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The Supreme Court Addresses Pregnancy Accommodations Under Title VII

On March 25, the U.S. Supreme Court issued its much anticipated decision in *Young v. United Parcel Service, Inc.*, which centered on whether UPS unlawfully discriminated against a pregnant employee by denying her a light-duty accommodation for her lifting restriction. The Court vacated a Fourth Circuit Court of Appeals decision, which granted summary judgment in favor of UPS.

Peggy Young, the plaintiff, was a part-time driver for UPS. UPS policy required drivers to be able to lift up to 70 pounds. When Young became pregnant, her doctors advised her that she should not lift more than 20 pounds during the first 20 weeks of her pregnancy. Based on its internal policy, UPS advised Young that she could not work under the lifting restriction.

Young sued UPS, claiming that it had discriminated against her by refusing to accommodate her pregnancy-related lifting restriction. Young alleged that UPS had provided other drivers who had similar restrictions with light-duty accommodations, but UPS argued that it only provided light-duty work to a limited number of employees, including those who: (1) were injured on the job; (2) had lost their Department of Transportation certification; or (3) had an ADA-covered disability.

Young argued that under the Pregnancy Discrimination Act (PDA), which amended the definitions subsection of Title VII to include pregnancy discrimination as a form of sex discrimination, if an employer accommodates only a subset of workers with disabling conditions, pregnant workers who are similar in their ability or inability to work must be treated the same regardless of whether there are other non-pregnant employees who do not receive the same accommodations. Unpersuaded by this broad approach, the Court stated that it doubted Congress "intended to grant pregnant workers an unconditional most-favored-nation status."

However, the Court also refused to accept UPS' interpretation of the PDA. UPS argued that the second provision of the PDA (which requires employers to 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") means that an employer is not required to accommodate a pregnant employee if there are other non-pregnant employees who also are not eligible for such accommodations. UPS argued that pregnant employees such as Young were treated exactly the same as non-pregnant employees who had temporary lifting restrictions due to off-the-job injuries, and that its refusal to provide an accommodation for Young was therefore lawful.

The Court also refused to "rely significantly" on the EEOC guidance which was issued in July of 2014 — less than two weeks after the Supreme Court decided to hear the case. The EEOC guidance provided that "an 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 limitations (e.g., a policy of providing light duty only to workers injured on the job)." The Court reasoned that the EEOC's position was inconsistent with previous positions and the EEOC failed to explain the basis of its guidance.

Instead, the Court announced its own interpretation. It held that a pregnant employee attempting to establish a claim of disparate treatment based on pregnancy may do so through the same general framework applicable to other types of employment discrimination claims (known as the *McDonnell Douglas* framework). An employee who alleges that an employer's denial of a pregnancy accommodation constitutes disparate treatment under the PDA must establish a prima facie case that: (1) she belongs to the protected class; (2) she sought an accommodation; (3) the employer did not accommodate her; and (4) the employer did accommodate others "similar in their ability or inability to work."

Once the employee establishes her *prima facie* case, the burden shifts to the employer to offer a legitimate, nondiscriminatory reason to justify its refusal to accommodate the employee. The Court advised, however, that the employer cannot merely claim that accommodating pregnant women is "more expensive or less convenient."

If the employer articulates a legitimate, nondiscriminatory reason, the employee must show the employer's reason is a pretext for pregnancy discrimination. The Court held that the employee may satisfy her burden at this stage by providing "sufficient evidence that the employer's policies impose a significant burden on pregnant workers, and that the employer's 'legitimate, nondiscriminatory' reasons are not sufficiently strong to justify the burden, but rather — when considered along with the burden imposed — give rise to an inference of intentional discrimination." For the claim to survive summary judgment, the employee can provide evidence that although the employer accommodates a large percentage of non-pregnant workers, it does not accommodate a large percentage of pregnant workers.

Applying this standard, the Court explained that Young may be able to show that UPS provides light-duty accommodations to most non-pregnant employees with lifting restrictions, while "categorically failing" to accommodate pregnant employees with similar lifting restrictions. Accordingly, the Court vacated the Fourth Circuit's grant of summary judgment in favor of UPS, as there was a genuine dispute as to whether UPS treated employees whose situation "cannot reasonably be distinguished from Young's" more favorably.

For employers, this case may create more confusion than clarification on the issue of what obligation it may have to provide light duty assignments to pregnant employees. However, given the Court's articulation of the applicable legal standard, employers should:

- review their light duty policies and determine whether such policies should also apply to pregnant employees;
- review all other workplace accommodation policies to ensure compliance with the PDA and Americans with Disabilities Act;
- establish a policy for addressing requests for an accommodation, and in particular, requests from pregnant employees; and
- train supervisors and managers with regard to pregnant employees' requests for an accommodation.

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