



Pregnancy Accommodation: Selected Pregnancy Accommodation Cases

*The first section of this document addresses pregnancy accommodation cases brought under Title VII of the Civil Rights Act of 1964 as amended by the Pregnancy Discrimination Act of 1978. The first case described is the Supreme Court’s recent decision in *Young v. UPS*, which announced the standard that now applies in disparate treatment cases brought under the Pregnancy Discrimination Act. The remainder of the first section describes significant early cases applying *Young*.*

*The second section describes cases decided under the 2008 Americans with Disabilities Act Amendment Act (ADAAA). The ADAAA expanded the interpretation of “disability” by broadening the scope of “substantially limits” and “major life activity” in ways that permit more pregnancy-related conditions to be considered disabilities. In addition, the ADAAA limited the relevance of the duration of an impairment to certain types of claims, effectively permitting temporary impairments like pregnancy-related conditions to be deemed disabilities. See *A Cool Sip of Water: Pregnancy Accommodation After the ADA Amendments Act*, Joan C. Williams, Robin Devaux, Danielle Fuschetti, and Carolyn Salmon, 32 *Yale Law and Policy Rev.* 1, 97-148 (2013), available at <http://worklifelaw.org/wp-content/uploads/2014/07/A-Sip-of-Cool-Water.pdf>.*

For additional resources on pregnancy accommodation law, visit WorkLife Law’s Pregnant@Work online resource center, pregnantatwork.org.

I. Pregnancy Accommodation Under Title VII

A. *Young v. UPS*

Young v. UPS, 575 U.S. ___, 135 S. Ct. 1338 (2015): Peggy Young was a UPS delivery driver. In 2006, Young became pregnant. Her doctor restricted her from lifting more than 20 pounds in her first 20 weeks of pregnancy and 10 pounds thereafter. UPS told Young that she could not continue working while under the lifting restriction because her job required her to lift more than 70 pounds. Young was put on leave without pay, and subsequently lost her health insurance coverage.

Young brought suit under the Pregnancy Discrimination Act (PDA), claiming that UPS’s failure to accommodate her was unlawful pregnancy discrimination where UPS provided accommodations to three other groups of employees: (1) employees who lost their Department of Transportation certifications; (2) employees who were disabled within the meaning of the ADA¹; and (3) employees who were injured on the job. Both the district court and the Fourth Circuit found against Young on summary judgment. The Supreme Court reversed and remanded for further consideration under a newly

¹ The Court did not consider whether Young was disabled under the 2008 amendments to the ADA because Young was denied her accommodation before those amendments went into effect. However, both the majority opinion and Kennedy’s dissenting opinion noted that the 2008 amendments may require accommodations for pregnant women like Young. Relevant ADAAA cases are discussed below.

articulated standard.

The PDA amended Title VII in 1978 to clarify that discrimination on the basis of sex includes discrimination on the basis of pregnancy, childbirth, or related medical conditions. The PDA also provides that “women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes . . . as other person not so affected but similar in their ability or inability to work . . .” The Supreme Court announced in *Young* the standard courts must apply when a plaintiff brings a disparate treatment claim of intentional discrimination under this clause of the PDA. The Court held that – as with disparate treatment claims in other contexts - in the absence of direct evidence, plaintiffs may prove intentional discrimination by using the burden-shifting framework set forth in *McDonnell Douglas*. The Court provided useful guidance on how this framework is applied and, most notably, modified the third step of the framework to announce a new standard that applies in the pregnancy accommodation context.

With regard to the first *McDonnell Douglas* step, the Court held that Young made a prima facie case by showing (1) she was pregnant; (2) she requested an accommodation; (3) her request was denied; and (4) the employer accommodated others “similar in their ability of inability to work.” ***This is a new prima facie case for pregnancy accommodation claims brought under the second clause of the PDA.*** With regard to the fourth prong of the prima facie case, the Court noted that it does not “require the plaintiff to show that those whom the employer favored and those whom the employer disfavored were similar in all but the protected ways.”

The second step of the *McDonnell Douglas* framework allows the employer to seek to justify its refusal to accommodate the plaintiff by relying on “legitimate, non-discriminatory” reasons for denying her accommodation. Significantly, the Court noted that the reason “normally cannot consist simply of a claim that it is more expensive or less convenient” to accommodate pregnant women. The Court did not indicate what type of justification would be acceptable.

The third step of the *McDonnell Douglas* framework allows the plaintiff to show that the employer’s proffered reason for denying the accommodation is in fact pretext. Here the Court modified the traditional standard by announcing a new balancing test. To prove pretext under the PDA, a plaintiff must show “that the employer’s policies impose a significant burden on pregnant workers, and that the employer’s ‘legitimate, nondiscriminatory’ reasons are not sufficiently strong to justify the burden.” The Court offered one example of how a plaintiff may make such a showing, based on the facts in *Young*. A plaintiff may show a significant burden exists by providing evidence that the employer accommodates a large percentage of nonpregnant workers while failing to accommodate a large percentage of pregnant workers. The Court also noted that the fact that the employer provides accommodations to some employees tends to show that its reasons for not accommodating pregnant women are not sufficiently strong. As Justice Breyer framed the central consideration: “why, when the employer accommodated so many, could it not accommodate pregnant women as well?”

B. Pregnancy Accommodation Cases Applying *Young v. UPS* In Which Employees Succeeded or Survived Summary Judgment

Hicks v. City of Tuscaloosa, --F.3d-- (11th Cir. 2017): A police officer working on a specialized narcotics squad was demoted to a patrol position eight days after returning to work from maternity leave. Patrol officers were required to wear protective ballistics vests, which had to be fitted snugly around the chest to ensure that the officers’ vital organs. The officer’s doctor told her that the compression of a properly fitting vest would reduce her milk supply and put her at risk of a breast infection and reduced milk

supply, recommending that she be given alternate duties while she breastfed her baby. The employer refused, instead telling her that she could go on patrol with a larger vest or with no vest at all. Forced to choose between breastfeeding and wearing essential protective gear, the officer resigned. She brought suit under the PDA alleging, among other claims, failure to accommodate and constructive discharge. The case went to trial and the jury returned a verdict for the plaintiff. The City appealed.

The Eleventh Circuit Court of Appeals affirmed the verdict in favor of the plaintiff. The Court held that both a plain reading of the PDA and the legislative intent of the PDA supported a finding that breastfeeding is a “related medical condition” covered by the PDA. Relying on *Young*, the Court held that failure to accommodate a breastfeeding worker but accommodating other workers similar in their ability or inability to work constituted a violation of the PDA. The Court also upheld the jury’s finding that any reasonable person in the officer’s position would have resigned.

Legg v. Ulster Cty., 820 F.3d 67 (2d Cir. 2016): A corrections worker requested a light duty accommodation that would allow her to avoid direct contact with inmates during her high risk pregnancy. Although she was briefly granted a light duty assignment, she was gradually required to work with inmates again. After encountering two fighting inmates and being bumped by one who was attempting to flee, the plaintiff left work and did not return until after giving birth. After returning to work, she sued under Title VII alleging unlawful pregnancy discrimination. The employer moved for judgement as a matter of law, asserting that it granted light duty only to employees injured on the job and that compliance with worker’s compensation laws was a neutral, non-discriminatory reason for its policy. The district court granted judgment as a matter of law in favor of the defendant. The Second Circuit reversed.

The Second Circuit held that compliance with a state workers' compensation scheme would be a neutral reason for providing benefits to employees injured on the job but not pregnant employees, but that the plaintiff had offered sufficient evidence that this facially neutral reason was a pretext for discrimination due to inconsistencies in the testimony of key defense witnesses regarding the reasons for the disparate treatment of pregnant workers under the county's accommodation policies. The court also found that the plaintiff had produced sufficient evidence under *Young* that the employer’s policies imposed a significant burden on pregnant workers not sufficiently justified by the employer’s proffered reasons. The court explicitly rejected the defendant's argument that its marrio did not impose a heavy burden on pregnant workers because the plaintiff was the only pregnant worker and therefore the only pregnant worker not accommodated. The court reasoned that in refusing accommodations to the plaintiff, the defendant had failed to accommodate "100%" of its pregnant workers, and finding that this fact weighed in favor of a finding of burden.

Allen-Brown v. D.C., 174 F. Supp. 3d 463 (D.D.C. 2016): A breastfeeding police officer requested a temporary assignment that would not require her to go on beat patrol because an officer on patrol must wear a bullet-proof vest that can cause pain, clogged milk ducts, and reduced milk supply for a lactating woman. The officer’s request for limited duty was denied by her employer, and the officer spent several months on unpaid leave until she finished breastfeeding her child. She sued for failure to accommodate under the PDA and the employer moved for summary judgment.

The court found that the plaintiff had offered sufficient evidence that the city had discriminated against her based on a pregnancy-related condition. The court found held that, after the city had offered a legitimate business reasons for its refusal to grant her request for light duty, the plaintiff could show discrimination *either* through traditional *McDonnell Douglas* pretext analysis *or* through a showing pursuant to *Young* that the employer’s policies impose a significant burden on pregnant employees

without sufficient justification. The court found that the plaintiff had produced sufficient traditional pretext evidence to create triable issues of fact, making summary judgment inappropriate. The court noted that because the plaintiff was relying on traditional pretext evidence rather than evidence of disproportionate burden pursuant to *Young*, she was not required to show that the defendant granted light duty status to a large percentage of non-pregnant employees while denying accommodation to a large percentage of pregnant employees. The court also rejected the city's argument that lactation was not a condition related to pregnancy for purposes of the PDA, finding that lactation was "directly caused by hormonal changes associated with pregnancy and childbirth."

Martin v. Winn-Dixie Louisiana, Inc., 2015 U.S. Dist. LEXIS 127415 (M.D. La. 2015)—A co-director at a store was advised by her OB-GYN not to lift more than 10 pounds due to her pregnancy. The employee submitted a doctor's note to her employer and requested a lifting accommodation, which had previously been provided to other employees. The employer denied her request and told her that her choices were to either accept a demotion or go on leave. The employee chose to go on leave and was terminated shortly after giving birth. The employee sued for failure to accommodate under the PDA, among other claims. The employer moved for summary judgment. The court, relying on *Young*, denied the motion, finding that the plaintiff had presented sufficient evidence that she was pregnant, that she requested an accommodation, that her request was denied, and that others were accommodated. The court found that evidence that non-pregnant employees with similar limitations had been accommodated was sufficient to support a finding of pretext. The case settled.

C. Pregnancy Accommodation Cases Applying *Young v. UPS* In Which Employers Defeated Employees' Claims

Sanchez-Estrada v. MAPFRE Praico Ins. Co., 126 F. Supp. 3d 220 (D.P.R. 2015), appeal dismissed (Jan. 15, 2016): A service advisor became pregnant and requested maternity uniforms. Her employer denied her request. She later took a leave of absence due to pregnancy-related complications required hospitalization and bedrest. The employee resigned her employment when her leave benefits were exhausted. The employer sued for pregnancy discrimination, among other claims. The court granted the employer's motion for summary judgment. The court found that the employer's claim that it had exhausted its annual budget for uniforms was a legitimate non-discriminatory reason for denying plaintiff's request for maternity clothing. The court acknowledged that a legitimate non-discriminatory reason normally cannot consist of a claim that it is more expensive or less convenient to accommodate pregnant women, but held that in this particular case, the employer was not choosing not to accommodate the plaintiff but genuinely lacked the money to do so. Because the plaintiff could not show that the employer's stated reason was pretextual, the court summarily adjudicated the claim.

Luke v. CPlace Forest Park SNF, LLC, 2016 U.S. Dist. LEXIS 105295 (M.D. La. 2016): A Certified Nursing Assistant (CNA) at a rehabilitation center became pregnant with twins and was instructed by her doctor to avoid heavy lifting due to the high risk nature of the pregnancy. The CNA gave her employer a doctor's note restricting her from lifting more than 30 pounds for the remainder of her pregnancy. Her employer told her that lifting 30 pounds was an essential part of the job and that no light duty was "available." The CNA was forced out on medical leave and eventually terminated due to her lifting restriction. She brought suit asserting, among other claims, failure to accommodate in violation of Title VII and the PDA. The district court granted the employer's motion for summary judgment, holding that the plaintiff had failed to make out a prima facie case of sex discrimination. Although the plaintiff presented evidence that the employer had a policy of accommodating workers with lifting restrictions and that she herself had received lifting assistance prior to her pregnancy, the court found that the plaintiff had not showed that she was treated differently than others similar in their ability or inability to work. The court further found, without analysis, that it was "self-evident" that when a plaintiff sought a

particular accommodation, her PDA claim would be limited to any denial of that specific accommodation even if another accommodation could have been arranged. The case is currently on appeal.

Jackson v. J. R. Simplot Company, 666 Fed. Appx. 739 (10th Cir. 2016) (unpublished): A pregnant worker at fertilizer plant requested light duty office work to avoid exposure to chemicals. The employer refused, stating that it had no available positions that would not require exposure to chemicals. The worker brought suit alleging, among other claims, that her employer had failed to accommodate her under the PDA. The district court granted summary judgment in favor of the employer and the Tenth Circuit affirmed. The court found that the plaintiff satisfied a prima facie case of discrimination, but found that the employer had articulated a legitimate, non-discriminatory reason for the refusal to accommodate, i.e. the absence of any existing positions that did not involve chemical exposure. Although the plaintiff identified five co-workers who were given light duty, the court concluded that these workers were not similar to the plaintiff because they only had lifting restrictions and were able to work around chemicals. The court reaffirmed the availability of traditional methods of showing pretext, but concluded that the plaintiff had failed to provide sufficient evidence of pretext to rebut the employer's legitimate business reason for refusing to accommodate her.

Lawson v. City of Pleasant Grove, U.S. Dist. LEXIS 57264 (N.D. Ala. Feb. 16, 2016): A police officer requested various accommodations due to her pregnancy. Her request for lead-free ammunition during her firearms recertification was verbally denied by the police chief, but she was later provided with lead-free ammunition by the sergeant in charge of the actual testing. She also requested light duty, which her employer refused to provide on the basis that there were no light duty positions available and the employer did not grant light duty requests as a matter of practice. She continued to work until a few weeks before her due date. The officer was terminated a few months after returning from maternity leave for repeatedly improperly accessing a criminal justice database in violation of state and federal law. The officer sued, alleging failure to accommodate in violation of the PDA, among other claims. The district court granted summary judgment to the defendants. The court found that the plaintiff had failed to make out a prime facie case of discrimination where she presented evidence of only one comparator, who was also pregnant, and did not provide evidence that any non-pregnant employees were accommodated with light duty. The court affirmed that a plaintiff can also make out a case of failure to accommodate under the PDA by adducing sufficient non-comparator circumstantial evidence to raise a reasonable inference of intentional discrimination, but concluded that the plaintiff's non-comparator evidence was not strong enough to support a primae facie claim of discrimination.

D. Pregnancy Accommodation Cases Applying *Young v. UPS* At The Pleading Stage

LaSalle v. City of New York, 2015 U.S. Dist. LEXIS 41163 (S.D.N.Y. Mar. 30, 2015): a morgue van driver was pregnant and gave her employer a note saying she could not lift more than 45 pounds. She asked not to be assigned to drive the morgue van, which required the ability to lift cadavers weighing more than 45 pounds. Her request was refused, despite the fact that she had not been required to drive the morgue van during her first pregnancy. She was injured as a result of lifting a cadaver, and was out of work for several months without pay or insurance while her employer engaged in conversations with her attorney about suitable accommodations – which ultimately ended up being that she would not be required to drive the morgue van. The court denied the employer's motion to dismiss the failure to accommodate claim brought by plaintiff under the PDA, applying the new prima facie case of *Young* and finding that plaintiff had sufficiently pled her claim in that she was pregnant, she requested an accommodation, and she was denied an accommodation. The court noted that she had not pled the fourth element of the prima facie case (i.e. that other employees were provided accommodations), but found that she had provided sufficient information in her complaint to put the defendant on notice of her claim.

Anfeldt v. UPS, 2017 U.S. Dist. LEXIS 30150 (N.D. Ill. Mar. 3, 2017): The district court granted the employer's motion to dismiss based on the plaintiff's failure to allege that the employer accommodated others similar in their ability or inability to work. The plaintiff did allege that based on the evidence adduced in *Young v. UPS*, it was *likely* that the Defendant provided an accommodation to a large percentage of similarly situated non-pregnant employees, while failing to accommodate a large percentage of pregnant workers, but the district court held that this was insufficient to state a claim and dismissed with leave to amend.

Taylor v. C&B Piping, Inc., 2017 WL 1047573 (N.D. Ala. March. 20, 2017): A pregnant accounting clerk was medically restricted from heavy lifting after she began experiencing cramping and difficulty lifting heavy file boxes overhead. The clerk requested assistance with lifting as an accommodation of her restriction, but her employer denied the request and required her to continue lifting throughout her pregnancy. The clerk was terminated the day after she returned from maternity leave. She brought suit alleging pregnancy discrimination in violation of the PDA. The employer moved to dismiss the employee's complaint. The employer argued that the complaint did not adequately allege differential treatment because it made only a conclusory statement that the employee was treated differently than men with lifting restrictions and did not provide any supporting facts. The court denied the motion, finding that a Title VII plaintiff need not allege all elements of a *McDonnell Douglas* prima facie case and that the plaintiff had plead enough facts to plausibly plead pregnancy discrimination. The court also rejected the employer's argument that the complaint should be dismissed because lifting was an essential job function, holding that whether lifting was an essential job function was a factual question that could not be resolved at the pleadings stage.

Gonzales v. Marriott Int'l, Inc., 142 F. Supp. 3d 961 (C.D. Cal. 2015): An accountant and cashier served as a gestational surrogate and gave birth to a child. She expressed milk at work twice a day for two months and sent the expressed milk to the child's parents. After her obligation to send breastmilk to the child's parents had ended, the accountant continued to express milk due to the personal health benefits of the practice and so that she could donate milk to women who were unable to produce enough breastmilk for their babies. Her employer informed her that in 30 days, it would no longer allow her to express milk at work because she was "not feeding a child at home." The employee stopped taking lactation breaks and pumped only on her lunch and experienced physical complications as a result. She sued the employer for failure to accommodate, among other claims. The employer moved to dismiss the complaint and the district court denied the motion. The court applied *Young* and found that the employee had sufficiently alleged that she was a member of a protected group, that she was denied an accommodation, and that other employees (both lactating and non-lactating) were accommodated. The court rejected the employer's argument that the gender discrimination claim should be dismissed because the employer accommodated other lactating women (i.e. those who were not gestational surrogates), citing the U.S. Supreme Court decision in *Connecticut v. Teal*, 457 U.S. 440 (1982) for the proposition that Title VII protects individual as well as group rights.

II. Pregnancy Accommodation Under the ADA

A. ADA Cases in Which Employees Succeeded or Survived Summary Judgment

Wanamaker v. Westport Board of Ed, 11 F. Supp. 3d 51 (D. Conn. 2014): a teacher suffered injury during childbirth, and requested additional leave as an accommodation but claimed that she was terminated instead. She sued for disability discrimination, and the employer moved to dismiss. The court

mentioned the ADAAA, but cited pre-amendment law and observed that pregnancy is not a disability and that complications generally do not qualify as disabilities. The court further said that the plaintiff had not shown she was substantially limited in a major life activity and had not shown that her condition was not temporary. It dismissed the claim without prejudice. 899 F. Supp. 2d 193 (D. Conn. 2012) The plaintiff filed an amended complaint, setting forth more detailed allegations regarding the plaintiff's disability and specifically including that her impairment substantially limited her in the major life activities of walking and standing. The employer moved for summary judgment, conceding that the plaintiff was disabled but arguing that it had met its obligations of reasonable accommodation under the statute. The court denied the motion. It found that the employer had an obligation to engage in the interactive process with the plaintiff even if, as the employer claimed, she did not initiate the process with a request for accommodation because the employer was aware of her disability and her need for accommodation. It further found that questions of fact existed as to whether the employer provided a reasonable accommodation and whether the plaintiff could have performed the essential functions of her job with an accommodation. The case settled before trial.

Oliver v. Scranton Materials, Inc., 2016 U.S. Dist. LEXIS 77266, (M.D. Pa. June 13, 2016): An executive, pregnant with triplets, placed on bed rest by her physician due to high blood pressure and a high risk pregnancy. She was terminated while on bed rest despite having notified her employer of her intent to return to work. The employee sued for discrimination under the ADA, among other claims. The employer moved for summary judgment. The court applied the ADAAA and recognized that while pregnancy itself is not a disability, complications arising out of pregnancy can constitute disability under the ADA. The court concluded that a jury could conclude that the plaintiff was disabled within the meaning of the ADA due to complications related to her pregnancy and denied the motion.

Meacham v. Memphis Light Gas & Water, 119 F. Supp. 3d 807 (W.D. Tenn. 2015): An attorney was placed on bed rest by her physician after undergoing surgery to correct premature cervical shortening. The employer denied her request to work from bed. After her return to work, the employer gave her a negative performance review and terminated her employment. The attorney sued for failure to accommodate, among other claims, and the employer moved for summary judgment. The district court denied the motion, finding that a jury could conclude that the attorney was otherwise qualified within the meaning of the ADA where the employer had no explicit policy requiring physical presence in the office while working and had not listed physical presence in the office as an essential job function in the employee's job description. The case went to trial and the jury returned a verdict for the plaintiff on her failure to accommodate claim. The case is currently on appeal.

Nayak v. St. Vincent Hosp. & Health Care Ctr., 2013 U.S. Dist. LEXIS 3273 (S.D. Ind. Jan. 9, 2013): An OB-GYN resident was pregnant with twins, had severe morning sickness, and needed bed rest. One fetus died; after the other's birth, the plaintiff had severe pelvic pain. She was fired when she could not return to work. She sued her former employer for disability discrimination, and the employer moved to dismiss the complaint. The court denied the motion, relying on ADAAA regulations to find that the plaintiff had pled a sufficient claim that she had a disability that the employer needed to accommodate. The court held that pre-ADAAA cases are no longer persuasive.

Price v. UTi Integrated Logistics, 2013 U.S. Dist. LEXIS 142974 (E.D. Mo. Oct. 3, 2013): A manager who had experienced four prior miscarriages had a high risk pregnancy, a blood disorder and an open cervix. As a result, she needed leave. She was fired when her FMLA leave expired. She sued her employer, and the employer moved for summary judgment. The court denied the motion, rejecting the employer's argument that pregnancy is not a disability because it is temporary. The court cited the amended ADA and new regulations, and stated that an impairment need not be permanent or long-term and that a

complication related to pregnancy can be a physiological disorder that affects the reproductive system. At trial, however, the jury found for the employer on the ADA claim.

Alexander v. Trilogy, 2012 U.S. Dist. LEXIS 152079 (S.D. Ohio Oct. 23, 2012): The plaintiff, a pregnant nurse, claimed that her employer suspended her for taking three days of leave to deal with hypertension and suspected preeclampsia. She sued her employer for pregnancy and disability discrimination, and both parties asked the court to enter judgment in their favor. The court denied the employer's motion for summary judgment on the pregnancy discrimination claim, finding questions of fact existed. The court, in a highly unusual move, granted the *plaintiff* summary judgment on her disability claim, saying that under the ADAAA, preeclampsia is a "physiological disorder that affects the cardiovascular and urinary systems" and citing the regulations to find that the impairment of the operation of a major bodily function constitutes a disability. The court found that the employer was aware that the plaintiff had a disability and that the plaintiff was subjected to an adverse employment action because of the disability.

EEOC v. Midwest Independent Transmission Systems Operator, Inc., 2013 Jury Verdicts LEXIS 7378 (S.D. Ind. July 11, 2013) – A human resources coordinator took maternity leave. After returning to work, she took time off again for post-partum complications. She was set to return, but had to delay her return for an additional 30 days. Before returning to work, she was terminated in a letter referencing her time out of the office. The EEOC sued the employer for failure to accommodate under the ADAAA, and the employer moved for summary judgment. It argued that she was not qualified for her position because she could not work, and that she did not request additional leave as an accommodation. The court concluded that there was a genuine issue of material fact as to whether a leave of absence might have enabled the plaintiff to return to work and thus have been a reasonable accommodation in this case (although it acknowledged that lengthy leaves may not ordinarily be reasonable), and denied the employer's motion for summary judgment on the failure to accommodate claim. The parties settled prior to trial, with \$90,500 in compensation for the employee.

Mayorga v. Alorica, 2012 U.S. Dist. LEXIS 103766 (S.D. Fla. July 25, 2012): A customer service representative had a high-risk pregnancy with complications including "premature uterine contractions, irritation of the uterus, increased heart rate, severe morning sickness, severe pelvic bone pains, severe back pain, severe lower abdominal pain, extreme headaches, and other pregnancy-related conditions." She was terminated upon returning from three weeks of bed rest and sued for disability discrimination and failure to accommodate under the ADA. The employer moved to dismiss on the ground that the plaintiff did not have a disability within the meaning of the Act. In denying the defendant's motion to dismiss, the court acknowledged the impact of the "ADAAA's lenient standards to establish a disability," distinguished healthy pregnancies from pregnancy-related conditions, and found that the plaintiff had alleged sufficient facts to state a claim for relief under the ADA for a pregnancy-related complication. It expressly rejected the employer's argument that the plaintiff's condition was too short in duration to be a disability. The court nevertheless relied heavily on pre-ADAAA case law without acknowledging its questionable validity. The court stated, for example, that a pregnancy-related disability is covered under the ADA only in "extremely rare" cases. Nevertheless, the court refused to dismiss the plaintiff's disability claim, finding that "whether the nature, duration, and severity of [the plaintiff's pregnancy-related conditions] are sufficient to constitute a disability under the ADA" required a factual inquiry. The case later settled.

B. ADAAA Cases in Which Employers Defeated Employees' Claims

Lang v. Wal-Mart Stores East, L.P., 813 F.3d 447 (1st. Cir. 2016): A pregnant unloader at a distribution

center was advised by her doctor not to lift more than 20 pounds. She did not request accommodation from her employer, but rather continued to work and lift until she pulled a groin muscle. After her injury, her employer allegedly denied her requests to be assigned to a less demanding position or to be assigned to trucks that could be unloaded with a forklift. The employee took an extended leave of absence and returned to work after giving birth. The employee experienced a second on-the-job injury after returning from leave and was placed on light duty. The employee was eventually terminated after moving to another state with her husband. She sued for failure to accommodate, among other claims. The district court granted summary judgment in favor of the employer and the First Circuit affirmed. The First Circuit held that the employer was not required to allow the employee to use a forklift for heavy lifting because the unloader's job description stated that lifting 60 pounds *without assistance* was an essential function of her job, an assertion that the unloader's attorneys did not dispute before the trial court. The First Circuit further found that the employee had not provided evidence of specific open positions to which she could have been transferred.

Heatherly v. Portillo's Hot Dogs, Inc., 958 F. Supp. 2d 913 (N.D. Ill. 2013): A pregnant fast-food worker's doctor told her she could not lift, and put her on light duty, then bed rest, because of her high risk pregnancy. She was terminated when she did not return to work or request additional leave. She sued her employer for disability discrimination, and the employer moved for summary judgment. The court cited the ADA, found lifting to be a major life activity and found that the temporary duration of pregnancy is irrelevant, but found that the evidence showed she could work and thus was not disabled. The court granted summary judgment to the employer.

Turner v. Eastconn Regional Education Service Center, 2013 U.S. Dist. LEXIS 169785 (D. Conn. Dec. 2, 2013), *aff'd*, 588 Fed. Appx. 41 (2d Cir. 2014): A special education teacher was pregnant and her doctor did not want her restraining potentially violent students. She was given light duty for a short while and then placed on leave and terminated when her leave was exhausted. She claimed she was disabled or perceived as disabled, and sued for failure to accommodate under the ADA. In granting the employer's motion for summary judgment, the court cited the ADA, but then applied pre-ADA case law, relying on *Wanamaker* and *Sam-Sekur*, both discussed below. It held that temporary conditions cannot be disabilities, even under the ADA, and that duration is a factor. It stated that pregnancy is not a disability and the plaintiff did not have any complications. The plaintiff appealed, and the Second Circuit affirmed on the ground that the plaintiff appeared to have abandoned her claim that her pregnancy was a disability and proceeded on the ground that she was "regarded as" disabled, which did not require accommodation. Moreover, the plaintiff had not established that there was a reasonable accommodation that did not eliminate an essential function of her job. The case is now in state court on the plaintiff's remaining state claims.

Nunes-Baptista v. WFM Hawaii, LLC, 2012 U.S. Dist. LEXIS 59838, (D. Haw. Apr. 30, 2012), *aff'd* 585 Fed. Appx. 611 (9th Cir. 2014): pregnant bakery manager required accommodations, which the employer provided. She presented her employer with a medical certificate requiring additional accommodation, and was fired the next day for taking food from the cafeteria without paying for it. The court granted the employer's motion for summary judgment on the ADA claim, finding that although the timing of the events was close, the employer's record of accommodating plaintiff and other pregnant employees defeated the claim of pretext.

Abbott v. Elwood Staffing Serv., 44 F. Supp. 3d 1125 (N.D. Ala. 2014): A pregnant assembly line worker complained about having to do strenuous work, and the next day began bleeding vaginally. Her doctor told her to take it easy and not to strain, so she requested light duty to prevent straining. She had no further bleeding and had only routine prenatal care. Her employer made a limited search for a light duty

position to which she could be transferred, found none, and denied her request. She was placed on FMLA leave. When she exhausted her FMLA leave, she was terminated and she sued her employer for failure to accommodate under the PDA and ADA, among other things. In a motion for summary judgment, the employer stated that it accommodated only those workers who were injured on the job. She argued she was injured on the job because work-related straining caused her bleeding, and therefore had to be treated like others injured on the job. The court disagreed. It stated that just because she bled on the job doesn't mean she had an injury that occurred at work or that work caused the injury. Although she requested worker's comp, her situation was not treated as a worker's comp situation and she testified at her deposition that she just wanted light duty of the sort that every pregnant woman should have. With respect to her claim under the ADA that she had a disability that the employer failed to accommodate, the court, citing the ADAAA, found she did not have a disability. It found that she was not under special care, had no more bleeding, and didn't need medication, so she had a healthy pregnancy and not a disability. Moreover, she presented no evidence that her impairment substantially limited a major life activity and she testified at her deposition that she did not have a disability. Summary judgment was granted to the employer.

C. Pregnancy Accommodation Cases Applying the ADAAA At The Pleading Stage

Oliver v. Scranton Materials, Inc., 2015 U.S. Dist. LEXIS 27121 (M.D. Pa. Mar. 5, 2015): an executive, pregnant with triplets, was on bed rest because she had high blood pressure and a high risk pregnancy. While she was on bed rest, she was terminated despite having notified her employer of her intent to return to work. The court, ruling on the employer's motion to dismiss, applied the ADAAA and observed that pregnancy complications can rise to the level of disability. It granted the motion to dismiss the claim, however, because it found that the plaintiff had not pleaded her disability with sufficient detail because she did not specify what complications and surgery she actually experienced. The dismissal was without prejudice. The plaintiff successfully amended her complaint and survived a motion for summary judgment, as discussed above.

Bray v. Town of Wake Forest, 2015 U.S. Dist. LEXIS 44731 (E.D.N.C. Apr. 6, 2015) – A newly hired police officer notified her employer during her probationary period that she was pregnant. She provided a doctor's note restricting her from running, jumping, lifting more than 20-25 pounds, and having any physical altercations. She requested a light duty assignment, but was told that there was no light duty available. She was forced onto short term disability and later terminated for inability to perform the essential functions of her job. She sued for disability discrimination under the ADA and the employer moved to dismiss. The district court denied the motion, finding that the plaintiff had alleged sufficient facts to establish that she was a qualified individual with a disability under the ADAA and EEOC regulations.

Sam-Sekur v. Whitmore Grp., 2012 U.S. Dist. LEXIS 83586 (E.D.N.Y. June 15, 2012): A pro se litigant had numerous ailments, some of which she claimed were linked to pregnancy. She sued her employer, claiming that it had terminated her because of her pregnancy-related disabilities. In ruling on the employer's motion for summary judgment, the court mentioned the ADAAA, but applied pre-ADAAA law and stated that only in extremely rare cases are pregnancy complications covered by ADA. She amended her complaint to allege a chronic disability that had been caused by her pregnancy. The court denied the employer's motion to dismiss, finding that while the case was not particularly strong, the plaintiff should be permitted to engage in discovery. The case settled several months later.