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Employment Law Alert

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Supreme Court Rules on Pregnancy Accommodations in the Workplace; Impact for Employers

In *Young v. United Parcel Service, Inc.*, No. 12-1226 (Mar. 25, 2015), the U.S. Supreme Court has clarified the meaning of a key provision of the federal Pregnancy Discrimination Act ("PDA") and its effect on employers' obligations to accommodate pregnant employees who have work restrictions. This new decision reverses a summary judgment for UPS, with the Court mapping out how a plaintiff may be able to prove that an employer's policies and decisions had intentionally discriminated against pregnant employees. The good news for employers is that the Court rejected the employee's very expansive interpretation of the PDA, likening it to a "most-favored-nation" approach. However, *Young v. UPS's* overall effect will likely be muted by the Americans with Disabilities Act Amendments Act ("ADAAA"), which postdated the employee's pregnancy in this case, and by state laws, including those in California, that already impose obligations on employers to accommodate pregnancy-related physical limitations.

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Peggy Young worked as a driver for UPS, which required its employees to be able to lift up to 70 pounds. After she became pregnant, her physician advised her not to lift more than 20 pounds. UPS then told Young that it could not accommodate this restriction and that she was not eligible for a light duty assignment, as (under company policy at the time) it made those available only to employees who (i) had physical limitations stemming from a work-related injury, (ii) had lost a federally required driving certification, or (iii) had a disability covered by the ADA. Young took an unpaid leave for the duration of her pregnancy and later sued UPS, alleging the denial of a light duty assignment violated the PDA (42 U.S.C. § 2000e(k)). The lower courts ruled for UPS, essentially finding that its light duty policies did not discriminate against pregnant employees.

The PDA has two sections, one stating that pregnancy bias is a form of sex discrimination based on sex, and the other declaring that female workers who become pregnant must be treated the same as other workers who "are similar in their ability or inability to work." The dispute in *Young v. UPS* involved the second provision. The Court first rejected the parties' competing interpretations. Plaintiff Young, supported by the United States, argued that pregnant workers are entitled to an accommodation if any other worker is

accommodated for a similar impairment. The Court disagreed, calling this argument a "most-favored-nation" approach that found no support in the statute's words or intent. In rejecting that approach, the Court refused to follow recent EEOC pregnancy discrimination guidelines that provide a similarly liberal interpretation of the accommodation duty. The Court noted that the EEOC only issued the guidelines after the Court had granted certiorari in this case, and the agency had failed to explain either its rationale or why it had departed from the near-opposite position it had taken in the past.

The Court also rejected UPS's interpretation of the PDA. The employer argued that Congress added the second section to clarify that sex discrimination includes pregnancy discrimination. According to the Court, Congress had already stated that intent in the first part of the PDA, and this reading would not carry out Congress's goal to accord women more protection than the Supreme Court had previously held was provided under Title VII.

Having rejected the parties' positions, the Court articulated a middle ground interpretation that in part relied on its longstanding construction of Title VII, found in cases such as *McDonnell Douglas v. Green*, 411 U.S. 792 (1973). Under this approach, a female employee alleging pregnancy discrimination must offer proof that (i) she is in the protected group (*i.e*., pregnant women), (ii) she asked to be accommodated because her pregnancy interfered with her ability to perform her normal job duties, and (iii) the employer refused the accommodation even though it provides similar accommodations for other workers who also are temporarily unable to fulfill their usual job duties. The employer then may show that its policy was not biased against pregnant workers, but had a neutral business rationale – although "that reason normally cannot consist simply of a claim that it is more expensive or less convenient to add pregnant women" to the categories of those whom the employer accommodates. The plaintiff can challenge this explanation as pretext for bias against pregnant employees by showing that the policy puts a "significant burden" on female workers and that the justification for the policy is "not sufficiently strong" to justify that burden. The Court explained, for example, that a plaintiff can create an inference of discrimination with evidence that the employer accommodates a large percentage of nonpregnant workers while denying such treatment for most pregnant workers. It thus appears that the Court's approach borrows from disparate impact law in that proof of intentional disparate treatment against a pregnant employee will require an evaluation and weighing of the employer's business reasons for its policies that allegedly deny equal treatment to pregnant employees.

As noted, the 2008 ADAAA will likely limit the significance of *Young v. UPS*, since the amendments require employers to accommodate employees who have developed temporary lifting, standing or bending restrictions that are unrelated to a work-related injury or condition. Likewise, California and other states have enacted legislation that requires workplace accommodations for pregnant employees. For example, California's pregnancy regulations specify that a female employee who is "affected by pregnancy" may be entitled to an accommodation or transfer to a less strenuous position when "medically advisable."

At a minimum, *Young v. UPS* is likely to result in more litigation involving treatment of pregnant employees. Thus, employers should reassess their disability accommodation policies, either to ensure they provide protections for pregnant employees like those available to other employees with similar physical limitations, or, to the extent differences in treatment exist, to carefully evaluate whether the business justifications for such differences will withstand judicial scrutiny. Employers should also respond appropriately to requests for pregnancy-related accommodations to minimize exposure to pregnancy discrimination claims.

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