The PDA Fails to Deliver: Why *Nalco* and *Wallace* Cannot Coexist, and a New Standard for Defining "Related Medical Condition"

By Christine Moore*

> *Here's a pop quiz: Which of the following would violate federal employment law? 1. Laying off a pregnant woman. 2. Laying off a woman on maternity leave. Pencils down. The answer is neither. It may not sound fair . . . . But it is entirely legal to lay off a pregnant woman or a woman on maternity leave—as long as the employer can make the case that she is being let go for a reason unrelated to her pregnancy.*
>
> —Lesley Alderman, N.Y. Times[1]

Introduction

PREGNANT WOMEN MAY BE FIRED so long as employers (and subsequently the courts) determine that the reason for termination is not related to pregnancy. How one determines what is, in fact, "related" to pregnancy has been a cause for both concern and recent circuit splits. The issue is a pertinent one: as of 2007, the sixty-eight million[2] women in the workplace comprise nearly half of the workforce in the United States, and the number of employed women is projected to continue rising through 2016.[3] As early as 1978, after recognizing that most of these women have the potential to become pregnant at some point in their careers, Congress began to design

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1. Lesley Alderman, *When the Stork Carries a Pink Slip*, N.Y. Times, Mar. 28, 2009, at B6 (emphasis added).

2. Women's Bureau, U.S. Dep't of Labor, Quick Stats on Women Workers 2008, http://www.dol.gov/wb/stats/main.htm (last visited Mar. 31, 2010).

3. *Id.*

various ways to protect against pregnancy-related workplace discrimination.[4] The 1978 Pregnancy Discrimination Act (the "PDA" or the "Act") amended Title VII of the Civil Rights Act of 1964 to include pregnancy discrimination within the definition of "sex discrimination."[5] Employers therefore cannot refuse to hire, discharge, or otherwise discriminate against women "on the basis of pregnancy, childbirth, or related medical conditions."[6]

The PDA, although certainly a product of well-meaning intentions, has proven to be erratic and misplaced in its enforcement. The problematic term "related medical conditions" is not defined in the Act, and courts have inconsistently interpreted it. This Comment focuses on the striking inconsistency between one interpretation that provides protection for women who take leave to undergo in vitro fertilization treatments and another interpretation that denies protection for women who take leave to breastfeed their children. In *Hall v. Nalco Co.* ("*Nalco*"),[7] the Seventh Circuit held that women cannot be fired for taking leave to undergo in vitro fertilization ("IVF") treatments, and that infertility treated by IVF is thus a related medical condition under the PDA because it is related to a woman's "child-bearing capacity."[8] In contrast, a Sixth Circuit district court held in *Wallace v. Pyro Mining Co.* ("*Wallace*")[9] that women can be fired for taking leave to attend to the breastfeeding needs of their children because breastfeeding is not a related medical condition under the PDA, as it is not an "incapacitating condition for which medical care or treatment is usual and normal."[10]

There is a logical gap in interpreting the PDA to cover IVF, as in *Nalco*, but not breastfeeding, as in *Wallace*. Reconciling the *Nalco* court's interpretation of "related medical conditions" with that of the *Wallace* court is impossible. The standard used by each court to determine what qualifies as a related medical condition is different, and this difference has led to a result where, if both holdings were adopted, the law would protect a woman who was trying to have a baby but not one who actually became pregnant and experienced the usual and natural symptoms and conditions that accompany pregnancy.

4. *See* The 1978 Pregnancy Discrimination Act, 42 U.S.C. §§ 2000e–2000e-17 (2000).
5. *Id.*
6. *Id.*
7. Hall v. Nalco Co., 534 F.3d 644, 649 (7th Cir. 2008).
8. *Id.*
9. Wallace v. Pyro Mining Co., 789 F. Supp. 867, 869 (W.D. Ky. 1990), *aff'd*, 951 F.2d 351 (6th Cir. 1991).
10. *Id.*

Therefore, in properly interpreting both the language and intent of the PDA to cover IVF as a related medical condition to pregnancy and a woman's childbearing capacity, a court must also necessarily interpret it to cover breastfeeding as a condition that is traditionally and physically more closely related to pregnancy. To achieve this result, this Comment argues courts must look to the intent of the PDA and adopt a more comprehensive standard in defining a "related medical condition." Such a comprehensive standard would first acknowledge the *Nalco* court's proper interpretation of the term as protecting conditions that are related to a woman's childbearing capacity. The standard would further fill the gap left by *Nalco* by recognizing Congress's intent to read the term "medical" broadly so as to include all pregnancy conditions related to the health and well-being of the mother, fetus, or infant. This broad interpretation of the standard would be the most accurate interpretation of congressional intent and would account for both pre- and post-pregnancy conditions, like IVF and breastfeeding, which are logically inseparable from a woman's "capacity" to give birth.

Part I of this Comment examines the general intent of the PDA and explains why the childbearing capacity standard for determining what is a "related medical condition" is the proper interpretation of congressional intent. The *Nalco* decision to include infertility and IVF as a related medical condition is used as an example of the application of this standard, followed by an overview of breastfeeding and an explanation of why it is also protected by the childbearing capacity standard. Part II explains why the term "medical" should be interpreted to mean the "health or well-being of the mother, fetus, or infant" and why the *Wallace* court's definition of "medical" misinterprets the intent of the PDA to wrongly exclude breastfeeding. Finally, Part III gives two examples of practical applications of the proposed standard to demonstrate that it both conforms to congressional intent and maintains the scope of the PDA.

I. The Link Between "Childbearing Capacity" and Related Medical Conditions

A. The PDA's Legislative History

The PDA was passed in direct response to the Supreme Court's decision in *General Electric Co. v. Gilbert* ("*Gilbert*"),[11] in which the Court held that the denial of benefits for a pregnancy-related disability does

11. Gen. Elec. Co. v. Gilbert, 429 U.S. 125 (1976).

not constitute sex discrimination.[12] The PDA overruled the *Gilbert* decision and clarified the scope of sex discrimination by making clear that "for all Title VII purposes, discrimination based on a woman's pregnancy is, on its face, discrimination because of her sex."[13] The PDA thus effectively expanded the definition of discrimination "on the basis of sex" to include "on the basis of pregnancy, childbirth or related medical conditions."[14] Congress's inclusion of the term "related medical conditions" was intended to protect women due to their unique abilities or "capacities" to become pregnant and experience a realm of conditions to which men are immune. It is this childbearing capacity that Congress intended to protect, and it is therefore the proper standard for determining whether a condition is "related" to pregnancy.

B. The "Childbearing Capacity" Standard Properly Interprets Congressional Intent

The PDA makes it illegal for an employer to refuse to hire, discharge, or otherwise discriminate against women "on the basis of pregnancy, childbirth, or related medical conditions."[15] Though defining the phrase "related medical conditions" has come to be problematic for some courts, Congress intended a broad reading of the language and a general recognition that the PDA prohibits pregnancy discrimination because such discrimination is sex discrimination based on the woman's unique ability to carry a child. Congress's intent that the PDA cover medical conditions that are related to a woman's childbearing capacity is illustrated by the following: (1) the circumstances surrounding the PDA as a legislative amendment; (2) the House and Senate reports leading up to the PDA; and (3) the statutory language ultimately chosen.

First, Congress amended and redefined the scope of Title VII's "sex discrimination" to include "pregnancy discrimination." It recognized that discrimination on the basis of any aspect of pregnancy *is* discrimination on the basis of sex because the ability or capacity to be pregnant or become pregnant is a trait that is *inherently* female. The PDA was enacted to address the Supreme Court's failure in *Gilbert* to read the Civil Rights Act of 1964 as including pregnancy discrimina-

12. *Id.* at 145.
13. *Nalco*, 534 F.3d at 647.
14. 42 U.S.C. § 2000e(k) (2000).
15. *Id.* § 2000e-2.

tion;[16] it is thus intrinsically linked to the long-standing Title VII prohibition against sex discrimination in general. Congress recognized that pregnancy is a uniquely female attribute and that to discriminate against pregnant women is to commit sex discrimination.[17] Senator Harrison Williams, the chief sponsor of the Senate bill leading to the PDA, summarizes this argument: "The overall effect of discrimination against women because they might become pregnant, or do become pregnant, is to relegate *women in general*, and pregnant women in particular, to a second-class status."[18] One can see from the circumstances surrounding the adoption of the PDA that Congress intended for pregnancy discrimination to be considered a *part of* or a *type of* sex discrimination; it recognized that pregnancy occurs only in women and therefore discrimination based on pregnancy is inherently linked to discrimination based on sex. Congress amended the existing Title VII instead of proposing new legislation because it intended to recognize pregnancy discrimination as a form of sex discrimination.

Such intentions demonstrate that Congress meant for the PDA to protect pregnancy as part of something unique to the female sex—such as a unique capacity to carry children. Similarly, the *Nalco* court used this argument to properly deem IVF a related medical condition,[19] as will be explained *infra* Part I.C. Even without the *Nalco* precedent, however, the circumstances leading up to the enactment of the PDA as an amendment to Title VII demonstrate that the PDA was intended to protect pregnancy as a form of sex discrimination because pregnancy is *inherently* female. An employer therefore cannot discriminate based on a woman's ability or capacity to give birth.

Second, the notes and statements of House and Senate legislators demonstrate that the PDA was intended to cover both pre- *and* post-pregnancy conditions—that is, an entire realm of conditions related to pregnancy or a woman's ability to become pregnant are to be protected, not just those that occur during the nine gestational months. Before the PDA was passed, Representative Ronald Sarasin praised it for giving a woman "the right to be financially and legally protected

16. *See Gilbert*, 429 U.S. at 145; *see also* Pacourek v. Inland Steel Co., 858 F. Supp. 1393, 1400–04 (N.D. Ill. 1994).

17. *Pacourek*, 858 F. Supp. at 1400–04 (explaining that pregnancy-related disabilities are unique to women and that discrimination based on a pregnancy-related medical condition is discrimination because of sex).

18. *Id.* at 1402 (quoting 123 CONG. REC. 29385 (1977)) (emphasis added).

19. Hall v. Nalco Co., 534 F.3d 644, 649 (7th Cir. 2008).

before, *during*, and *after* her pregnancy."[20] Representative Sarasin clearly understood the PDA to protect women from termination or other adverse employment actions at all of these stages of "pregnancy," including the time before a woman actually becomes pregnant. Though there are few cases directly addressing the relatively new IVF procedures, there is a long history of case law that follows Representative Sarasin's logic in protecting the "potential" for pregnancy.[21] Courts have historically held that the PDA covers women who are not hired simply because they might become pregnant in the future.[22] An employer thus cannot refuse to hire a woman who admits in a job interview that she wants to have children within the next five years. It is this "potential" for pregnancy, or a woman's "capacity" to become pregnant at some point in the future, that legislators understood and intended the PDA to protect. A district court from the same circuit as the *Nalco* case summarized this argument well:

> Discrimination against an employee because she intends to, is trying to, or simply has the potential to become pregnant is . . . illegal discrimination. It makes sense to conclude that the PDA was intended to cover a woman's intention or potential to become pregnant, because all that conclusion means is that discrimination against persons who intend to or can potentially become pregnant is discrimination against women, which is the kind of truism the PDA wrote into law.[23]

A woman is thus protected before, during, and after pregnancy for conditions involving the capacity to become pregnant.

Finally, the plain language that was ultimately chosen for the statute demonstrates that Congress intended a broad reading of related medical conditions that includes *all* conditions related to a woman's childbearing capacity rather than those merely related to a pregnancy itself. The plain language of the statute trumps would-be opponents' views that the absence of any explicit reference to "infertility" or other

20. *Pacourek*, 858 F. Supp. at 1402 (quoting 124 CONG. REC. 38574 (1977)) (emphasis added).

21. *See* Int'l Union v. Johnson Controls, 499 U.S. 187, 199 (1991) (recognizing that the PDA applies to classifications based on "potential for pregnancy" and not just actual pregnancy); *see also* Griffin v. Sisters of Saint Francis, 489 F.3d 838, 844 (7th Cir. 2007) (explaining that there are circumstances where a PDA claim can be based on adverse employment action taken against a woman who is not currently pregnant); Kocak v. Cmty. Health Partners of Ohio, Inc., 400 F.3d 466, 470 (6th Cir. 2005) (holding that a woman cannot be refused employment based on the belief that she intends to become pregnant in the future); Walsh v. Nat'l Computer Sys., Inc., 332 F.3d 1150, 1160 (8th Cir. 2003) (holding that plaintiff was discriminated against because she might become pregnant again).

22. *See generally Griffin*, 489 F.3d 838 (explaining that the PDA has covered women who are not pregnant at time of filing based on their capacity to become pregnant).

23. *Pacourek*, 858 F. Supp. at 1401.

pre-pregnancy conditions is indicative of congressional intent to exclude not-yet-pregnant women from coverage;[24] one need only examine the plain language of the statute to both refute such a claim as well as demonstrate that the PDA was intended to cover infertility treatments and other pre-pregnancy conditions related to a woman's capacity to carry children. The language of the PDA itself indicates that "the terms 'because of sex' or 'on the basis of sex' include, *but are not limited to*, because of or on the basis of pregnancy, childbirth, or related medical conditions."[25] Therefore, the included "conditions" of pregnancy, childbirth, and others that are "related" to pregnancy is not an exhaustive list. The language is meant to be broad and to discourage narrow interpretations. One district court explained this language perfectly: "First and foremost, the language is expansive, covering 'pregnancy, childbirth, or related medical conditions.' 'Related' is a generous choice of wording, suggesting that interpretation should favor inclusion rather than exclusion in the close cases."[26]

The PDA's terminology is thus broad and open-ended. It accounts for flexibility and special situations that may not be associated with "usual" or "everyday" pregnancy-related conditions but are surely not out of the range of conditions covered by the Act. This expansive language not only refutes the claim that Congress would have included pre- or post-pregnancy conditions if it so desired, it also demonstrates that the *inclusive* childbearing capacity standard that protects a wide range of conditions is what Congress intended. A House of Representatives report further notes that a liberal reading of the PDA's language is proper: "In using the broad phrase 'women affected by pregnancy, childbirth and related medical conditions,' the bill makes clear that its protection extends to the whole range of matters concerning the childbearing process."[27]

As Congress used such broad phrasing and the generous term "related," the whole range of matters in the childbearing process should thus be included. Such a range is represented by conditions that affect the mother "before, during, and after"[28] pregnancy, including those conditions that are related to a woman's overall *capacity* to bear children. Some courts have expressed that there is "no doubt

24. Brief of Defendant-Appellee Nalco Co. at 9, Hall v. Nalco Co., 534 F.3d 644 (7th Cir. Apr. 6, 2007) (No. 06-3684) (explaining this opposing view).

25. 42 U.S.C. § 2000e(k) (2000) (emphasis added).

26. *Pacourek*, 858 F. Supp. at 1402.

27. H.R. REP. NO. 95-948, at 5 (1978), *reprinted in* 1978 U.S.C.C.A.N. 4749, 4753.

28. *Pacourek*, 858 F. Supp. at 1402 (quoting 124 CONG. REC. 38574 (1977)).

that by including the phrase 'related medical condition' the statutory language clearly embraces more than pregnancy itself."[29] The Northern Illinois district court even explained that "a medical condition related to the *ability* of a woman to have a child is related to pregnancy and childbirth" for purposes of the PDA.[30] Thus, the statutory language, coupled with the intentions of Congress as encompassed in its reports and the passing of the PDA to recognize the exclusively female capacity to bear children, proves that the PDA was intended to address pre- and post-pregnancy conditions that are related to a woman's childbearing capacity. The childbearing capacity standard is therefore the proper interpretation of congressional intent. The *Nalco* court properly utilized and applied this standard to read the PDA to protect IVF as a condition relating to a woman's childbearing capacity.

C. The *Nalco* Decision Illustrates Why the Childbearing Capacity Standard Is Correct

1. What Is In Vitro Fertilization?

IVF[31] is the process of fertilization that combines an egg and sperm in a laboratory dish and then transfers the resulting embryo to a woman's uterus.[32] The egg retrieval and implantation processes are described as "minor surgical procedures" that come with possible side effects like any other surgery.[33] The side effects can include anything from discomfort and cramping the day of the retrieval procedure to pressure in the abdominal region for several weeks.[34] There are also more severe side effects that occur in less than one percent of women as well as the regular side effects associated with sedation and anesthesia.[35]

29. Saks v. Franklin Covey, 316 F.3d 337, 345 (2d Cir. 2003).

30. *Pacourek*, 858 F. Supp. at 1403 (emphasis added).

31. This Comment uses the term "in vitro fertilization" to refer to the variety of surgical procedures that involve manual retrieval or implantation of embryos and other surgical methods of insemination. For more precise definitions of the different types of procedures available, see, e.g., Am. Pregnancy Assoc., *In Vitro Fertilization: IVF* (2009), http://www.americanpregnancy.org/infertility/ivf.html (explaining gamete intrafallopian tube transfer and zygote intrafallopian tube transfer); CENTERS FOR DISEASE CONTROL AND PREVENTION, 2006 ASSISTED REPRODUCTIVE TECHNOLOGY (ART) REPORT COMMONLY ASKED QUESTIONS, *available at* http://www.cdc.gov/ART/ART2006/download.htm.

32. *See* Am. Pregnancy Assoc., *supra* note 31 (describing the five-step in vitro fertilization process and procedural risks in detail).

33. *Id.*

34. *Id.*

35. *Id.*

According to a survey by the Centers for Disease Control, 11.8% of all women between the ages of fifteen and forty-four suffer from an impaired fecundity,[36] which makes it difficult or impossible for them to become pregnant or carry a child to term.[37] In fact, 7.3 million women have reported using some kind of infertility treatment.[38] Because the average cost of one cycle of IVF treatment in the United States is $12,400,[39] it is often the "last resort" for women coping with infertility, especially since the success rate usually decreases as a woman's age increases and more cycles are necessary in order to become pregnant.[40]

Despite the cost of IVF, more women are taking advantage of this increasingly successful technology to conceive and carry children. The number of cycles performed more than doubled between 1996 and 2006, and the number of infants born from the procedures in 2006 is more than two and a half times the number born in 1996.[41] IVF is thus becoming one of the most successful and consistent methods for treating infertility, and the number of women undergoing treatment is steadily increasing. Although usually accompanied by restrictions regarding the patient's age and the necessity of the procedure, at least twelve states have legislation that either mandates coverage of IVF by certain insurers or mandates certain insurers to offer policies with coverage to employers.[42] State governments are therefore forcing insur-

36. Note that "fecundity" is different than "infertility" in general, which refers to reproductive problems in both men and women or in couples. *See also infra* note 54 (explaining "infertility" as a female problem due to lack of other treatments for men).

37. CENTERS FOR DISEASE CONTROL AND PREVENTION, NATIONAL CENTER FOR HEALTH STATISTICS, FERTILITY, FAMILY PLANNING, AND REPRODUCTIVE HEALTH OF U.S. WOMEN: DATA FROM THE 2002 NATIONAL SURVEY OF FAMILY GROWTH, ser. 23, no. 25, tbl. 67 (Dec. 2005), *available at* http://www.cdc.gov/nchs/data/series/sr_23/sr23_025.pdf.

38. *Id.* tbl. 97.

39. Am. Soc'y for Reprod. Med., Frequently Asked Questions About Infertility, http://www.asrm.org/Patients/faqs.html (last visited Feb. 7, 2010).

40. CENTERS FOR DISEASE CONTROL AND PREVENTION, 2006 ASSISTED REPRODUCTIVE TECHNOLOGY (ART) REPORT, at 68 sec. 5, fig. 56 (2006), *available at* http://www.cdc.gov/ART/ART2006/index.htm.

41. *Id.*

42. *See, e.g.*, Ark. Code Ann. §§ 23-85-137, 23-86-118 (West 2007); CONN. GEN. STAT. ANN. § 38a-509 (West 2007); HAW. REV. STAT. §§ 431:10A-116.5, 432:1-604 (2008); 215 ILL. COMP. STAT. ANN. 5/356-m, 125/5-3 (2009); MD. CODE ANN., INS. § 15-810 (LexisNexis 2008); MD. CODE ANN., HEALTH-GEN. § 19-706 (LexisNexis 2008); MASS. GEN. LAWS ANN. ch. 175, § 47H, ch. 176A, § 8K, ch. 176B, § 4J, ch. 176G, § 4 (2009); MONT. CODE ANN. § § 33-22-1521, 33-31-102 (2007); N.J. STAT. ANN. §§ 17B:27-46.1X, 17:48A-7W, 17:48-6X, 17:48E-35.22, 26:2J-4.23 (West 2009); OHIO REV. CODE ANN. § 1751.01 (West 2009); R.I. GEN. LAWS §§ 27-18-30, 27-19-23, 27-20-20, 27-41-33 (2009); TEX. INS. CODE ANN. § 3.51-6 (Vernon 2009) (repealed 2005); W. VA. CODE ANN. § 33-25A-2 (2009); *see also* Am. Soc'y for

ance companies to recognize IVF as a "pregnancy-related benefit"[43] or even as part of "basic health services" coverage.[44]

These coverage laws are not without restrictions. A wide range of qualifications are imposed on women, including age requirements, a limitation on the use of only spousal sperm for fertilization, and waiting periods or doctor certification to deem procedures medically necessary.[45] Some may think these standards make IVF a more radical or "elective" procedure to be sparingly covered. However, courts should recognize that these laws actually demonstrate that IVF is a *medically necessary* procedure to "cure" a woman's childbearing capacity. Though the laws are not yet found in a majority of states, they are an important recognition by large, legislation-leading states (California, New York, Texas) that infertility is a condition that can and should be treated with IVF.

Just as these states are acknowledging that IVF is a widely used procedure that can be necessary to allow a woman to bear a child, so should the courts acknowledge that the PDA was enacted to protect a woman's ability to do so. Congress's intent when enacting the PDA, discussed *supra* Part I.B, and the *Nalco* decision, discussed below, confirm this assertion.

2. The *Nalco* Decision and the Childbearing Capacity Standard

The Seventh Circuit rightly determined that the PDA protects female infertility treatments in *Hall v. Nalco Co.*[46] The court recognized that the PDA was intended to protect conditions related to a woman's capacity to become pregnant. It further found that when infertility requires IVF or IVF-like treatments, it is a related medical condition.[47]

Plaintiff Cheryl Hall claimed that Nalco Company violated the PDA when she was fired for taking time off from work to undergo IVF treatments after being diagnosed with infertility.[48] Six years after she was hired, Hall requested a leave of absence from her position as a

Reprod. Med., State Infertility Insurance Laws (Oct. 2005), http://www.asrm.org/Patients/insur.html (last visited Feb. 7, 2010).

43. *See, e.g.*, *supra* note 42 (Arkansas, Maryland, Massachusetts, New Jersey, Rhode Island, and Texas).

44. *See, e.g.*, *supra* note 42 (Montana, Ohio, and West Virginia).

45. Eleven of the twelve states mentioned in note 42 have one or more of these restrictions. Montana does not. Montana, however, only requires Health Maintenance Organizations ("HMOs") to cover infertility services. All other Montana health insurers are not required to do so. *See supra* note 42 (Montana).

46. Hall v. Nalco Co., 534 F.3d 644, 649 (7th Cir. 2008).

47. *Id.*

48. *Id.* at 645–46.

sales secretary, which was approved for the dates of March 24 to April 21.[49] Upon return, she requested another leave of absence to begin in August for another cycle of treatment because the first had failed.[50] Nalco, in the meantime, had restructured its office and decided to keep only one of its two sales secretaries—the one that was completely incapable of becoming pregnant. It then informed Hall that her termination "was in [her] best interest due to [her] health condition."[51] Notes from Hall's termination meeting cited "absenteeism" for "infertility treatments."[52]

The court held that Hall was terminated for the gender-specific quality of childbearing capacity because all employees who undergo IVF are women. The court summarized its holding as follows:

> Although infertility affects both men and women, Hall claims she was terminated for undergoing a medical procedure—a particular form of surgical impregnation—performed only on women on account of their childbearing capacity. Because adverse employment actions taken on account of childbearing capacity affect only women, Hall has stated a cognizable sex-discrimination claim under the language of the PDA.[53]

These women are not simply classified as the gender-neutral term "infertile," but rather as deficient in their childbearing capacities—an all-female class. Treating this capacity is thus an inherently female problem,[54] and the court properly determined that Congress intended to prohibit employers from taking adverse actions against female employees who undergo IVF to treat it.

The *Nalco* court therefore interpreted the PDA as protecting a woman's "capacity" or ability to become pregnant—that is, protecting even pregnancy-inhibiting conditions that occur *prior* to actual pregnancy. The court properly articulated the childbearing capacity standard for determining whether a condition is sufficiently "related" to

49. *Id.* at 646.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.* at 645.

54. While some may argue that infertility is not "inherently female," it is important to note that treatment for female infertility will likely involve IVF or similar procedures and therefore is far more time-consuming and physically invasive than male infertility. In fact, one of the only treatments for male infertility (i.e. low sperm count and/or mobility) is an IVF procedure for the female partner, although, in rare cases, treatment through hormone supplements for the male may be possible. *See* Advanced Fertility Center of Chicago, Male Infertility Treatment (2009), http://www.advancedfertility.com/maleinfertilitytreatment.htm (last visited Mar. 31, 2010).

pregnancy.[55] This standard sets forth a broad or "inclus[ive]"[56] reading of the statute, just as Congress intended. While the *Nalco* court's standard may be slightly less than complete with regard to defining the term "medical," the court's broad reading of the PDA to encapsulate all conditions associated with the uniquely female ability to bear children reflects an accurate interpretation of what Congress intended to protect.

D. Protecting Breastfeeding with the Childbearing Capacity Standard

1. Breastfeeding Is Even More "Related" to Pregnancy than IVF

Producing breast milk is an actual, natural, and *physical* symptom or condition of pregnancy. Breastfeeding is the physical and biological process of lactation that is an immediate and direct result of all pregnancies, and it has been lauded by experts as having "health, nutritional, immunologic, developmental, psychological, social, economic, and environmental benefits."[57] However, women who have sought protection for breastfeeding under the PDA have been unsuccessful.[58] While the *Nalco* court properly recognized that female infertility (and therefore IVF treatments to treat it) is related to a woman's "capacity" to become pregnant,[59] other courts have failed to apply the PDA to breastfeeding even though it is part of a woman's unique ability to carry children.

The irrefutable benefits of breastfeeding are what make the practice so widespread, and doctors are currently working toward increasing the number of breastfed babies.[60] The Centers for Disease Control and Prevention reports that there were over 4.3 million births registered in the United States in 2007, the highest number ever re-

55. *Nalco*, 534 F.3d at 649.

56. Pacourek v. Inland Steel Co., 858 F. Supp. 1393, 1402 (N.D. Ill. 1994).

57. Lawrence M. Gartner et al., *American Academy of Pediatrics: Breastfeeding and the Use of Human Milk*, 100 PEDIATRICS 1035, 1035 (1997).

58. *See* Wallace v. Pyro Mining Co., 789 F. Supp. 867 (W.D. Ky. 1990), *aff'd*, 951 F.2d 351 (6th Cir. 1991).

59. *Nalco*, 534 F.3d at 649.

60. CENTERS FOR DISEASE CONTROL AND PREVENTION, BREASTFEEDING (Oct. 2009), *available at* http://www.cdc.gov/breastfeeding/index.htm [hereinafter CDC BREASTFEEDING]. *See also* CENTERS FOR DISEASE CONTROL AND PREVENTION, BREASTFEEDING AMONG U.S. CHILDREN BORN 1999–2006, CDC NATIONAL IMMUNIZATION SURVEY (July 2008), *available at* http://www.cdc.gov/breastfeeding/data/NIS_data [hereinafter CDC BREASTFEEDING AMONG U.S. CHILDREN].

corded.[61] This figure represents the large number of female workers who could be victims of discrimination if the PDA is not interpreted to cover breastfeeding. Mothers who give birth produce breast milk and have the potential to breastfeed, but many are forced to choose between the health of their babies and their need to return to a non-accommodating workplace.[62] While discrimination based on infertility and subsequent IVF treatment affects a *portion* of women who eventually give birth, breastfeeding discrimination can potentially affect *all* women who give birth. The fact that milk production is a condition experienced by all women demonstrates that breastfeeding is more closely tied or "related" to pregnancy itself than infertility treatments. It is a condition that the PDA was intended to and should protect.

2. The Childbearing Capacity Standard Protects Breastfeeding

Both the *Nalco* court and Congress recognized that the capacity or ability to bear children is unique to the female sex and for that reason should be protected as "related" to pregnancy under the PDA.[63] Courts must therefore also recognize that breastfeeding is "related" to pregnancy in the same manner.

As the *Nalco* court explained, "adverse employment actions taken on account of childbearing capacity affect only women, [and therefore such affected women have] . . . a cognizable sex-discrimination claim under the language of the PDA."[64] A woman's capacity to bear a child is thus an immutable, inherently female characteristic that the PDA is intended to protect. Similarly, milk production is an immutable, inherently female characteristic that occurs as a result of this capacity in every single case of pregnancy. To exclude breastfeeding

61. Brady E. Hamilton et al., *Births: Preliminary Data for 2007*, 57 NAT'L VITAL STAT. REPS. No. 12 (2009), *available at* http://www.cdc.gov/nchs/data/nvsr/nvsr57/nvsr57_12.pdf.

62. Expressing breast milk in the workplace and possible federally mandated accommodations by employers will not be discussed here. If breastfeeding does fall within the definition of a "related medical condition," as argued in this Comment, the PDA has generally been interpreted to mean that employers are obligated to give time off or make workplace accommodations for pregnant women in the same manner as they would for other temporarily "disabled" workers. However, when and to what extent such affirmative obligations would be required for breastfeeding are beyond the scope of this Comment. *See* Elissa Aaronson Goodman, *Breastfeeding or Bust: The Need for Legislation to Protect a Mother's Right to Express Breast Milk at Work*, 10 CARDOZO WOMEN'S L.J. 146 (2003); Laura M. Gardner, *A Step Toward True Equality in the Workplace: Requiring Employer Accommodation for Breastfeeding Women*, 17 WIS. WOMEN'S L.J. 259 (2002).

63. *See Nalco*, 534 F.3d 644; *see also* H.R. REP. NO. 95-948 (1978), *reprinted in* 1978 U.S.C.C.A.N. 4749.

64. *Nalco*, 534 F.3d at 645.

from coverage as "unrelated" to pregnancy is clearly erroneous, and doing so misinterprets both the language and intent of the PDA.

Further, Representative Sarasin indicated that the PDA gives a woman the right to be "legally protected *before*, *during*, and *after* her pregnancy,"[65] from which courts like *Nalco* can discern both protection of "capacity" *before* pregnancy, as the court indicates in reference to infertility and IVF treatments, as well as protection of related conditions *after* pregnancy. If courts can rightly justify coverage of IVF on the premise that the PDA protects women before pregnancy, logically courts must interpret coverage of a woman's childbearing capacity after pregnancy as well. If courts do not interpret the PDA to do so, then illogical and unjust results are sure to follow.

For instance, under such an interpretation, a female employee could take several bouts of leave over a five-year period in order to undergo IVF treatments for infertility, and her employer could not take any adverse action.[66] After finally becoming pregnant, the same employee could be ordered to remain on bed rest for the last two months of her pregnancy, and again no adverse action may be taken.[67] Once the baby is delivered and the employee wants to attend to the breastfeeding needs of the newborn, however, the employer can take adverse or discriminatory action against her, including discharge. The employer cannot fire her for the entire time she is not yet pregnant, but once she actually goes through pregnancy and desires to breastfeed, she can be fired. Similarly, the PDA would protect a woman who endured labor complications and had to remain in the hospital for weeks after pregnancy for a "related medical condition"[68] but would not protect a new mother who desired a slightly more flexible schedule or even a few minutes throughout the day to expel breast milk at work.[69]

Thus, to fill a gap in reasoning, courts must interpret the PDA to cover infertility treatments *and* breastfeeding. To include infertility

65. Pacourek v. Inland Steel Co., 858 F. Supp. 1393, 1402 (N.D. Ill. 1994) (quoting 124 CONG. REC. 38574 (1977)) (emphasis added).

66. Note that in this example, the employer cannot take any adverse action *only* as long as that employer otherwise allows leave or time off for temporary disabilities, illness, or hospitalization. In order to comply with the PDA, employers only need to treat pregnant employees the same as other employees with temporary disabilities. The example assumes that the employer allows leave for non-pregnant but temporarily disabled workers. As explained, this Comment does not advocate or address accommodation of pregnant employees. *See supra* note 62.

67. *Id.*

68. *Id.*

69. *Id.*

and IVF as conditions related to a female's unique childbearing capacity but exclude breastfeeding under the same standard would be unreasonable and illogical. Breastfeeding is both unique to a woman's capacity to bear children as well as physically and traditionally more closely related to pregnancy itself. While this childbearing capacity standard rightly suggests that breastfeeding should be covered as a related medical condition, a clearer standard that explicitly purports to protect such conditions that occur both before and after pregnancy, as well as that serves to broaden the definition of the term "medical," would allow courts to more easily include breastfeeding coverage and better enforce the intentions of the PDA.

II. The Term "Medical" Should Be Interpreted to Mean the "Health or Well-Being of the Mother, Fetus, or Infant"

Both breastfeeding and female infertility are clearly linked to a woman's unique ability to carry a child. The *Nalco* court correctly interpreted the PDA to cover infertility as a condition related to pregnancy by way of relation to a woman's childbearing capacity.[70] It is this unique and inherently female characteristic that Congress intended to protect in amending the definition of "sex discrimination" to include "pregnancy discrimination" under Title VII.[71] However, using only the childbearing capacity standard to determine a related medical condition under the PDA can lead to some confusion over conditions that may be clearly "related" to childbearing capacity but that are not overtly "medical." Courts must therefore read the term "medical" broadly so as to incorporate all conditions related to a woman's childbearing capacity that are associated with the health or well-being of the mother, fetus, or infant.[72]

70. Hall v. Nalco Co., 534 F.3d 644, 649 (7th Cir. 2008).

71. *See infra* Part II.B.

72. While this Comment argues in favor of a broad interpretation of the term "medical," it also maintains that the term applies to the health or well-being of the "mother, fetus, or infant." The use of "fetus or infant" indicates that a woman's condition may occur while she is pregnant or after the infant is born. There is thus no confusion over whether a condition related to a woman's childbearing capacity must be a pre-pregnancy condition that only relates to *becoming pregnant* (like infertility and IVF), or whether it simply can be related to overall childbearing capacity. While it is clear that Congress had no intention of limiting the childbearing capacity standard to pre-pregnancy conditions, explicitly stating that the "health-related" standard applies to a "mother, fetus, or infant" simply helps courts to more readily protect post-pregnancy conditions like breastfeeding.

A. The Term "Medical" Should Be Construed Broadly in Accordance with Congressional Intent

The *Nalco* court did not need to address the fact that the PDA calls for protection of related medical conditions because of the medical nature of IVF treatments. Infertility as treated by IVF is "medical" in the ordinary sense of the word: the diagnosis requires a medical doctor, the procedures are themselves *surgical*, and infertility is a condition resulting from problems with reproductive organs, often on a microscopic level where *only* medical doctors can diagnose and treat them. There is, therefore, no doubt as to the medical nature of infertility and IVF treatments.

Although it is the *biological* process of lactation that occurs incident to every pregnancy, breastfeeding does not have the same immediate medical connotations as a procedure like IVF. While people do seek medical attention or support for other natural, biological occurrences in the body, and while women are even specifically instructed by obstetric physicians and nurses in breastfeeding techniques almost immediately after childbirth,[73] the *Wallace* court and others have interpreted the term "medical" more strictly than intended by the PDA, thereby excluding breastfeeding from coverage as non-medical even though it is inextricably linked and unique to a woman's childbearing capacity.

The PDA used "the broad phrase 'women affected by pregnancy, childbirth and related medical conditions'" to extend it to "the whole range of matters concerning the child-bearing process."[74] There is no doubt that Congress wanted the language interpreted broadly,[75] and interpreting the term "medical" narrowly renders many matters concerning the childbearing process, like breastfeeding, improperly unprotected. A narrow interpretation of the term "medical" would contravene Congress's intended broad interpretation and unreasonably limit the "childbearing capacity" standard. A new definition of "medical" is needed to join the childbearing capacity standard in order to broaden the range of conditions covered and therefore comport with Congress's intentions.

Courts should adopt the broader "health and well-being" interpretation of "medical." Using the childbearing capacity standard

73. *See* CENTERS FOR DISEASE CONTROL AND PREVENTION, THE CDC GUIDE TO BREASTFEEDING INTERVENTIONS, MATERNITY CARE PRACTICES (Oct. 2009), *available at* http://www.cdc.gov/breastfeeding/pdf/BF_guide_1.pdf.

74. H.R. REP. NO. 95-948, at 5 (1978), *reprinted in* 1978 U.S.C.C.A.N. 4749, 4753.

75. *See infra* Part II.B.

alone to determine a related medical condition under the PDA led to the *Wallace* court's confusion regarding conditions that may be clearly "related" to childbearing capacity but are not overtly medical. The *Wallace* court failed to recognize Congress's intent to cover a "whole range of matters concerning the child-bearing process,"[76] and a clarified definition of "medical," as encompassed in this new standard, would provide much needed guidance. Courts should therefore use the health and well-being definition of medical in order to comport with Congress's intent to make the PDA cover a range of pregnancy-related conditions.

B. *Wallace*'s Definition of "Medical" Misinterprets the Intent of the PDA

The *Wallace* court held that breastfeeding is not a related medical condition under the PDA because it is not an "incapacitating condition for which medical care or treatment is usual and normal."[77] Plaintiff Martha Wallace was employed by Pyro Mining Company as an accounting clerk and became pregnant in 1986.[78] She took approximately one month of disability leave at the end of her pregnancy due to complications, and then requested an additional six-week leave of absence after her maternity leave because she had not yet weaned her child from breastfeeding.[79] Wallace was informed before she was supposed to return to work that this leave would not be granted and failure to return would result in her termination.[80] When Wallace did not return to work, she was terminated and replaced with another hire.[81]

The *Wallace* court indicated that Congress wanted the term "related medical conditions" to cover disabilities caused by pregnancy,[82] and therefore that related medical conditions should be limited to those that are "incapacitating . . . [and] for which medical care or treatment is usual and normal."[83] However, the *Wallace* court misinterprets Congress's intent in enacting the PDA. First, the court mistakenly believes that because Congress expressed a desire to treat

76. H.R. REP. NO. 95-948, at 5 (1978), *reprinted in* 1978 U.S.C.C.A.N. 4749, 4753.

77. Wallace v. Pyro Mining Co., 789 F. Supp. 867, 869 (W.D. Ky. 1990), *aff'd*, 951 F.2d 351 (6th Cir. 1991).

78. *Id.* at 868.

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.* at 869 (quoting H.R. REP. NO. 95-948, at 2 (1978), *reprinted in* 1978 U.S.C.C.A.N. 4749, 4750).

83. *Id.*

disabilities caused by pregnancy, it intended to cover only those conditions that are "incapacitating." The court failed to recognize that pregnancy is not, in and of itself, incapacitating. Pregnant women remain employed and continue working often until they actually go into labor. Further, the court's aforementioned reasoning seems to indicate that disabilities are incapacitating, and such an interpretation renders a plain reading of the rest of the PDA impossible. The PDA requires employers to treat pregnant women as they would other temporarily disabled workers (i.e., by providing alternative work tasks and schedules). According to the court's reasoning, however, all of these "disabled" workers are "incapacitated" and simply unable to work.[84] Such a reading is clearly not what Congress intended by alluding to "temporary disabilities."

Second, the *Wallace* court failed to recognize that the PDA has been extended to other conditions that are not incapacitating. The *Wallace* court cites a House of Representative's Report as evidence that Congress intended to cover pregnancy-related disabilities but fails to mention the section explaining that the PDA is intended to apply to women who are terminated for having abortions.[85] Here it is clear that Congress intended the PDA to protect abortion as a related medical condition, and women who undergo abortions are not incapacitated. While they may be temporarily unable to work full days or perform certain tasks, much like women who may be breastfeeding, these women are not incapacitated and under constant medical supervision.

Third, the *Wallace* court does not recognize that the PDA's protection is broad and open-ended to account for flexibility and special situations.[86] The same House Report cited by the court actually explains the intent behind the general language: "In using the broad phrase 'women affected by pregnancy, childbirth and related medical conditions,' the bill makes clear that its protection extends to the whole range of matters concerning the childbearing process."[87] Nowhere does the Report mention that a condition must be incapacitating in order to be protected as a related medical condition. In fact, it shows that Congress intended to extend coverage to a "whole range of matters concerning the childbearing process."[88]

84. *Id.*

85. H.R. REP. NO. 95-948, at 7 (1978), *reprinted in* 1978 U.S.C.C.A.N. 4749, 4750.

86. *See supra* Part I.B.

87. H.R. REP. NO. 95-948, at 5 (1978), *reprinted in* 1978 U.S.C.C.A.N. 4749, 4750.

88. *Id.*

The *Wallace* court thus misinterprets the language and intent of the PDA in formulating its incapacitation standard. The *Wallace* decision does indicate that "breast-feeding and weaning are natural concomitants of pregnancy and childbirth" but concludes that they are not "medical conditions" because they are not incapacitating.[89] The court recognizes the natural connection between breastfeeding and pregnancy but is limited by its incapacitation standard and cannot extend protection to this "natural" part of pregnancy. The court's error in interpreting congressional intent is clear, and, as argued in the following subsection, application of a health and well-being definition of the word "medical" would correct such an error.

C. Why Breastfeeding Is Protected Under a "Health and Well-Being" Interpretation

For many mothers and infants, breastfeeding is an integral part of their health and well-being, therefore breastfeeding should be protected under a "health and well-being" interpretation of the term "medical." The American Academy of Pediatrics identifies breastfeeding as "the ideal method of feeding and nurturing infants and recognizes breastfeeding as primary in achieving optimal infant and child health, growth, and development."[90] In fact, the number of breastfed babies has increased significantly since 1999, and as of 2005 nearly seventy-five percent of newborns in the United States are breastfed beginning postpartum.[91]

Such a staggering number not only reflects that breastfeeding is a long-held tradition in society but also indicates the high likelihood that health benefits to the baby, mother, and even third parties exist. Statistics show that breastfed babies carry a far lower risk of developing a variety of illnesses, from respiratory and urinary tract infections to more serious conditions like bacterial meningitis, diabetes, Crohn's disease, and even sudden infant death syndrome.[92] Further, there is a general recognition that an infant's overall growth, health, and development benefits from breast milk.[93] As for the mother, studies have shown that breastfeeding lessens postpartum bleeding, reduces the risks of ovarian and pre-menopausal breast cancer, and helps her re-

89. *Wallace*, 789 F. Supp. at 869.

90. *Gartner* et al., *supra* note 57, at 1036.

91. *See* CDC Breastfeeding Among U.S. Children, *supra* note 60.

92. *See* CDC Breastfeeding, *supra* note 60.

93. *Id.*

turn to her pre-pregnancy weight.[94] Statistics even indicate that third parties like employers and the family unit benefit from breastfeeding: fewer instances of infant illness due to breastfeeding means less employee absenteeism of new mothers as well as reduced employer health care costs, which actually translates to a higher income for families.[95]

While some argue that PDA coverage for breastfeeding is vague and indefinite as well as too hard on employers (i.e., how long after childbirth may a woman claim coverage for breastfeeding and what would "coverage" entail?), courts could effectively employ a "reasonableness" standard as they do in many other areas of law.[96] As to a reasonable period for breastfeeding an infant, courts may look at national statistics indicating that, while close to half of women are still breastfeeding six months after childbirth, only 13.6% breastfeed exclusively at that point.[97] These statistics could help courts define a "reasonable period." There is discretion given to courts, but the reasonableness standard is not an unfamiliar one, and in these circumstances it is guided by statistical evidence. The health and well-being standard can logically only protect a condition until it no longer affects the health and well-being of the mother or child, so courts could also discern when breastfeeding no longer reasonably serves the health purposes that have been medically recognized. Finally, employers could use the reasonableness standard to refute a breastfeeding claim by stating that the employee is being unreasonable in her requests, whether for time off or accommodations, and courts can begin to set precedent for determining what is unreasonable for certain circumstances—a method that has been employed throughout our legal history and across all areas of law.

94. *Id.*

95. KATHERINE R. SHEALY ET AL., THE CDC GUIDE TO BREASTFEEDING INTERVENTIONS, ATLANTA: U.S. DEPT. OF HEALTH AND HUMAN SERVS., CENTERS FOR DISEASE CONTROL AND PREVENTION (2005), *available at* http://www.cdc.gov/breastfeeding/pdf/breastfeeding_interventions.pdf.

96. The "reasonableness" or "reasonable person" standard is one of the foundations of Anglo-American law. Tort law determines wrongdoing based on how a reasonable person would act in similar circumstances. Contract law declares that an offer to contract has not occurred unless a reasonable person would believe an offer had been made. In the employment law context, the reasonableness standard is invoked in sexual harassment cases. Such a standard, therefore, has a history of application across a variety of fields of law. To reject its application to the PDA for vagueness would be to refute an established legal mechanism.

97. CENTERS FOR DISEASE CONTROL AND PREVENTION, BREASTFEEDING REPORT CARD—UNITED STATES (2009), *available at* http://www.cdc.gov/breastfeeding/pdf/2009BreastfeedingReportCard.pdf.

Breastfeeding is accompanied by undeniable health benefits. While not an overtly medical condition that requires frequent doctor visits or treatment, respected medical statistics show that breastfeeding is related to the overall health and well-being of the mother and child. Moreover, employers benefit from mothers who breastfeed, thus eliminating their claim that broadening the definition of medical to encompass breastfeeding could be a drain on their businesses. Adoption of a new definition of the term "medical" to include all conditions related to the "health and well-being of the mother, fetus, and infant" would therefore encompass breastfeeding and adhere to Congress's desired broad reading of the PDA.

III. Practical Application of the Proposed Standard: Further Proof This Standard Conforms to Congressional Intent While Maintaining the Scope of the PDA

Application of the childbearing capacity standard with the health and well-being definition of the term "medical" not only aids courts in adhering to Congress's intent to protect women "before, during, and after" pregnancy,[98] but it also maintains the scope of the PDA by protecting only those conditions relating to a woman's overall capacity to bear children rather than extending protection to those that seem unique to women but do not meet the standard. A simple survey of other pregnancy-related conditions and past PDA litigation demonstrates that the proposed standard properly interprets Congress's intent to read the statute broadly, but not so broadly as to extend protection to conditions that are not inherently connected to a woman's unique capacity to carry a child.

First, this standard could provide protection to women suffering from postpartum depression. Postpartum depression has been reported to affect twelve percent of women who give birth,[99] and the consequences not only affect a female employee's work attitude and productivity, but may also include attempts to harm herself or her baby.[100] Although it should be diagnosed and can require doctor-pre-

98. Pacourek v. Inland Steel Co., 858 F. Supp. 1393, 1402 (N.D. Ill. 1994) (quoting 124 CONG. REC. 38574 (1978)) (emphasis omitted).

99. *See* CENTERS FOR DISEASE CONTROL AND PREVENTION, PREGNANCY RISK ASSESSMENT MONITORING SYSTEM (PRAMS): PRAMS AND POSTPARTUM DEPRESSION (2004), *available at* http://www.cdc.gov/prams/PDFs/PRAMS%20PPD%20Factsheet_Final.pdf.

100. Mayo Clinic Staff, Postpartum Depression: Symptoms, http://www.mayoclinic.com/health/postpartum-depression/DS00546/DSECTION=symptoms (last visited Mar.31, 2010).

scribed medication, this condition is not as overtly medical as IVF in that it requires no medical or surgical procedure and may be even less overtly medical than breastfeeding in that there are often no *physical* symptoms. However, it is a potentially dangerous condition that is unique to women who go through the process of pregnancy. Postpartum depression is usually caused by the dramatic hormone changes—specifically in estrogen and progesterone levels—that occur in women after childbirth and is thus related to a woman's childbearing capacity.[101] Further, the condition is related to and affects the health and well-being of the mother and baby. The new standard would thus properly allow for protection of postpartum depression in accordance with Congress's intent to read the statute broadly and cover a range of conditions.

Second, the proposed standard allows the PDA to be read broadly while still maintaining a distinct scope and protecting against over inclusion. Because the standard interprets related medical conditions as those that are related to a woman's childbearing capacity, conditions that can be separated from such a capacity remain unprotected and allow for the PDA to retain a defined scope. For example, courts have repeatedly declined to allow PDA claims for morning sickness as a related medical condition.[102] While morning sickness is connected to pregnancy, it is not inherently part of a woman's unique ability to carry a child; it is merely a symptom that some pregnant women experience. Some may argue that morning sickness accompanies pregnancy in a manner similar to lactation, but morning sickness is not a *direct result* of *all* pregnancies and it can be separated from a woman's ability to bear children. Women (as well as men) can experience flulike illnesses regardless of the capacity to bear children or current pregnancy status.

Conclusion

Both breastfeeding and female infertility are linked to a woman's childbearing capacity. While infertility and IVF treatments are more overtly medical, both IVF and breastfeeding are related to the health and well-being of mothers and infants. Adoption of the childbearing capacity standard with this broadened definition of the term "medical" is imperative. Failing to apply this standard has led to misinterpre-

101. Mayo Clinic Staff, Postpartum Depression: Causes, http://www.mayoclinic.com/health/postpartum-depression/DS00546/DSECTION=causes (last visited Mar.31, 2010).

102. *See* Dormeyer v. Comerica Bank-Ill., 223 F.3d 579, 583 (7th Cir. 2003); Troupe v. May Dep't Stores Co., 20 F.3d 734, 737 (7th Cir. 1994).

tations of the PDA by the courts, resulting in decisions that cannot logically coexist. Therefore, in keeping with the language and the intent of the PDA, courts must use the following standard when determining what constitutes a related medical condition: related medical conditions are those that are related to a woman's childbearing capacity that affect the health and well-being of the mother, fetus, or infant.