

LEGAL UPDATES

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U.S. Supreme Court Sheds New Light on the Issue of Accommodations to Pregnant Employees

On Wednesday, March 25, 2015, the United States Supreme Court issued a 6-3 decision in *Young v. United Parcel Service* that will allow a former employee to continue to litigate her claim for discrimination under the Pregnancy Discrimination Act (PDA). The Supreme Court's opinion sheds new light on the issue of whether employers are required to offer accommodations to pregnant employees and provides a test for analyzing claims under the PDA.

Background

In 2007, plaintiff Peggy Young, a delivery driver with United Parcel Service (UPS), brought suit against the company alleging discrimination under the PDA after she was denied light duty work and placed on unpaid leave after undergoing in vitro fertilization. The PDA, which amended Title VII of the Civil Rights Act in 1978, requires 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." 42 U.S.C. §2000e(k).

Young's lawsuit alleged that this section of the PDA required UPS to offer her light duty work because UPS had policies making light duty work available to individuals with work-related injuries and disabilities. Young argued that because UPS accommodated other employees who were not pregnant, it should be required to accommodate her because she was similarly unable to work. In contrast, UPS argued that it treated Young the same as other workers who also did not qualify for light duty under its policies and thus did not discriminate against her based on her pregnancy.

The Supreme Court's Decision

The Supreme Court rejected both Young's and UPS's interpretations of the PDA. The Court found Young's interpretation too broad because her argument would provide a "most-favored-nation" status to pregnant employees. Under Young's interpretation, the Court reasoned that any time an employer granted an accommodation, it would then be required to provide "similar accommodations to *all* pregnant workers (with comparable physical limitations), irrespective....of any other criteria." The Court also dismissed UPS's interpretation of the PDA as too narrow, stating that its reading of the statute would negate Congress' intent in passing the PDA.

Having renounced both parties' interpretations of the PDA, the Court provided a standard for analyzing claims of pregnancy discrimination using the *McDonnell Douglas* burden shifting framework applied to other disparate treatment claims. Specifically, the Court stated the plaintiff has the initial burden to establish a *prima facie* case of discrimination by showing (1) the plaintiff belongs in a protected class; (2) the plaintiff sought accommodation; (3) the employer did not accommodate the plaintiff; and (4) the employer did accommodate others "similar in their ability or inability to work."

If the plaintiff establishes a *prima facie* case of discrimination, the employer can justify its refusal to accommodate by providing a "legitimate, non-discriminatory" reason for denying the accommodation. If the employer provides such a "legitimate, non-discriminatory reason," the burden then shifts back to the employee to demonstrate the employer's offered reason was pretextual.

To show evidence of pretext, the Supreme Court explained that a plaintiff can provide "sufficient evidence that the employer's policies impose a significant burden on pregnant workers," and that the employer's proffered reason is "not sufficiently strong to justify the burden." The Court stated that the plaintiff can support a pretext argument by presenting evidence that the "employer accommodates a large percentage of non-pregnant workers while failing to accommodate a large percentage of pregnant workers."

After setting forth its new standard under the PDA, the Court remanded the case back to the lower court to apply its new standard to the facts of the case.

What This Means to You

The Supreme Court's decision opens the door for pregnancy discrimination claims based on requested accommodations. Prior to the Supreme Court's decision in *Young*, several states enacted legislation requiring employers to provide accommodations to pregnant workers, and the *Young* decision will likely encourage more states to impose similar obligations.

Employers should review their policies and practices concerning accommodations to determine whether they could run afoul of the PDA or any other state or local laws. Employer policies and

practices that provide accommodations to some workers (including those injured on the job) while denying similar accommodations to pregnant workers should be given careful scrutiny.

Additionally, if pregnant employees request accommodations, employers should engage in an interactive dialogue to determine whether reasonable accommodations exist that will not amount to an undue hardship for the employer.

Contact Information

For more information concerning this or other issues affecting labor and employment, please contact your Husch Blackwell attorney or an attorney in our Labor & Employment practice group.