When is Business Necessity a Necessity?: The Effect of Disability, Status, and Nature of Accommodation on Decisions to Accommodate Disabled and Pregnant Employees

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Abstract

A recent plethora of discrimination court cases regarding granting disability and pregnancy accommodations have brought to light many questions surrounding why outcome decisions have lacked uniformity. One such answer to these questions may be the central role that “business necessity” plays in whether or not a disabled or pregnant employee is granted accommodation. The current study sought to explore the potential perceptual bias in business necessity by investigating whether pregnant and disabled candidates were accommodated similarly and whether job status and the nature of the accommodation influenced decisions to accommodate. Using a group of HR professionals as our sample, the data was analyzed using a repeated measures vignette design. Our results indicated that job status was a factor significantly related to perceptual bias in granting accommodation to pregnant and disabled employees when interpreting business necessity. We also found an interaction between high status, physical limitation jobs and high status, stress limitation jobs in whether accommodation was granted. These findings have far-reaching implications not only for pregnant and disabled workers, but also for their children and future children. Our results point to how imperative it is to clarify business necessity and incorporate that clarification into law. As the laws stand now, the perceptual bias in job status can lead workers in lower status jobs to not receive the accommodations they deserve. These workers are the employees most at-risk for further injury to themselves and their children if they are not granted equivalent accommodations as similarly disabled workers in higher-status occupations.
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When is business necessity a necessity? The effect of disability, status, and nature of accommodation on decisions to accommodate disabled and pregnant employees

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Introduction

The concepts of “business necessity” and “essential duties” are central to many aspects of organizational functioning, including employee selection, appraisal of performance, promotion decisions, and requests for temporary organizational accommodation. While business necessity and essential duties are vital to organizational functioning, they have been moving targets since their incorporation into the seminal United States Supreme Court case of *Griggs v. Duke Power Co.* (1971). In this case, the U.S. Supreme Court decided that if an employment practice discriminated on the basis of protected categories under Title VII, that employment practice must be shown to be related to job performance. This legal requirement was deemed “business necessity”.

The concept of business necessity rose again to legal prominence with the *Ward's Cove Packing Co. v. Antonio* case (1989), when the Supreme Court sent the case back to the Court of Appeals, with the message that proper statistics must be used to determine whether the initial burden of proof necessary to move forward with unintentional discrimination claims had been established. Soon after this decision, Congress recognized the need to amend Title VII, which they did with the Civil Rights Act of 1991. This amendment aimed to provide a statutory guideline for the business necessity defense. It imposed on defendants the burden of proving “that the challenged practice is job related for the position in question and consistent with business necessity”; essentially organizations were charged with demonstrating that selection and promotion tools and criteria were valid and accurate predictors of the essential duties of the position for which the tools were used (Grover, 1996). This language used in the Act departed from earlier case law in three important ways. The first way was through the joining of business necessity and job relatedness, allowing a defendant to show *either* job relatedness or business necessity. The second way was through an interpretation of “consistent with business necessity” to require something less than absolute “necessity”. The third way was through the clarification of allocation of proof burdens, suggesting that necessary does mean essential.
Though this amendment did clarify some issues previously ruled upon in court cases, it still did not resolve whether the discriminatory practice must be essential to the continued viability of the business or whether it required something less (Grover, 1996). A further attempt to alleviate this confusion over what constituted “business necessity” and the “essential duties” of a job has been seen in practices that seek to rigorously define the knowledge, skills, and abilities (KSAs) and competencies needed to perform certain jobs.

Creating KSAs and Competencies, with Resulting Business Necessity

To create a defensible record of the essential duties of a job, the KSAs and competencies that are deemed to be of business necessity must be created through either job analysis or competency modeling. The traditional task analysis approach to job analysis provides an indirect estimation of KSAs needed for a job. Tasks are identified, and subject matter experts judge the importance or criticality of those tasks. Given the vital tasks, subject matter experts make inferences about which KSAs are most important to the job (Morgeson & Campion, 1997). Competency modeling is a second way to collect the KSAs and competencies that make up the essential duties of a job. While actual differences between job analysis and competency modeling can appear blurry, the main differences between the two methods are that competency modeling is less rigorous in data collection, assessment of reliability, and the research process as compared to job analysis (Schippmann et al., 2000). The three major advantages of competency modeling are that they link to organizational goals (making “business necessity” more obvious and easier to document), they show content validity of KSAs, and they show easier linkages to HR systems. Competency models provide a more comprehensive demonstration of job relevance than job analysis alone (Campion et al., 2011). It has also been demonstrated that competency modeling more validly ties together KSAs and essential duties, which can be important in determining business necessity (Cascio & Aguinis, 2011).

The general purpose of this study is to investigate whether and how these complicated ideas of business necessity and essential duties can create perceptual biases in cases of
discrimination when pregnant or disabled workers request organizational accommodation. The landscape of organizational leave laws is intricately tied to the confusion of what constitutes business necessity. The history of disability discrimination laws, pregnancy discrimination laws, and their interplay will be presented in the following sections. This is meant to frame how the current study seeks to unravel what makes the interpretation of business necessity so complicated, and how this might influence the interpretation and the administration of laws to protect the disabled, including those who are pregnant.

Legal Review of the History of the ADA

A recent report from the Institute of Medicine estimated that about 35 million Americans have disabling conditions that interfere with their daily activities (Pope & Tarlov, 1991). This creates a substantial pool of potential workers who may require legal protection against discrimination when seeking employment. To provide a common language of discrimination before discussing the actual laws, it is important to note that discrimination can fall into two categories: disparate treatment and disparate impact. Disparate treatment is intentional discrimination by employers. It is when an organization treats an employee or applicant who is protected from discrimination on the basis of race, ethnicity, national origin, age, disability, gender, or disability in an unequal way because of his or her classification in a particular grouping in one of the protected areas (e.g. being male or being female). Intentional discrimination is always illegal unless the organization can prove that the employee or applicant could not complete the job’s essential tasks and that decisions were based on job performance and not on being a member of a certain classification. Disparate impact is unintentional discrimination where the outcome is unequal, but not the intention. It occurs when a work criterion is seen as fair in form, but discriminatory in practice (Goldman et al., 2006). For example, New Bedford, Massachusetts, had a minimum height requirement of five feet six inches for those applying to be police officers. Since the minimum height requirement excluded far more women than men from competing for positions as police officers, this requirement had
disparate impact on women (*Costa v. Markey*, 1983). Disparate impact is only illegal if the unequal outcome (e.g. more of one group being hired than another) is not due to the fact that those who have been treated differently (e.g. hired or promoted at lower rates, let go at higher rates, etc.) are less able to complete the essential duties of the job (Cascio & Aguinis, 2011).

The first national anti-disability-discrimination legislation was the Americans with Disabilities Act (ADA), passed in 1990. The ADA’s specific purpose was to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities and to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities.” (42 U.S.C. Sec. 12101). The ADA defined disability as “a physical or mental impairment that substantially limits one or more of the major life activities” (42 U.S.C. Sec. 12102). The employment provisions of the ADA were enacted to remove barriers to employment for people with disabilities by banning discrimination and mandating employer-provided job accommodation (DeLeire, 2000).

The requirement to provide reasonable accommodation distinguished the ADA from other civil rights legislation, in that it required organizations to take action in adapting the environment so the disabled person could function on an even playing field. Since the enactment of this part of the ADA, concerns have been raised regarding an organization’s financial burden of providing reasonable accommodation. Organizations do not have to provide reasonable accommodation unless it is “readily achievable” or does not constitute an “undue hardship” (O’Keeffe, 1993). To identify what constitutes undue hardship, business necessity can be invoked. If the disabled worker cannot perform what the organization deems to be the essential duties of the job, then accommodating that person would cause undue hardship to the organization. The ADA did not lessen the ambiguity surrounding what exactly comprises business necessity, though.
Legal Review of the History of the ADAAA

The ADA in its original form led to widely different interpretations in undue hardship and the definition of disability. Pregnancy was also not covered under the original ADA. This and other issues necessitated the ADA Amendments Act of 2008 (ADAAA) to be passed, which expanded the ADA’s initial scope. The ADAAA emphasized that the definition of disability should cover a broader range of individuals to the maximum extent permitted by the ADA (Cox, 2012). Although the ADAAA retained the ADA’s disability definition, it shifted the meaning of this definition in two ways (Cox, 2012). First, the ADAAA expanded the definition of “major life activity” to include work-related tasks such as standing, lifting, and bending. Second, the durational requirements of an ADA disability were relaxed to include more temporary limitations.

Disabled workers are not the only class that experiences discrimination from laws surrounding undue hardship and essential duties. Pregnant employees also live in a complicated legal landscape of business necessity, and the protected status of pregnant women is related to legislation protecting the disabled; the legislation protecting pregnant women uses similarly limited disabled individuals as a comparison group. One effect of the relaxation of the ADA’s severity and durational requirements was that the ADAAA brought into the ADA’s protected class persons whose work limitations paralleled the limitations pregnant workers experienced. This served to remove two objections to ADA pregnancy coverage by bringing relatively modest and short-term conditions within the ADA’s scope (Cox, 2012).

It is important to study decisions about pregnancy and pregnancy discrimination at work for several reasons. The first reason is that women make up half of the workforce. With more women in the workforce, more women participating in physically demanding jobs, and more women with the economic need to work longer into pregnancy, the conflicts between pregnancy and work can only increase (Grossman, 2009). The second reason is that not accommodating pregnant workers could lead to problems on a national scale. These problems could include reinforcing a gender ideology incompatible with women’s full participation in the labor force.
(United States v. Virginia, 1996) or creating gaps in the labor force if women lose their jobs during pregnancy (Eichner, 2010).

In the next section, the history of pregnancy discrimination laws will be explored, and the interaction of these laws with the ADA and ADAAA will be further articulated to create a more complete picture of discrimination and business necessity in accommodating pregnant and otherwise disabled employees.

**Pregnancy Discrimination and the Law**

Pregnancy discrimination is defined as treating a woman (applicant or employee) unfavorably because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth (U.S. Equal Employment Opportunity Commission). It was commonplace in the 1960s and 1970s to overtly hinder pregnant women’s access to new or continued employment (Grossman, 2009). Many employers refused to hire pregnant women, required them to leave before a certain point in their pregnancies, excluded them from certain jobs, and denied them benefits such as insurance and leave. There were three developments that brought about the modern era of pregnancy discrimination law:

**Due Process Clause.** The first development was when the Supreme Court, in 1974, invoked the Due Process Clause of the Fifth and Fourteenth Amendments to the U.S. Constitution to invalidate school district policies that forced pregnant teachers to leave work at a certain point during pregnancy, regardless of their individual condition. The Supreme Court case of Cleveland Board of Education v. LaFleur recognized the pregnant woman’s right against being presumed incapable by the fact of pregnancy (Grossman, 2009).

**Pregnancy Discrimination Act.** The second development was the passage of the Pregnancy Discrimination Act (PDA) in 1978. This was designed to overrule the Court’s original ruling in General Electric Co. v. Gilbert. In the Gilbert case, the Court had ruled that pregnancy discrimination did not fall under Title VII of the Civil Rights Act of 1964, which made it unlawful for an employer to discriminate against any individual with respect to compensation,
terms, conditions, or privileges of employment because of that individual’s race, color, religion, sex, or national origin (Widiss, 2013); the overruling reversed this decision. In addition, the PDA guarantees employees two rights: (1) the right not to be treated adversely because of pregnancy and (2) the right to be treated the same as other employees “not so affected but similar in their ability or inability to work” with respect to all aspects of employment. To reiterate, the first clause added “pregnancy, childbirth, or related medical conditions” to Title VII’s list of protected characteristics. The second clause was subject to an interpretational dispute. The Supreme Court, in California Federal Savings & Loan Ass’n v. Guerra, ruled that the PDA was a floor beneath which pregnancy disability benefits may not drop, not a ceiling above which they could not rise (Widiss, 2013). The stipulations of the PDA mimic those of the ADA and ADAAA, in that all require an overarching consideration of the business necessity of a job task and the pregnant or otherwise disabled employee’s ability to perform it.

*Family Medical Leave Act.* The third development to influence the legal status of pregnant women at work was the adoption of the Family and Medical Leave Act of 1993 (FMLA). This was a gender-neutral law that provided eligible workers up to twelve weeks’ unpaid leave per year as needed to care for a newborn or newly adopted child, to care for a seriously ill family member, or to attend to one’s own serious health condition (Grossman, 2009). A pregnant woman could take “serious health condition” leave as needed for prenatal care or if her pregnancy caused her to be unable to work. However, FMLA also allowed an “out” for employers in cases where a pregnant woman could (and wanted to) work through her pregnancy, but required some accommodation to successfully complete her job. The organization could force a pregnant woman to take FMLA, rather than accommodate her, if the woman could not complete all essential duties of her job.

**Case Law: The Interpretation of Pregnancy Discrimination Laws**

The ambiguity in the interplay of these laws that impact both disabled and pregnant applicants and employees comes down to the definition and interpretation of business necessity
and essential duties. Pregnancy discrimination laws revolve around the pregnant woman’s ability to work. During pregnancy, a woman may find herself in one of three states as defined and classified by case law: full capacity to work, partial capacity to work, and little or no capacity to work. These three capacities are treated differently under the law (Grossman, 2009).

If a woman is fully capable of working, then she has the right not to be presumed incapable of work by the mere fact of pregnancy. This right against stereotyped incapacity was the central tenet of the PDA. The ruling in *UAW v. Johnson Controls, Inc.* cemented the right of capable pregnant women to work on equal terms with other employees (*United Automobile Workers v. Johnson Controls, Inc.*, 1991).

If a woman is fully incapable of working, she may seek job security upon return and salary and benefits during a leave of absence. The PDA grants her an absolute right to neither of these benefits, but a comparative right to both. Under the case of *Cal. Fed.*, employees unable to work because of pregnancy must be treated as well as employees disabled due to other reasons (*California Federal Savings & Loan Ass'n v. Guerra*, 1987). This means that pregnant employees must depend on the subjective nature of their employers. The most meaningful protection for a right to leave during periods of pregnancy-related incapacity is the FMLA, which grants employees an absolute right to twelve weeks’ leave in certain circumstances. However, nearly 40% of American workers are not eligible to take FMLA, and those who are eligible cannot afford to take unpaid leave.

Women who have partial capacity to work face the greatest number of legal gaps in coverage (Grossman, 2009). In situations involving partial capacity, determining whether a woman can complete the essential duties of the job are of paramount importance. These essential duties come from an organization’s competency model or job analysis, and constitute the “business necessity” of certain tasks. If a woman can complete these essential job duties or the great majority of them, she should be accommodated without hardship. For example, she could be given slightly different duties or not have to do the ones she cannot perform. If a woman
cannot complete these essential job duties, she should be given the opportunity to take leave. The issue in pregnant women having partial capacity to work hinges on whether she can or cannot do what is considered to be an “essential duty” of her job. However, as has been discussed, the precise definition of an essential duty is cloudy, at best.

The ADAAA makes it both easier and more difficult to protect a pregnant woman. The ADAAA makes it easier by requiring that a pregnant woman who cannot do certain aspects of her job while pregnant be reasonably accommodated. The ADAAA makes it more difficult by removing possible comparators for pregnant women necessitated by the PDA for protection. This makes it unclear which law(s) provide pregnant women protection from discrimination (Alemzadeh, 2012).

There were several cases that demonstrated that pregnant women were not treated the same as someone with a disability, despite aspects of the law meant to protect pregnant women (Peggy Young v. United Parcel Service, Inc., 2013). The Fourth Circuit’s ruling in Peggy Young v. United Parcel Service, Inc. made critical mistakes and violated the PDA’s core command that “women as capable of doing their jobs as their male counterparts may not be forced to choose between having a child and having a job” (UAW v. Johnson Controls). By carving out three categories of temporarily disabled workers who may not be used as comparators, the Fourth Circuit’s ruling relegated pregnant workers to a status worse than other workers. Pregnancy was treated as a category with no obvious comparator.

Four other appellate courts had upheld light-duty policies that accommodated some temporarily disabled employees, but refused accommodation for pregnancy-related disability (Serednyj v. Beverly Healthcare, LLC., 2011). One such case was Victoria Serednyj filing suit against Beverly’s Golden Living nursing home, where she was the Activity Director. After becoming pregnant, she was denied light-duty and terminated. Some federal appellate rulings have taken an opposing view about the correct analysis in light-duty cases (EEOC v. Horizon/CMS Healthcare Corp., 2000). In this case, the EEOC sought relief for four charging
parties, filing that they had been denied the opportunity to work modified duty when they became pregnant while modified duty was given to workers who were injured on the job. The original ruling against the charging parties was reversed and remanded.

Case law resulting from these cases and similar ones demonstrate how complicated the legal landscape is for both pregnant and otherwise disabled employees. This landscape is further complicated by the idea of “business necessity” being perceived on a case-by-case basis, rather than having a strict, legal definition. In the current study, we seek to answer several questions related to the possible influence of perceptual biases in business necessity judgments as they relate to possible discrimination in accommodating pregnant and otherwise disabled employees. Differences in decisions to accommodate similarly disabled pregnant and otherwise disabled individuals when both request similar accommodations have important repercussions and legal implications for the administration of the ADAAA and PDA, regardless of which group is favored. The first research question that we want to investigate is whether controlling for business necessity results in similar HR decisions to accommodate, depending on whether the employee requesting accommodation is pregnant or otherwise disabled.

Research Question 1: If the degree of business necessity is held constant, will HR professionals demonstrate differences in decisions to accommodate employees or not based upon whether the employee is pregnant or otherwise disabled?

Potential Predictors of the Disparity in Case Interpretation

As can be seen from the aforementioned case laws, there is a disconnect between how the law accounts for pregnant women or otherwise disabled employees who are healthy and eager to work, but in need of accommodations since they are temporarily unable to perform a job at full capacity. While many organizations do accommodate such workers, the myriad, and ambiguous, laws that influence business necessity can create confusion as to what is legally required from an organization. Two possible roots of the perceptual biases in partial capacity accommodation lie in
the status associated with certain jobs and the nature of the accommodation required by certain jobs. Each of these potential sources of bias will be further discussed in this section.

Status (SES) of Job. Status and socioeconomic status (SES) are highly associated with each other (APA Task Force on Socioeconomic Status, 2007). High status jobs are more associated with increased power and money, while low status jobs are more associated with decreased power and money. Social psychological research has studied the beliefs that Americans hold toward low-socioeconomic status individuals (Spencer and Castano, 2007). In a study of children, participants who saw a child as belonging to a high-SES background rated the child as performing above grade level, while if that same child was seen as having a low-SES background, the child was judged to perform below grade level (Darley and Gross, 1983). Further research on SES has related it to other social categories, such as gender (Dasgupta, 2005) and physical disabilities (Banks & Marshall, 2005).

Lott and Saxon (2002) investigated how impressions of a working woman differed depending on whether the woman was classified as a working-class or middle-class woman. The working-class woman was rated as more irresponsible and more unsuitable to be vice president of her children’s Parent Teacher Organization than the middle-class woman. The woman’s perceived SES led to stereotyping and stigmatizing. To make the accommodation-at-work terrain more complex, low-wage, lower SES, jobs are often more labor-intensive than higher SES jobs. The history of arduous labor that can lead to disability and a lack of provision for work relief for members of lower socioeconomic classes has been demonstrated in archeological studies (Banks & Marshall, 2005); the more physical nature of the essential duties for lower status jobs reduces the likelihood that individuals in these jobs may be accommodated, even though they can still perform all or most of the essential duties of their jobs.

Because of the physical nature of such jobs, it is women in low-wage jobs and traditionally male-dominated occupations who are most likely to experience temporary conflicts between the physical effects of pregnancy and job requirements. In Peggy Young v. United
Parcel Service, Inc., the council for the plaintiff suggests that the Fourth Circuit’s misunderstanding of the PDA’s second clause could create profound economic instability for such women and their families, leading to obstacles for re-entry if they lose their jobs (Peggy Young v. United Parcel Service, Inc., 2013). Ms. Young’s lawyers claimed that her job never required her to lift more than the amount she was medically allowed to, such that in frequency and importance the ability to lift heavy packages was not an essential duty of her job; yet she was told that if she could not complete this “essential duty” during her high risk pregnancy, she would be required to take a leave of absence.

Pregnancy and disability discrimination is a concern for working class employees and those in lower status jobs, as compared to those in higher status jobs, because individuals who work in lower status jobs are most likely to experience work conflicts and inability to complete the essential duties of their jobs while pregnant or disabled. Thus, they are most in need of protection under the PDA’s second clause. Professionals who work for employers with generous policies and an emphasis on employee retention may be able to secure accommodations without the PDA, ADA, or ADAAA. To add more color to this observation, it has been shown that 90% of workers in the top 10% of earnings have paid sick days, compared with only 23% of workers in the bottom 25% (Peggy Young v. United Parcel Service, Inc., 2013). The lower pay of lower status positions also makes taking leave during pregnancy a less viable option for these women (Grossman, 2009). These conditions are similar for disabled men and women in lower status jobs, with the only reprieve being that men and women in such positions who have been injured on the job are often guaranteed light duty alternative positions for the duration of their injury, while pregnant women are often not afforded such accommodation (Grossman, 2009).

It is unclear as to whether it is job status discrimination, or the more physically demanding nature of lower status jobs, that results in a higher number of claims brought forward by individuals in lower status jobs. More physically demanding, lower status jobs would create a larger pool of pregnant or otherwise disabled employees who are not fully capable of completing
the majority of the essential duties of their positions, making it difficult to discern whether is it the physical nature of the essential duties resulting in differential outcomes of lower status jobs or differential treatment to those in lower status as compared to higher status positions. Investigating the existence and the sources of possible bias is made even more complex by the male-dominated nature of jobs of a physical nature. As more women enter historically male-dominated fields involving increased physical labor, difficult environmental conditions, or increased psychological stressors, conflicts due to pregnancy (and disability) may become more widespread (Grossman, 2009). Women in lower status, traditionally male-dominated, occupations are the ones most likely to experience temporary conflicts between the physical effects of pregnancy and job requirements (Peggy Young v. United Parcel Service, Inc., 2013).

Building on these observations, our second research question asks whether perceptual biases in making decisions of whether to accommodate pregnant or otherwise disabled employees centers on the status of an employee’s job:

*Research Question 2*: If the degree of business necessity is held constant, do high status jobs influence HR professionals to grant the employee accommodation more than low status jobs?

Historically, pregnant women have been seen as less truly disabled than otherwise disabled employees. Since pregnancy is “avoidable”, unlike a true disability, accommodation may be dissimilar between pregnant women and otherwise disabled employees, even if their jobs have identical levels of business necessity (Cox, 2012) and job status. For this reason, we extended Research Question 2 to look at the interaction between pregnancy and other disabilities and job status. Research Question 2a and 2b sought to investigate whether job status influenced pregnant employees differently than disabled men and women or whether status influenced decisions to accommodate pregnant women, disabled women, and disabled men similarly.
Research Question 2a: If the degree of business necessity is held constant, does the job status of the employee interact with whether the employee requesting accommodation is pregnant or otherwise disabled in influencing whether an HR professional decides the employee should be granted accommodation or not?

Research Question 2b: If the degree of business necessity is held constant, do high status jobs receive more accommodation than low status jobs similarly for pregnant and disabled employees when an HR professional decides the employee should be granted accommodation or not?

Nature of Accommodation. Legal cases have categorized the accommodations required by partially able pregnant women into three general groupings; disabled employees requesting accommodation have been categorized similarly, though the legal landscape for disability claims is so complex it can be difficult to map (Grossman, 2009). The first area of conflict is environmental conditions that render the workplace hazardous to some or all pregnant women and their fetuses or disabled workers with chronic breathing conditions and other vulnerabilities (Czarnecki, 2003; LaPlante, 1990). The second area of conflict is physical movements that can be difficult for a disabled person to perform (LaPlante, 1990) or can endanger a woman and her baby (Mayo Clinic Staff, 2007). The third area of conflict is psychological stressors, such as irregular hours or highly stressful conditions, that can have an adverse effect on the mother and the fetus (Hollander, 2006) or on a disabled worker, such as one suffering from acute anxiety or a chronic heart condition (LaPlante, 1990).

Empirical research has not yet investigated whether the nature of accommodation influences decisions to accommodate pregnant and disabled workers or not, but research on the effects of working conditions on pregnancy and disability outcomes suggests this research is important. Croteau, Marcoux, & Brisson (2006) investigated whether varied occupational conditions during pregnancy increased the risk of delivering a small-for-gestational-age infant and whether taking measures to eliminate these conditions decreased that risk. These
occupational conditions included physical, environmental, and psychologically stressful conditions. This study demonstrated that physical, environmental, and psychological stresses were present in hundreds of jobs that pregnant women held and that women had an increased risk for having a small-for-gestational-age infant with an irregular or shift-work schedule alone or a cumulative index of at least 2 of the following: night work, irregular or shift-work schedule, standing posture, lifting loads, noise, and moderate to high job strain with low social support. While the number of these cases suggests that the three types of accommodations that pregnant women need are fairly equal, a lack of research on the causes and outcomes of discrimination against pregnant and otherwise disabled workers makes it unclear as to whether there are perceptual biases against particular categories of requested accommodation. Our third research question therefore sought to investigate whether the nature of the limitation and requested accommodation influences decisions of whether or not to accommodate a pregnant or otherwise disabled employee. Stemming from the same considerations that informed Research Question 2a, our Research Question 3a sought to investigate whether the nature of accommodation resulted in different decisions for pregnant or otherwise disabled employees.

Research Question 3: If the degree of business necessity is held constant, does the nature of the limitation and requested accommodation influence whether an HR professional decides the employee should be granted accommodation or not?

Research Question 3a: If the degree of business necessity is held constant, does the nature of accommodation interact with whether the employee requesting accommodation is pregnant or otherwise disabled to influence whether an HR professional decides the employee should be granted accommodation or not?

For the reasons discussed above, it is important to investigate not only whether job status and nature of accommodation influence decisions differently for pregnant or otherwise disabled employees, but also how those two predictors may interact such that status might influence
accommodation decisions differently for different limitations. We therefore pose our fourth research question:

*Research Question 4:* If the degree of business necessity is held constant, does the status of the job interact with the nature of accommodation requested to influence whether an HR professional decides the employee should be granted accommodation or not?

**Method**

**Participants**

Data was collected from individuals currently employed as Human Resources (HR) professionals. These participants were from an alumni listserv of graduates from a Master’s of Arts Program in Industrial/Organizational Psychology from a mid-sized university in the Northeast. The Master’s program began accepting students in 1982, but only graduates of the program since 1990 are subscribed to the alumni listserv. The great majority of those subscribed to the listserv graduated in 1997 or later. There were 112 surveys sent out, and 31 returned, for a response rate of 27.68%. Females made up 64% of respondents, and minorities made up 16.6% of respondents. The sample ranged in age from 18-64 years old. There were 20% of respondents between 18-24, 33.3% of respondents between 25-34, 36.7% of respondents between 35-44, 3.3% of respondents between 45-54, and 6.7% of respondents between 55-64. Mean HR experience was 4 years, with a range of 18 years. About 80% of participants had decision-making latitude in their position. The number of respondents who had asked for special accommodation due to injury at their jobs was 13%. Respondents with children made up 30% of the sample population, and respondents who had taken FMLA in the past made up 13% of the sample population.

This sample was used because participants had jobs in HR-related fields that contained decision-making discretion and latitude, which would enable them to make informed decisions about discrimination and employee accommodation. Alumni were also asked only to complete
the study if they were currently employed in an HR or I/O related job where they had decision-making responsibilities regarding other employees in an HR-related capacity. To obtain a greater number of HR participants outside Montclair State University alumni, these alumni were asked to forward the names of any coworkers who also had the requisite HR or I/O-related work experience. This snowball sampling allowed a wider population of HR professionals to be obtained.

Procedure

HR professionals were sent an email requesting their participation in an online study, and told that participation would involve the completion of an online questionnaire. This questionnaire contained the consent form, vignettes, demographic questions, perception questions, and debriefing form. The entire questionnaire took about 30 minutes to complete. The participants were then thanked for their participation. Two reminder emails to complete the survey were sent out one week and two weeks after the original request.

Measures

Vignettes. A mixed-design, vignette research methodology was used to answer both within- and between-subjects questions about decision-making. HR professionals were presented with 23 hypothetical scenarios regarding whether or not they would decide to grant leave to the employee in the vignette. They were asked to make these decisions by weighing and integrating the information presented to them in the vignette. Three conditions of vignettes were presented: one containing pregnant female workers, one containing injured female workers, and one containing injured male workers. The vignettes were identical between the three conditions, except for whether the individual requesting accommodation was pregnant or injured (and the gender of the employee).

Our vignettes also included two within-group manipulations. The variables of status of the job (2 levels: high and low status) and the particular nature of the limitation (three levels:
environmental, physical movement, stressors) were varied across within-group vignettes. Between- and within-group manipulations will be discussed in the next section.

Demographic and Experience Information. HR participants were asked to indicate their age, gender, ethnicity, years of HR work experience, whether they had children, whether they ever needed special accommodation at work, whether or not they exercised decision-making authority at work, and whether they ever took FMLA at work. These variables were considered as possible covariates.

The HR professionals presented with the pregnant employee vignettes were given legal information about disability discrimination and pregnancy discrimination. The HR professionals presented with the otherwise disabled employee vignettes were only given legal information about disability discrimination.

Repeated Measure Design

Case law can be analyzed to determine how various individual and legal factors influence decision outcomes. While this method of analysis can yield useful information, some downsides are a lack of control, an inability to study individual decisions, and an inability to determine how specific factors influence individual decision-making.

The purpose of our study was to investigate whether the job status (keeping the nature of the job constant between high and low status jobs) and the type of limitation influence HR professionals’ decisions to grant disability accommodations for pregnant or otherwise disabled employees. Being able to perform the essential duties of the position as determined by the job analysis is the legally justifiable reason for making a decision to accommodate an employee. As such, we controlled for this factor, only investigating factors not related to being able to perform the essential duties of a job. In addition to controlling the essential duties, we controlled for the potential confound of job masculinity, keeping all jobs somewhat “masculine” in nature as judged by the researchers and assessed by the subjects in the study. We did this because many of the jobs that require physical and environmental accommodation are stereotypically masculine jobs.
We used a vignette-based, fully-crossed mixed design whereby we manipulated the status (2 levels) and nature of the limitation of the position (3 levels) as repeated measure factors such that each level of these within-group factors was presented to each participant. Whether the employee requesting accommodation was pregnant or disabled (male and female) was a between-group factor, meaning each level of this variable (pregnant women, disabled women, disabled men) was presented to only one-third of subjects. Pregnant and disabled men and women were compared in our analyses.

The degree to which the employee could complete the essential duties of the position with or without accommodation was held constant across vignettes so this would not be a determinant in participants’ decisions. Each vignette discussed an employee that would be “partially incapacitated”, operationalized to mean that the employee was able to complete about 80% of the essential duties of the job. The task the employee would not be able to perform was an important one, but not the central job aspect. The employee would also need assistance in completing one, less important task in each vignette. To assess whether the vignettes used in the study complied with the above guidelines, two subject matter experts (SMEs) sorted various vignettes into the following categories: “employee not able to do 50% of essential duties of the job”, “employee able to do up to 50% of essential duties of the job”, “employee able to do between 50% and 75% of essential duties of the job”, “employee able to do about 80% of essential duties of the job” and “employee able to do more than 80% of essential duties of the job”. Once sorted, vignettes were rewritten to get them all into the category of “employee able to do about 80% of essential duties of the job”. Vignettes were sorted three additional times until all were deemed to belong to the appropriate category.

Gender discrimination was posed as a potential confound to the causes of legal ambiguity surrounding disability accommodation because physical jobs often requiring accommodation have traditionally been dominated by males and perceived as male-oriented positions (Grossman, 2009). Therefore, all jobs in the vignettes were male-oriented in nature, to control for this
confound of gender discrimination. Stimulus testing was conducted to ensure that the jobs in the vignettes were rated more male-oriented than female-oriented.

**Within- and Between-Group Independent Variables**

*Within-group Variables.* Within-group variables were determined by reviewing the literature on variables suggested to influence how pregnancy discrimination was perceived. Each vignette manipulated two variables.

The first variable manipulated was the level of status of the occupation presented, as determined by the NORC survey and pilot testing, and verified through manipulation checks. Six types of jobs were presented, representing two levels of status: higher status jobs (medical doctor (NORC score = 86.05), lawyer (74.77), engineer (70.69)) and lower status jobs (sales associate (33.60), truck driver (30.23), medical orderly (41.71)). We determined the status of these jobs using the NORC database of prestige scores, which were on a 100-point scale (Davis, Smith, Hodge, Nakao, & Treas, 1989). High status jobs had to have a score above 60, and low status jobs had to have a score below 45. Status manipulation of the jobs was evaluated in a pilot test of the stimulus materials to confirm that higher status jobs were actually rated higher in SES and prestige than lower status jobs in the present day. The ratings were determined to be significantly different between each prestige level. The perceptions of job prestige were also verified through vignette manipulation checks.

The second variable that was manipulated was the nature of accommodation that was necessitated. The three types of partial disability accommodations in discrimination cases (environmental conditions, physical movements, and psychological stressors) were manipulated in the present study due to case law categorization and the pregnancy and disability accommodation literature (Grossman, 2009).

The injured male and injured female vignettes were identical except for the names of the hypothetical people in the vignette and pronouns associated with them. The pregnant female condition was identical to the injured female condition except for the final paragraph of the
vignette. The pregnant female condition stated that the hypothetical woman in the vignette was pregnant and needed to protect her fetus from harm. The injured female condition stated that the hypothetical woman sustained an injury (not at work). Both vignettes then go on to describe the job tasks that need to be modified and the number of months needed for accommodation (the same for both pregnant and disabled conditions).

Vignettes were written to represent all 18 combinations of the full factorial design of status and nature of accommodation with three positions for each level of status. Two practice vignettes and three repeated vignettes were written to allow for practice and to test for participant reliability. An example of a vignette that discussed a high status job that was presented to HR participants is provided below:

Bethanne is a physician at Highpoint Hospital, an inner-city facility. Bethanne is 32 years old and has worked the night shift in the emergency room for the past 3 years.

Below is a brief description of the tasks, duties, and working conditions in Bethanne’s position:
• Interact with patients and nurses to assess ailments and provide appropriate care
• Manage the care of 15-20 emergency room patients at a time
• Perform all necessary duties of ER physician, including ordering tests and prescriptions
• Evaluates patient test results
• Able to differentiate different ailments/conditions and determine best practice for client rehabilitation
• Able to work 12 hour shifts, nights, weekends, and holidays
• Able to cope with trauma

Bethanne recently found out she is pregnant. In order to protect Bethanne and the fetus from harm, her doctor has requested that Bethanne be allowed to refrain from working any night shifts, that she be allowed to work shifts that are less busy, and that she minimizes potential trauma situations that could cause her blood pressure to increase adversely. Bethanne recently brought this request (in writing) to you, the HR Manager at Highpoint Hospital.

Vignettes were randomly ordered to minimize context effects of either predictor variable.

Between-group Variables. We assessed the between group variable of whether the employee requesting leave was a pregnant female, injured female, or injured male on mean ratings of the vignette decisions.
Dependent Variables and Analyses

Within-group Dependent Variables and Analyses. For HR professionals, after each vignette, participants were asked, “as a person in a decision-making human resource role how likely would you be to grant this person’s request?”, with a nine-point scale ranging from “would definitely not grant this request” (1) to “would definitely grant this request” (9).

Means for each level of each independent variable (High Status, Low Status; Environmental Limitation, Stress Limitation, Physical Limitation) were computed for each subject in order to conduct repeated measure ANOVAs.

Between-group Dependent Variables and Analyses. The mean ratings for each of the levels of the independent variables were compared between pregnant females, injured females, and injured males. A t-test analyzed whether different decisions were made for pregnant and disabled (male and female) employees.

A repeated measures, mixed-design ANOVA was computed by analyzing data using both the within group factor(s) and the between group factor of pregnancy vs. disability to investigate interaction effects between within- and between-group independent variables. Post-hoc analyses were conducted as needed.

Results

Manipulation Checks

Two manipulation checks were performed to assess the consistency of the independent variables. The first manipulation check was on the status of the six occupations chosen for the vignettes. HR professionals were asked to rate the prestige of each job at the end of their survey. A score of 1 indicated “very great” prestige, while a score of 4 indicated “hardly any prestige at all”. A paired t-test indicated that high status jobs (doctor, lawyer, engineer) were associated with significantly higher ratings of prestige (M=1.5556, SD=.42285) than were the low status jobs (sales associate, truck driver, medical orderly) (M=3.5111, SD=.39859), t(29)=-19.919, p=.000.
The second manipulation check assessed the perceived masculinity of the six occupations chosen for the vignettes. HR professionals were asked to rate the perceived masculinity of each occupation on a scale from 1 ("completely masculine") to 6 ("completely feminine"). Doctor (M=2.5333, SD=.57135), sales associate (M=3.8667, SD=1.10589), truck driver (M=1.5000, SD=.50855), lawyer (M=2.8000, SD=.76112), engineer (M=2.2333, SD=.72793), and medical orderly (M=3.7333, SD=.78492) all had means demonstrating that these jobs were not seen as being predominantly feminine in nature. Using a midpoint of 3.5 on the scale of masculine to feminine jobs, no mean could be seen as constituting a predominantly feminine job. The results of this manipulation check can be seen in Table 1.

Table 1

<table>
<thead>
<tr>
<th>Occupation</th>
<th>n</th>
<th>M</th>
<th>SD</th>
</tr>
</thead>
<tbody>
<tr>
<td>Doctor</td>
<td>31</td>
<td>2.5333</td>
<td>.57135</td>
</tr>
<tr>
<td>Sales Associate</td>
<td>31</td>
<td>3.8667</td>
<td>1.10589</td>
</tr>
<tr>
<td>Truck Driver</td>
<td>31</td>
<td>1.5000</td>
<td>.50855</td>
</tr>
<tr>
<td>Lawyer</td>
<td>31</td>
<td>2.8000</td>
<td>.76112</td>
</tr>
<tr>
<td>Engineer</td>
<td>31</td>
<td>2.2333</td>
<td>.72793</td>
</tr>
<tr>
<td>Medical Orderly</td>
<td>31</td>
<td>3.7333</td>
<td>.78492</td>
</tr>
</tbody>
</table>

Reliability Analysis

To make sure that participants were attending to vignettes, we placed three sets of identical vignettes within the set of vignettes presented to participants. As indicated by Table 2, analyses indicate that responses to identical vignettes were significantly correlated (Q1: p=.039; Q2: p=.002; Q3: p=.001).
Table 2

Reliability analysis for HR professionals on three repeated vignettes

<table>
<thead>
<tr>
<th></th>
<th>First Answer to Reliability Questions</th>
<th>Second Answer to Reliability Questions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Q1</td>
<td>Q2</td>
</tr>
<tr>
<td>Q1</td>
<td>.373*</td>
<td>--</td>
</tr>
<tr>
<td>Q2</td>
<td>--</td>
<td>.531*</td>
</tr>
<tr>
<td>Q3</td>
<td>--</td>
<td>--</td>
</tr>
</tbody>
</table>

*Note. *=p<.05

The means and standard deviations for all conditions are presented in Table 3.

Table 3

Means and standard deviations on condition, status, and nature of accommodation in HR professionals

<table>
<thead>
<tr>
<th>Vignette</th>
<th>N</th>
<th>M</th>
<th>SD</th>
</tr>
</thead>
<tbody>
<tr>
<td>High Status</td>
<td>12</td>
<td>7.0618</td>
<td>1.15890</td>
</tr>
<tr>
<td>Low Status</td>
<td>9</td>
<td>5.9494</td>
<td>1.75633</td>
</tr>
<tr>
<td>Physical Limitation</td>
<td>7</td>
<td>6.8111</td>
<td>1.39014</td>
</tr>
<tr>
<td>Environmental Limitation</td>
<td>6</td>
<td>6.4258</td>
<td>1.71839</td>
</tr>
<tr>
<td>Stress Limitation</td>
<td>8</td>
<td>6.5081</td>
<td>1.33305</td>
</tr>
<tr>
<td>Pregnant</td>
<td>11</td>
<td>6.7489</td>
<td>1.42015</td>
</tr>
<tr>
<td>Otherwise Disabled</td>
<td>20</td>
<td>6.4955</td>
<td>1.26060</td>
</tr>
</tbody>
</table>
Research Questions

Research Question 1 investigated whether HR professionals demonstrated differences in decisions to accommodate employees based on whether the employee was pregnant or otherwise disabled. As can be seen in Table 4, the repeated measure, mixed-design MANOVA was not significant in the comparison of pregnant and otherwise disabled employees, $F(1,29)=.387$, $p=.539$. Effect size was also calculated between the pregnant and otherwise disabled groups, using Cohen’s $d$. In hypothesis testing, effect size is a quantitative measure of the strength of a phenomenon (Kelley, 2012). It is also often linked to substantive significance, or whether the finding would be considered practically important. There are several tools with which to quantify effect size, and this study will utilize Cohen’s $d$. Cohen’s $d$ is a measure used to compare the means between two groups. A small effect size is quantified as a Cohen’s $d$ of .2, a medium effect size is a Cohen’s $d$ of .5, and a large effect size is a Cohen’s $d$ of .8. The effect size for the pregnant and otherwise disabled conditions was small ($d = .1887$). Therefore, the answer to Research Question 1 was that pregnant and otherwise disabled employees were not treated differently with regards to decisions to accommodate or not.
Research Question 2 investigated whether high status jobs influenced HR professionals to grant the employee accommodation more than low status jobs. A repeated measure, mixed-design ANOVA was conducted to investigate this relationship. As can be seen in Table 4, there was a significant effect of status according to the mixed-design ANOVA, Wilks' Lambda = .608, F(1,29) = 18.730, p=.000. These findings suggest that when controlling for business necessity (including the nature of the position), HR professionals are more likely to accommodate employees in high status positions than those in low status positions.

Research Question 2a investigated whether the job status of the employee interacted with whether the employee requesting accommodation was pregnant or otherwise disabled to influence whether HR professionals granted the employee accommodation. This relationship was also
investigated in Table 4. There was not a significant effect of this interaction, Wilks’ Lambda = .960, F(1,29) = 1.223, p=.278. These results supported Research Question 2, but not 2a.

Research Question 2b. In order to test hypothesis 2b which asked whether HR professionals accommodate high status jobs more than low status jobs similarly for pregnant women and disabled employees, we conducted paired t-tests. As can be seen in Table 5, pregnant and otherwise disabled conditions differed significantly in HR professionals’ likelihood of accommodating employees in high status and low status positions. HR professionals were more likely to accommodate a pregnant employee in a high status position (M=7.0606, SD=1.20075) than a pregnant employee in a low status position (M=6.3333, SD=1.88037), t(10)=2.102; p=.031, one-tailed; d=.4610. Cohen’s d indicated a medium effect size. HR professionals were also more likely to accommodate a disabled employee in a high status position (M=7.0625, SD=1.16694) than a disabled employee in a low status position (M=5.7382, SD=1.69627); t(19)=4.513; p=.000, one-tailed; d=.9096. Cohen’s d indicated a large effect size. These results suggest that status influences decisions to accommodate for both pregnant and disabled employees, supporting Research Question 2b.

Table 5

Paired samples t-test for status in overall, pregnant, and otherwise disabled conditions

<table>
<thead>
<tr>
<th></th>
<th>High Status</th>
<th>Low Status</th>
<th>N</th>
<th>df</th>
<th>t</th>
<th>Sig (1-tailed)</th>
<th>d</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>M</td>
<td>SD</td>
<td>M</td>
<td>SD</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Overall</td>
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<td>1.15890</td>
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<td>31</td>
<td>29</td>
<td>4.876</td>
</tr>
<tr>
<td>Pregnant</td>
<td>7.0606</td>
<td>1.20075</td>
<td>6.3333</td>
<td>1.88037</td>
<td>11</td>
<td>10</td>
<td>2.102</td>
</tr>
<tr>
<td>Otherwise Disabled</td>
<td>7.0625</td>
<td>1.16694</td>
<td>5.7382</td>
<td>1.69627</td>
<td>20</td>
<td>19</td>
<td>4.513</td>
</tr>
</tbody>
</table>

Research Question 3 investigated whether the nature of the requested accommodation influenced HR professionals’ decisions to grant employee accommodations. The results of the
mixed-design ANOVA investigating the within group effect of nature of the requested accommodation was not significant, as can be seen in Table 4. This suggested that the likelihood of accommodating was not influenced by the type of requested accommodation that the employee suffered from.

Research Question 3a investigated whether the type of requested accommodation interacted with whether the employee in the vignettes was pregnant or otherwise disabled in influencing HR professionals' decisions to accommodate. As can be seen in Table 4, there was not a significant effect of this interaction, Wilks' Lambda = .864, F(2,28) = 2.208, p=.129.

Research Question 4 investigated whether the status of the job interacted with the type of requested accommodation to influence whether HR professionals granted the employee accommodation. As can be seen in Table 4, there was a close to significant effect for this interaction, (Wilks' Lambda = .817, F(2,28) = 3.127. p=.059), such that we decided to further investigate the form of this relationship. Paired samples t-tests were conducted to investigate the effects of type of accommodation in both low and high status conditions. As can be seen in Table 6, there was a significant difference between the high status, physical limitation condition (M=7.5081, SD=1.28531) and high status, stress limitation condition (M=6.7097, SD=1.43558); (t(30)=2.941; p=.006; d=.5860), but not between physical limitations and environmental limitations, nor between stress limitations and environmental limitations for the high status positions. This Cohen's d indicated a medium effect size. There were no significant differences between limitations in low status jobs. Paired samples t-tests were also conducted to investigate the effect of status in each of the three limitation conditions. These analyses, in Table 7, found that in each of the limitation conditions, all high status jobs were significantly more likely to be accommodated as compared to low status jobs; (t(30)=4.830; p=.000; d=.9416 for physical limitation; t(30)=3.102; p=.000; d=.6065 for environmental limitation; and t(30)=2.404; p=.023; d=.3593 for stress limitation). The Cohen's d for physical limitations indicated a large effect size, for environmental limitations indicated a medium effect size, and for stress limitations
indicated a small/medium effect size. These results provide some indication that the effect of limitation differs between different status conditions, but suggests that the effect of status is constant for the different limitations.

Table 6

**Paired samples t-tests for status x limitation interaction**

<table>
<thead>
<tr>
<th></th>
<th>Phys. Lim.</th>
<th>M</th>
<th>SD</th>
<th>Env. Lim.</th>
<th>M</th>
<th>SD</th>
<th>Stress Lim.</th>
<th>M</th>
<th>SD</th>
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</thead>
<tbody>
<tr>
<td></td>
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<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
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<td>Status</td>
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</tr>
<tr>
<td></td>
<td>7.5081</td>
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<td>7.0538</td>
<td>1.51803</td>
<td>--</td>
<td>--</td>
<td>6.7097</td>
<td>1.43558</td>
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<tr>
<td></td>
<td>7.5081</td>
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<td>--</td>
<td>--</td>
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<td>--</td>
<td>6.1720</td>
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<tr>
<td>Status</td>
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<td>6.1720</td>
<td>1.50769</td>
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<tr>
<td></td>
<td>--</td>
<td>--</td>
<td>5.8118</td>
<td>2.46634</td>
<td>6.1720</td>
<td>1.50769</td>
<td>31</td>
<td>30</td>
<td>-1.207</td>
</tr>
</tbody>
</table>

Table 7

**Paired samples t-test for status x limitation interaction**

<table>
<thead>
<tr>
<th></th>
<th>High Status</th>
<th>M</th>
<th>SD</th>
<th>Low Status</th>
<th>M</th>
<th>SD</th>
<th>N</th>
<th>df</th>
<th>t</th>
<th>Sig (1-tailed)</th>
<th>d</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Physical</td>
<td>7.5081</td>
<td>1.28531</td>
<td></td>
<td>5.8817</td>
<td>2.07730</td>
<td>31</td>
<td>30</td>
<td>4.830</td>
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<td>.9416</td>
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<tr>
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<td>5.8118</td>
<td>2.46634</td>
<td>31</td>
<td>30</td>
<td>3.102</td>
<td>.004</td>
<td>.6065</td>
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<tr>
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<td>Stress</td>
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<td>1.43558</td>
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<td>6.1720</td>
<td>1.50769</td>
<td>31</td>
<td>30</td>
<td>2.404</td>
<td>.023</td>
<td>.3593</td>
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</table>
Discussion

Findings

In this study, we sought to explore whether, when keeping the degree to which the essential duties of the job could be performed by pregnant or otherwise disabled candidates constant, the condition of a disability (pregnant or otherwise disabled), the status of a job (high or low), or the nature of accommodation requested (physical, environmental, or stress) influenced HR professionals’ decisions to accommodate an employee. We also investigated whether decisions to accommodate were influenced by an interaction between either status or the nature of accommodation with pregnancy/disability status and whether status and the nature of accommodation interacted. We found that the status of a job was a significant predictor in whether HR professionals granted accommodation to an employee. When the degree the employees could perform the job (business necessity) was held constant, an employee in a high status job was significantly more likely to be accommodated than an employee in a low status job. There was no significant interaction found between job status and whether the employee requesting accommodation was pregnant or otherwise disabled, nor was there a significant difference found between the nature of accommodation and whether HR professionals granted accommodation to employees in the vignettes. The interaction between the nature of accommodation and whether the employee requesting accommodation was pregnant or otherwise disabled was not significant either. The interaction of status and nature of accommodation approached significance, and further analyses determined that when a high status job involved physical limitations, it was more likely to be accommodated as compared to a high status job involving stress limitations. Regardless of limitation type, however, there was a significant difference between accommodation of high and low status jobs.

Theoretical and Practical Implications

Our results have practical implications for explaining how biases influenced by the status of the job and the nature of the accommodation may influence the perceptions of business
necessity in various organizational contexts when partially able employees request accommodation. Through Research Question 1, it was determined that pregnant employees were not more or less likely to be accommodated than otherwise disabled employees. This is a promising conclusion, suggesting that legislation may be creating more airtight laws that aid in uniform decision-making regarding disability and business necessity in the workplace. However, it could also mean that there are unfair decisions being made for both disabled and pregnant employees, and our findings for subsequent research questions support this idea.

When business necessity was held constant, status influenced decisions to accommodate pregnant and otherwise disabled employees. High status jobs were more likely to be accommodated than were low status jobs, pointing to a bias in interpreting business necessity across these conditions. We found that the difference in likelihood of accommodation occurred for both pregnant and disabled employees. The findings from Research Questions 2, 2a, and 2b therefore bring the fairness of disability court cases into question. Our results suggest that some court cases may be more influenced by the plaintiff's job status, rather than by the true business necessity of the job. One such example is the current Supreme Court case of Peggy Young, the driver for UPS who was denied light duty during her pregnancy when she could not complete a "business necessity" lifting duty of her job (*Peggy Young v. United Parcel Service, Inc.*, 2013). She claimed that this was not truly an essential duty of the job, and that she was never required to lift more than her at-risk pregnancy allowed. Enacting judgments based on status, rather than on business necessity, creates an unfair situation for employees in jobs of lower status. These jobs encompass the majority of job positions, and also include jobs where pregnant and disabled employees can less afford to take unpaid leave. Unfair accommodation can cause financial hardship and personal strain for these employees.

While it is disconcerting to realize that status plays such a role in interpreting business necessity, it is of positive note that the nature of accommodation (whether physical, environmental, or stress-related) does not significantly differ in predicting whether an HR
professional accommodates a partially able employee. This means that this potential predictor
does not significantly change the perception of what constitutes business necessity. The nature of
accommodation, however, does interact with the status of the job in question. Status, therefore,
can be seen as a powerful perceptual bias in the workplace. We will further explore here how our
findings suggest that changing this perceptual bias of status can theoretically dictate more
positive working outcomes for a class of employees that are most in need of both protection and
accommodation.

A study released by the Robert Wood Johnson Foundation found that education matters
for health outcomes of workers and their children (Commission to Build a Healthier America,
2009). A large body of evidence strongly linked education with health through three major,
interrelated pathways: health knowledge and behaviors, employment and income, and social and
psychological factors. The pathway of employment and income is the one related to our research
findings. More education generally means a greater likelihood of being employed, having a job
with healthier working conditions, and having higher wages. On the other hand, workers with
less formal education and training are more likely to hold lower-paying jobs with more
occupational hazards and poor working conditions that put them at a higher risk of injury and
other adverse health conditions (Cubbin, LeClere & Smith, 2000). These less-educated workers
are also more likely to experience psychosocial stress and have fewer health-related benefits
(Gabel et al., 2002). The results of our study found bias against accommodating those in lower
status jobs, and this finding could be one mechanism through which less educated, lower status
employees develop adverse health outcomes. Our findings also suggest the possibility for
adverse health outcomes for the children of such employees. Parents with lower educational
attainment typically face greater obstacles to creating healthy home environments and modeling
healthy behaviors for their children. Being less willing to accommodate lower status positions
means that these employees who have children may lose their positions when pregnant or injured
or may have to take unpaid leave during pregnancy or injury, which can create adverse financial
and health conditions for the entire family. In addition, pregnant women who are forced to take FMLA during their pregnancies won’t be paid to do so and are unable to take those twelve weeks at home with their child when he or she is born.

The detrimental effects of bias related to job status affect pregnant women as well as otherwise disabled workers. This can be seen in the previously mentioned Croteau, Marcoux, and Brisson study of small-for-gestational-age infants. This study found that there was an increased risk for a mother to have a small-for-gestational-age infant if she worked an irregular or shift-work schedule, had night work, had to engage in excessive standing posture, lifted heavy loads, experienced high levels of noise, and had high job strain with low social support (Croteau, Marcoux & Brisson, 2006). These types of dangers are found in greater proportions in lower status occupations. This means that bias against lower status workers could lead to more pronounced pregnancy complications. Understanding that such a status bias exists and taking steps to eliminate it are important measures to protect both disabled parents and their children and future mothers and their children.

Limitations

While the findings of this study have extremely important implications for the workplace, this study did have several potential limitations. The first limitation was sample size. Obtaining a sample with the required business experience was a challenge, and such a population is inherently extremely busy. This created difficulty in getting a high response rate for a study that required a time commitment to complete. Future studies can look at a larger group of HR professionals to improve the power of the study. However, the repeated measure design utilized in this study helped to provide the necessary power to draw significant conclusions, despite the small sample size.

A second potential limitation of this study was that the results may have been influenced by the fact that two jobs (sales associate and medical orderly) were deemed to be not as masculine as the other four jobs and that these two jobs were low status jobs, creating a possible
confounding variable. While this is noted as a potential limitation, the results of the masculinity manipulation check did not categorize these two jobs as predominantly feminine; rather, their ratings just passed the midpoint of the masculine/feminine continuum. It is not very likely that this strongly influenced this study’s results.

A third potential limitation of this study was that there was only one outcome measure used: the answer to a question of whether the HR professional would accommodate a partially able employee. A more complete picture may have been obtained through an analysis of the data surrounding why the HR professional gave his or her answer. Future studies should also qualitatively analyze the responses that HR professionals give as to why they provided their numerical answer, with trends in responses noted.

**Future Studies**

The current study can be extended in two ways. The current study held business necessity constant across all conditions. While this allowed us to analyze disability conditions, job status, and the nature of accommodation within-subjects, it would have been interesting to investigate how or if HR professionals differentially interpreted cases of full capacity, partial capacity, and no capacity by manipulating the ability to complete essential duties. In varying this capacity, we could have determined if status interacted with different levels of capacity to bias perceptions of business necessity. Future research should manipulate examples of full, partial, and no capacity to work in vignettes to provide another within-subjects measure of the impact of business necessity.

Future studies may additionally utilize a broader cross-section of the HR population to increase external generalizability of the findings. For example, HR professionals with varying levels of education and from various cultures may have different views and biases on accommodating employees with temporary disabilities. Elucidating those differences would be an interesting contribution to the literature.
Conclusion

A recent plethora of discrimination court cases regarding disability and pregnancy have brought to light many questions surrounding why outcome decisions have lacked uniformity. The current study sought to explore this perceptual bias by investigating whether pregnant and disabled candidates were accommodated similarly and whether job status and the nature of the accommodation influenced decisions to accommodate. Using a repeated measure vignette design, we found support for job status as a factor related to perceptual bias in granting accommodation to pregnant and otherwise disabled employees when interpreting business necessity. We also found an interaction between high status, physical limitation jobs and high status, stress limitation jobs in whether accommodation was granted. Our findings have far-reaching implications not only for pregnant and disabled workers, but also for their children and future children. Our results point to how imperative it is to clarify business necessity and incorporate that clarification into law. As the laws stand now, the perceptual bias in job status can lead workers in lower status jobs to not receive the accommodations they deserve. These workers are the employees most at-risk for further injury to themselves and their children if they are not granted equivalent accommodations as similarly disabled workers in higher-status occupations.
References


42 U.S.C. Sec.12101

U.S.C. Sec.12102

