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U.S. Supreme Court Provides Roadmap to Avoid Baby Bump Blunders

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On March 25, 2015, the Supreme Court issued its long-awaited opinion in Young v. United Parcel Service, Inc. to address whether, and to what extent, the Pregnancy Discrimination Act requires reasonable accommodations of pregnancy-related health issues and restrictions. Peggy Young was a driver for United Parcel Services (UPS), and UPS requires all drivers to be able to lift 70 pounds (and up to 150 pounds with assistance). Young became pregnant after suffering several miscarriages, and her doctor placed her on a 20-pound lifting restriction for the first 20 weeks of pregnancy and then a 10-pound restriction for the remainder of the pregnancy. Young sought an accommodation from UPS, which was denied. At that time, UPS only provided accommodations in three situations: 1) an employee had been injured on the job/workers' compensation; 2) an employee had a disability as defined under the Americans with Disabilities Act; or 3) an employee had temporarily lost his/her Department of Transportation certifications. Since Ms. Young did not meet one of these three conditions, UPS did not find it necessary to provide an accommodation, and UPS told Ms. Young that she could not work until the lifting restrictions had been lifted.

An aggrieved Ms. Young filed suit, alleging disparate treatment. UPS argued that "it had not discriminated against Young on the basis of pregnancy but had treated her just as it treated all 'other' relevant 'persons.'" That argument was successful with the District Court, and UPS successfully obtained summary judgment which was affirmed by the Fourth Circuit Court of Appeals. Yesterday, the Supreme Court said those decisions were incorrect.

The Court held:

In our view, the [Pregnancy Discrimination] Act requires courts to consider the extent to which an employer's policy treats pregnant workers less favorably than it treats nonpregnant workers similar in their ability or inability to work. … Ultimately the court must determine whether the nature of the employer's policy and the way in which it burdens pregnant women shows that the employer has engaged in intentional discrimination.

The Court noted, however, that the PDA does not give pregnant employees "an unconditional most-favored-nation status." And the Court declined to significantly rely on the EEOC's July 2014 pregnancy guidance.

Instead, the Court held that to state a prima facie case of disparate treatment for failure to accommodate, the plaintiff must show that "she belongs to the protected class, that she sought accommodation, that the employer did not accommodate her, and that the employer did accommodate others 'similar in their ability or inability to work.'" The burden then shifts to the employer to state a legitimate, non-discriminatory reason for the denial of the accommodation; however, "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 ('similar in their ability or inability to work') whom the employer accommodates." The burden then shifts back to the employee to show that the proffered reasons are pretext, and the Court held that a plaintiff can create a genuine issue of fact as to pretext by showing that "the employer accommodates a larger percentage of nonpregnant workers while failing to accommodate a large percentage of pregnant workers." In the Court's opinion, Young had created a genuine issue of material fact, and the Court remanded her case for further development.

What does this mean for employers? The Court declined to interpret the PDA as creating an obligation on the employer to accommodate a pregnant employee if it accommodates any employees. Instead, the Court posed the inquiry as "[W]hy, when the employer accommodated so many, could it not accommodate pregnant women as well?" As such, now is a good time to review your company's policy and procedures for granting accommodations with that question in mind. If you find that you are accommodating a large number of employees and cannot articulate a reason for not accommodating pregnant employees, it is time to adjust your policies. Additionally, train your managers and supervisors to recognize a pregnancy-related accommodation request. And while the Supreme Court did not adopt the EEOC's guidance as law, we would encourage you to review the EEOC's guidance on the subject and to adopt the "Best Practices" to the extent that your company is able.

UPS failed to accommodate Young in 2006, and yesterday's Supreme Court opinion does not end this matter. The time and expense of nine years of litigation is astronomical. You may want to adopt UPS' lead – while the case was pending before the Supreme Court, they changed their accommodation policy to cover pregnancy-related restrictions.