



Apr 01, 2015

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U.S. Supreme Court Remands *Young v. UPS* and Creates New Standard for Pregnancy Discrimination Claims

In a 6–3 decision, the U.S. Supreme Court remanded a closely watched Fourth Circuit Court of Appeals decision in *Young v. UPS* and created new standards for deciding pregnancy discrimination claims.

Background

Young, a part-time package car driver for UPS, had complications related to her pregnancy and was placed on lifting restrictions by her doctor prohibiting her from lifting more than 20 pounds. At UPS, it is an essential function for package car drivers to be able to lift 70 pounds or more. Because Young was medically restricted from performing the essential functions of her job, she was given medical leave until she could perform the essential functions. Young, however, requested a different “light duty” position until her medical restriction was lifted. Although UPS offered “light duty” work to other employees unable to perform their regular duties because of on-the-job injuries, ADA disabilities, or Department of Transportation (DOT) restrictions, Young was not allowed to work “light duty” because she did not fit into any of the above-listed categories.

Previously, the Fourth Circuit ruled in UPS’s favor and held that Young was not treated differently from other employees similar in their ability or inability to work. UPS had a facially neutral policy that only allowed individuals with on-the-job injuries, ADA disabilities or DOT restrictions to work “light duty.” Although Young was denied “light duty”, it was because she did not qualify for the program’s non-pregnancy related factors. Young was treated the same as all other employees who did not suffer from on-the-job injuries, ADA disabilities or DOT restrictions.

Supreme Court Rejects Both Parties’ Arguments

The Supreme Court struck down part of the Fourth Circuit's reasoning and disagreed with both Young and UPS's arguments interpreting the Pregnancy Discrimination Act (PDA). Young argued that pregnant employees should be given any accommodation that was previously given to any other employee, regardless of other factors, if they are similar in their ability or inability to work. The Supreme Court rejected this "most favored nation" status. The Supreme Court held that "disparate treatment law normally allows an employer to implement policies that are not intended to harm members of a protected class, even if their implementation sometimes harms those members, as long as the employer has a legitimate, nondiscriminatory, nonpretextual reason for doing so."

UPS conversely argued, in part, that the PDA requires employers to treat pregnant women the same as other employees similar in their ability or inability to work, unless there are other differentiating criteria. UPS argued that they treated Young the same as any other non-pregnant employee who did not suffer from an on-the-job injury, ADA disability or DOT restriction.

Supreme Court Creates New Analysis for Pregnancy Discrimination Act Claims

The Supreme Court disagreed with both parties' interpretations and created a new interpretation of the PDA. The Supreme Court held that an employee can establish a PDA claim by following the familiar three-part *McDonnell Douglas* test. Absent direct evidence, an employee can establish a PDA failure-to-accommodate claim by demonstrating 1) she is a member of a protected class; 2) she sought an accommodation; 3) the employer failed to accommodate her; and 4) the employer did accommodate others "similar in their ability or inability to work." The employer may then rebut the employee's *prima facie* case by relying on a legitimate, nondiscriminatory reason for denying the accommodation. "That 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 puts forward a nondiscriminatory reason, the employee must then establish that the employer's reason was pretextual. Importantly, the Supreme Court held that an employee may establish this by proving that an "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." Specifically, the Supreme Court stated that if an employer has a policy that accommodates a large percentage of nonpregnant workers, but also fails to accommodate a large percentage of pregnant workers, that policy could be discriminatory.

New Standard Requires Careful Examination of Previous Accommodations for Other Employees

The Supreme Court also admonished the Equal Employment Opportunity Commission (EEOC), which issued new pregnancy discrimination guidance just two weeks after the Supreme Court decided to review *Young v. UPS*. The Supreme Court held that the EEOC's guidance lacked the timing, consistency and thoroughness of consideration to be persuasive. The Supreme Court also held that the EEOC's guidance lacked basis and was inconsistent with positions long advocated by the government. Revisions to the EEOC's guidelines are likely after the Supreme Court's decision.

Importantly, after the Fourth Circuit ruled in favor of UPS, UPS voluntarily changed its internal policy and now makes "light duty" work available to pregnant workers with lifting or other physical restrictions to the same extent as such work is available as an accommodation to employees with similar restrictions resulting from on-the-job injuries.

The Supreme Court's new standard creates some new issues for employers, as they can no longer rely upon facially neutral policies to justify the denial of an accommodation to a pregnant employee. When presented with accommodation requests from pregnant employees, employers will have to examine what accommodations they have provided to other employees in the past, who were similar in their ability or inability to work. Employers should also make sure that even facially neutral policies do not result in a large

percentage of pregnant employees being treated differently than non-pregnant employees.

For questions regarding this or any other labor and employment issues, contact [Neal Shah](#) or any other member of the Frost Brown Todd [Labor and Employment Practice Group](#).

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