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The Supreme Court Weighs in on The Pregnancy Discrimination Act – Providing Guidance to Employers and Protections for Pregnant Workers

The Supreme Court has recently issued an important opinion, *Young v. United Parcel Service, Inc.*, clarifying the protections afforded by the Pregnancy Discrimination Act ("PDA").

The PDA mandates that employers treat women "affected by pregnancy…the same for all employment-related purposes… as other persons not so affected but similar in their ability or inability to work." 42 U.S.C. § 2000e(k). The issue in *Young* was whether an employer's policy which did not accommodate pregnant employees yet accommodated many, but not all, workers with nonpregnancy-related disabilities ran afoul of the PDA.

When the plaintiff in *Young* became pregnant, her doctor told her she should not lift more than 20 pounds. Young, who was normally required to lift up to 70 pounds as part of her job, requested to be placed on light duty. UPS denied the request, explaining that the company only granted light duty to employees who met one of the following criteria: (1) the employee became disabled on the job; (2) the employee lost his or her Department of Transportation certifications; or (3) the employee suffered from an ADA-covered disability.[1] Pregnancy-related disabilities were not specifically covered by this policy. Young filed suit alleging pregnancy discrimination.

Young argued that the PDA requires an employer to provide the same accommodations to employees with pregnancy-related disabilities that it provides to employees with disabilities that have other causes but a similar effect on the employee's ability to work. UPS argued that its policy complied with the PDA since it was "pregnancy-blind" and treated Young the same as any worker who requested light duty but did not fit into one of the three categories above. The district court granted summary judgment for UPS on this basis, and the Fourth Circuit affirmed.

The Supreme Court rejected the analyses of both parties. It held that a pregnant worker could establish a prima facie case under the *McDonnell Douglas* framework by showing that she sought accommodation for her pregnancy-related condition, that the employer did not accommodate her, and that the employer did accommodate others "similar in their ability or inability to work." Once the employer proffers a legitimate, nondiscriminatory reason for denying the accommodation, the plaintiff can show pretext by providing evidence that the employer accommodated a large percentage of non-pregnant workers while failing to accommodate a large percentage of pregnant workers.

In other words, the PDA does not grant automatic "most-favored-nation" status to pregnant employees, meaning that if an employer provided one or two workers with a particular accommodation, it would be forced to do the same for any pregnant employee. But it requires something more than a facially-neutral policy if that policy results in pregnant employees being accommodated at a lower rate than similarly situated non-pregnant employees.

It is worth noting that in July 2014, after the Court had agreed to hear this case, the Equal Employment Opportunity Commission ("EEOC") issued guidelines that strongly supported Young's interpretation of the PDA, stating in relevant part that "[a]n employer may not refuse to treat a pregnant worker the same as other employees who are similar in their ability or inability to work by relying on a policy that makes distinctions based on the source of an employee's

1 This case arose before the 2008 Americans with Disabilities Act Amendments Act ("ADAAA") came into effect. The ADAAA increased protections with workers with disabilities (including by expanding the definition of "disability" to include temporary and less severe impairments).

limitations (e.g., a policy of providing light duty only to workers injured on the job)." 2 EEOC Compliance Manual § 626-I(A)(5). The Solicitor General submitted an amicus brief arguing that the Supreme Court should give "special, if not controlling" weight to these guidelines. In yet another blow to the EEOC – and to employers grappling with how much weight to give the EEOC's new guidelines – the Court refused to "rely significantly" on the guidelines, on the basis that the EEOC did not offer a sufficient explanation for what the Court deemed to be its new and "contrary" position.

Employers should carefully examine whether any of their policies provide a benefit to non-pregnant employees that is not available to pregnant employees, even if the policy does not specifically or intentionally bar pregnant employees from receiving the benefit. Although the Supreme Court stopped short of holding that pregnant employees are automatically entitled to any benefit offered to a non-pregnant category of employees, after *Young*, the benefits offered to non-pregnant employees can be offered as evidence of pretext in a discrimination claim.

In addition, employers should be aware of state and local laws that provide additional protection for pregnant employees. For example, a 2013 amendment to the New York City Human Rights Law requires employers with four or more employees to provide ADA-style reasonable accommodations for pregnancy, childbirth, and related medical conditions, unless the employer can prove that the accommodation would cause it an undue hardship.

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