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Is Pregnancy a Disability?

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The Americans with Disabilities Act should be expanded to include pregnant workers, according to research to be presented Thursday, Jan. 5, at the American Association of Law Schools annual meeting in Washington, D.C.

"The recent expansion of the ADA's protected class now includes persons with minor temporary physical limitations comparable to pregnancy's physical effects," said employment discrimination expert Jeannette Cox. "This invites re-examination of the assumption pregnant workers may not use the ADA to obtain workplace accommodations."

Cox found examples of women who lost their jobs "even though reasonable adjustments to work rules or job duties might have enabled these women to continue working during their pregnancies." A retail worker lost her job because drinking water while working to maintain a healthy pregnancy violated store policy. A pregnant police officer lost her job because her department imposed vigorous physical requirements incompatible with pregnancy, while other officers injured on duty received temporary light duty assignments.

Because pregnancy is not specifically ADA-protected, the law currently doesn't provide pregnant women any right to pregnancy-related accommodations she said. Current law dictates the ADA covers physical or mental impairments. It does not consider pregnancy a result of a physiological disorder. Cox, a University of Dayton associate professor of law, writes in her paper most Americans consider pregnancy a physically healthy condition.

The American Pregnancy Association estimates there are nearly 6 million pregnancies a year in the U.S.

Cox said the litmus test for the ADA should be how workplace policies and conditions transform pregnancy into a workplace "disability."

Pregnancy comes with physical limitations equivalent to other protections added to the ADA Amendments Act, which Cox found in U.S. Equal Employment Opportunity Commission literature. Three instances made mentions of people with lifting restrictions as having an ADA disability. Other ADA protections not applicable to pregnant women include: shortness of breath and fatigue while walking; jobs requiring repetitive bending, reaching, prolonged sitting or standing, extensive walking, driving, or working under conditions such as high temperatures; and medically diagnosed disorders that restrict activity accompanying pregnancy such as gestational diabetes and high blood pressure.

Cox found courts have reasoned the ADA does not require employers to accommodate pregnant employees with these physical limitations because they have considered "all of these symptoms, at some degree of severity, are part and parcel of a normal pregnancy."

"This reluctance to associate pregnancy with disability, however, has resulted in a legal regime in which many pregnant workers currently have less legal standing to workplace accommodations than other persons with comparable physical limitations," Cox wrote in her paper.

Cox argues these limitations adversely affect women in male-dominated positions and low-income workers who often work in physically demanding jobs. They often face the dilemma of continuing to work at the risk of endangering their own or the baby's health or leaving the job, which is often not an option for low-income workers.

The *Boston College Law Review* is scheduled to publish Cox's paper in March. Cox also has presented the paper at the Seton Hall Law School Employment and Labor Law Forum and the Colloquium on Current Scholarship in Labor and Employment Law in Los Angeles.

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