

Supreme Court Vacates Employer Victory in Pregnancy Discrimination Case

Friday, March 27, 2015

The **U.S. Supreme Court's** March 25, 2015 decision in ***Young v. United Parcel Service, Inc.*** brings some clarity to the issue of whether and when employers are required to provide work-related accommodations to pregnant employees.

As employers well know, **Title VII of the Civil Rights Act** of 1964 prohibits discrimination against an employee with respect to terms, conditions, or privileges of employment on the basis of, among other characteristics, the employee's sex. In 1978, Congress enacted the Pregnancy Discrimination Act, which clarified that unlawful sex discrimination includes discrimination "because of or on the basis of pregnancy, childbirth, or related medical conditions." 42 U.S.C. § 2000e(k). The Pregnancy Discrimination Act further provides that

"women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes... as other persons not so affected but similar in their ability or inability to work..." *Id.* In *Young*, the Supreme Court addressed the question of whether this latter provision requires an employer to provide light-duty assignments as an accommodation to pregnant employees (who have been placed on medical restrictions as a result of their pregnancy), if the employer provides light duty assignments as an accommodation to some, but not all, other employees.

Young was a part-time driver for UPS, who became pregnant and was placed on a 20 pound lifting restriction, as a result. At the time, UPS required drivers like Young to be able to lift parcels weighing up to 70 pounds. While UPS made light duty assignments available to individuals who (1) experienced on-the-job injuries, (2) lost their Department of Transportation certification, or (3) suffered from a disability covered by the Americans with Disabilities Act, UPS refused to accommodate Young's lifting restriction because she did not fall into any of these three categories and informed her that she would not be able to return to work until after her pregnancy.

Young brought suit against UPS, claiming that its refusal to accommodate her pregnancy-related lifting restriction constituted unlawful discrimination. Specifically, Young argued that, if an employer accommodates even one or two employees that are similar in their inability to work as pregnant employees, then the employer is obligated to provide the same accommodation to pregnant employees, notwithstanding other considerations. UPS argued the opposite, asserting that all the Pregnancy Discrimination Act did was clarify that Title VII's prohibition on discrimination includes discrimination on the basis of pregnancy, childbirth, or related medical conditions, nothing more. Under UPS's interpretation of the law, an employer did not violate Title VII by maintaining a facially neutral policy that provided light duty assignments only to a specific sub-set of employees, even though pregnant employees were not entitled to an accommodation under such a policy. UPS reasoned that because pregnant employees were treated the same as all other non-pregnant employees who did not fall into one of the designated categories for which light duty assignments were available, there was no discrimination. The district court agreed with UPS and granted its motion for summary judgment. The Fourth Circuit affirmed.

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In a 6-3 decision, the Supreme Court disagreed and vacated the grant of summary judgment, sending the case back for further proceedings. In so doing, the Court attempted to navigate a middle ground between the parties' "polar opposite" interpretations of the Pregnancy Discrimination Act. According to the majority, the proper interpretation of the Act is straight-forward and requires "an individual pregnant worker who seeks to show



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disparate treatment through indirect evidence [to] do so through application of the McDonnell Douglas framework." Under this well-established mechanism, a pregnant employee alleging that the denial of an accommodation constitutes disparate treatment in violation of Title VII must first establish a prima facie case by showing 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." The employer then has the burden of justifying its denial of the accommodation by demonstrating that it relied on "legitimate, non-discriminatory" reasons for its decision. The justification, however, "cannot consist simply of a claim that it is more expensive or less convenient to add pregnant women to the category of those ('similar in their ability or inability to work') whom the employer accommodates." If the employer offers legitimate, non-discriminatory reasons for its actions, the plaintiff then has the burden of establishing that the employer's proffered reasons are, in fact, pretextual.

Key to the decision in *Young* is the Court's holding that a plaintiff can withstand summary judgment 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..." The Court further held that a plaintiff can meet this standard "by providing evidence that the employer accommodates a *large percentage* of nonpregnant workers while failing to accommodate a *large percentage* of pregnant workers." (emphasis added). Of note, in reaching these conclusions, the Court gave no deference to the Equal Employment Opportunity Commission's July 14, 2014 enforcement guidance addressing pregnancy discrimination and related issues.

While the *Young* decision provides some clarity, the Court did not draw a definitive line establishing when employers may legitimately distinguish between employees in the provision of accommodations (e.g., on-the-job injuries/restrictions v. off-the-job injuries/restrictions). The take-away from *Young* is that employers must re-examine their accommodation practices, even those that are facially neutral, to make sure that they have strong, legitimate, non-discriminatory reasons for not extending accommodations to pregnant employees. Absent such support, a policy that provides light duty assignments to workers who suffer on-the-job injuries, for example, but does not extend the same accommodation to pregnant employees, is subject to challenge under Title VII and the Pregnancy Discrimination Act. This is especially true where the employer accommodates a "large percentage" of non-pregnant employees in this manner.

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