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U.S. Supreme Court Tackles Pregnancy Discrimination in the Workplace

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On March 25, 2015, the ***Supreme Court*** of the United States issued its long-awaited decision in ***Young v. United Parcel Service, Inc***., which interprets the federal ***Pregnancy Discrimination Act ("PDA")***. All employers need to be up to speed on the implications of this opinion.

Generally speaking, the PDA prohibits discrimination and harassment on account of a woman's pregnancy, childbirth, or related medical condition. In addition to protecting women who are currently pregnant, it also prohibits discrimination based on an employee's ability or intention to become pregnant, and based on an employee's past pregnancy.

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The PDA requires employers to treat women affected by pregnancy the same for all employment-related purposes as other persons not affected by pregnancy. In other words, an employer must treat a pregnant employee temporarily unable to perform the functions of her job because of her pregnancy or related medical condition in the same manner in which it treats other employees in their ability or inability to work. The contours of this concept were what Supreme Court was confronted with in the *Young* case.

Ms. Young's lawsuit stemmed from UPS's refusal to accommodate a 20-pound lifting restriction that applied to her when she became pregnant. Ms. Young worked as a part-time driver, and drivers are required to be able to lift up to 70 pounds. Because Ms. Young could not lift 70 pounds, UPS did not allow her to work.

When Ms. Young filed suit under the PDA as a result of this determination, she argued that UPS discriminated against her on account of her pregnancy because UPS would accommodate non-pregnant employees who were subject to similar restrictions as hers. For example, pursuant to a collective bargaining agreement, UPS provided temporary alternative work assignments to employees unable to perform their normal work assignments due to an on-the-job injury. Ms. Young also introduced evidence that a number of employees received accommodations while suffering similar or more serious disabilities than she suffered and that some of these disabilities had not been incurred on the job. According to the testimony of one employee, the only time a light duty request became an issue occurred when the requests were made by pregnant employees. UPS also provided accommodations to drivers who lost their Department of Transportation certifications because of a failed medical exam, a lost driver's license, or a motor-vehicle accident.

The lower courts found in favor of UPS. On appeal, the Supreme Court applied the traditional *McDonnell Douglas*

burden-shifting test to determine whether the denial of an accommodation constitutes discrimination under the PDA. Under that standard, a plaintiff, such as Ms. Young, must make a *prima facie* showing: (1) that she belongs to a protected class, (2) that she sought accommodation, (3) that the employer did not accommodate her, and (4) that the employer did accommodate others similar in their ability or inability to work. If the employee can make that *prima facie* showing, the employer may then justify its refusal to provide an accommodation by providing legitimate, non-discriminatory reasons for denying the requested accommodation.

However, in *Young*, the Supreme Court cautioned that the "legitimate, non-discriminatory reason" normally cannot consist simply of a claim that it is more expensive or less convenient to add pregnant women to the category of those whom the employer accommodates. If the employer is able to provide a legitimate, non-discriminatory reason for its conduct, the employee may then show that the employer's proffered reasons are pretextual.

The Supreme Court explained that one way in which an employee can show pretext is by providing evidence that the employer's policies impose a significant burden on pregnant workers and that the employer's legitimate, non-discriminatory reasons are not sufficiently strong to justify the burden, but, instead, give rise to an inference of discrimination. For instance, the Court stated, the employee can do this by proving that the employer accommodates a large percentage of non-pregnant workers while failing to accommodate a large percentage of pregnant workers. Ultimately, the Supreme Court found that Ms. Young provided – in her specific situation – enough evidence of possible pretext to overturn the lower court's grant of summary judgment, so it sent the case back to the Fourth Circuit Court of Appeals for further determination consistent with its opinion.

The specifics of Ms. Young's situation notwithstanding, there are a few important more general takeaways for employers from the Supreme Court's opinion. The first is that employers need to scrutinize more carefully whether they really are treating pregnant employees in the same manner as they treat non-pregnant employees. For instance, if employers provide modified duty to non-pregnant employees injured on the job, they should provide modified duty to pregnant employees who are under similar work restrictions.

Another thing to keep in mind is that, while the Equal Employment Opportunity Commission ("EEOC") recently issued Guidance for employers on dealing with pregnancy under the PDA, the Supreme Court criticized the reliability of the Guidance in its opinion, suggesting that it was not promulgated "thoroughly" and questioning its consistency. As such, employers may need to be cautious in the future about putting too much emphasis on all the mandates in that Guidance document.

Finally, there is something to be said for the view that the overall import of the *Young* opinion may be "much ado about nothing," since the Americans with Disabilities Act Amendments Act ("ADAAA") – which went into effect a little more than 6 years ago – significantly broadened the scope of the term "disability" so much that employees with limitations due to pregnancy arguably now fall within the scope of the ADA, which entitle them to a reasonable accommodation in any event. That interpretation, combined with the growing number of individual state laws protecting the right of pregnant employees to be provided with a reasonable accommodation (including, for example, under the West Virginia Pregnant Workers' Fairness Act), are both much more likely to have a practical, day-to-day impact for employers when it comes to dealing with pregnancy. Even though these concepts were not front-and-center in the *Young* case, it is important for employers not to forget their applicability.

Needless to say, dealing with pregnancy in the workplace isn't getting simpler for employers. When in doubt about what to do, consulting competent counsel is advised.