temporary work or light duty assignments, the court, post-Young, rejected those employees as valid comparators even though some of those accommodated were part-time, like Adduci, and occupied the same exact position as Adduci. In another case out of Florida, a court rejected a firefighter’s claim that the city failed to provide her light duty because she could not produce a “nearly identical” comparator.

Why is the Americans with Disabilities Act Amendments Act inadequate for pregnant workers in need of accommodations?

The purpose of the Americans with Disabilities Act Amendments Act (ADAAA) is to address instances when a worker with a disability needs an accommodation related to that disability. Pregnancy is not itself a disability under the law, and hence a pregnant worker who has no complications but seeks an accommodation in order to avoid a complication, will not be able to get an accommodation under the ADAAA.

Furthermore, even though Congress expanded the ADA in 2008 and in theory it should provide accommodations for workers with pregnancy-related disabilities, courts have interpreted the ADA Amendments Act in a way that did little to expand coverage even for those pregnant workers with serious health complications.

As one court recently concluded in 2018, “Although the 2008 amendments broadened the ADA’s definition of disability, these changes only have had a modest impact when applied to pregnancy-related conditions.”

Thus, even in scenarios where pregnant workers have presented very serious complications related to pregnancy, courts have still been unwilling to
recognize those as ADA-qualifying disabilities because the complication did not amount to an “impairment” in the courts’ view, and/or their pregnancy complication did not substantially limit a major life activity.\(^\text{15}\)

### Pregnancy-related complications that did not merit ADAAA protections:

- **High-risk pregnancy**: Shakirat Tomiwa, a pharmacist in Texas, had to undergo two emergency surgeries related to her high-risk pregnancy but the court said she did not have an impairment that constituted a “disability” and dismissed her ADAAA claim.\(^\text{16}\)
- **Hyperemesis gravidarum**: Sylvia Wonasue, from Maryland, went to the ER while pregnant and was diagnosed with hyperemesis gravidarum, a severe form of morning sickness, and hypokalemia, a low level of potassium. But the court found she did not have an impairment for purposes of the ADAAA and dismissed her ADAAA claim.\(^\text{17}\)
- **Pregnancy-related nausea**: Elizabeth Annobil, from Massachusetts, reported to her supervisor that she suffered from headaches, nausea, and vomiting during her pregnancy but the court found she had “no legal argument as to whether such symptoms differ from normal symptoms of pregnancy and how these complications are disabling” and dismissed her ADAAA claim.\(^\text{18}\)
- **Pregnancy-related bleeding at work**: Jennifer Alger, from Georgia, experienced “severe complications” and bleeding at work while she was pregnant but the court said she failed to show her complications qualified as a disability and dismissed her ADAAA claim.\(^\text{19}\)

### Why is the Family and Medical Leave Act inadequate for pregnant workers in need of accommodations?

The Family and Medical Leave Act (FMLA)\(^\text{20}\) is a federal law that gives covered workers the right to up to 12 weeks of unpaid, job-protected time off to address their own serious health needs, bond with a new child, care for a seriously ill or injured family member, or address certain military family needs.

Although a very important protection, the FMLA is not the statutory scheme pregnant workers need when they require reasonable accommodations, like a stool to sit on, a water bottle, or light duty, to continue working. The FMLA provides workers with up to twelve weeks of unpaid leave for pregnancy-related illness, recovery from childbirth, and other pregnancy-related incapacity. More than 40 percent of workers are ineligible for FMLA protections and many more cannot afford to take time off unpaid.\(^\text{21}\) Workers who are forced to use up their FMLA leave entitlement when forced off the job during pregnancy are then often unable to use its protections to care for their new baby, one of the intended uses of the FMLA.

### The Solution Is the Pregnant Workers Fairness Act

The bipartisan Pregnant Workers Fairness Act would address this gap in our federal laws and fulfill the intent of the PDA. Specifically, the Pregnant Workers Fairness Act would require employers to make reasonable accommodations for employees who have limitations stemming from pregnancy, childbirth or related medical conditions, unless the requested accommodation would impose an undue hardship on the employer—the same familiar process in place for workers with disabilities. The Pregnant Workers Fairness Act, like the ADAAA, would encourage a productive, informal dialogue between employer and employees. The law would finally ensure that pregnant workers can get the immediate relief they need to remain healthy and on the job. It is long overdue.

For more information see:
- A Better Balance’s Congressional Testimony from the Pregnant Workers Fairness Act hearing
- A Better Balance Pregnant Workers Fairness Resources page
- A Better Balance Fact Sheet: The Pregnant Workers Fairness Act
THE PREGNANT WORKERS FAIRNESS ACT (H.R. 2694)


Id. (citing, e.g., Vidovic v. City of Tampa, No. 8:16-cv-T-17AAS, 2017 WL 10294807, at *9 (M.D. Fla. Oct. 17, 2017); Diaz v. Florida, 219 F. Supp. 3d 1207, 1218 (S.D. Fla. 2016)).