

## **CLIENT ALERT: EEOC Issues Updated Pregnancy Discrimination Guidance**

The Equal Employment Opportunity Commission (EEOC) recently revised its pregnancy discrimination enforcement guidance to comport with the U.S. Supreme Court's recent holding in *Young v. United Parcel Service, Inc.*, 135 S. Ct. 1338 (2015), which clarified the legal framework for pregnant employees challenging workplace accommodation policies and practices under the Pregnancy Discrimination Act (PDA).

### ***Young v. UPS* and the EEOC's Original Enforcement Guidance**

In *Young*, the Supreme Court ruled in favor of a pregnant employee who claimed that the United Parcel Service's (UPS's) denial of her request for light-duty work was unlawful under the PDA, and held that an employee could prove a violation of the PDA if the employer's policies placed a "significant burden" on pregnant employees without a "sufficiently strong justification." (More information regarding the decision can be found in MBJ's Client Alert: [U.S. Supreme Court Clarifies Legal Test for Pregnancy Discrimination Cases](#)).

On July 14, 2014, less than two weeks before the Supreme Court granted certiorari review in *Young*, the EEOC issued its "Enforcement Guidance on Pregnancy Discrimination and Related Issues" (Enforcement Guidance). In the EEOC's original Enforcement Guidance and in its amicus brief filed in the *Young* decision, the EEOC took the position that it was a violation of the PDA for an employer's policy to provide light duty only to employees with on-the-job injuries and/or to employees with disabilities under the Americans with Disabilities Act (ADA), but not to pregnant employees. The EEOC further took the position that employees with disabilities or on-the-job injuries serve as appropriate comparators to pregnant employees.

However, in the *Young* decision, the Supreme Court was critical of the EEOC and rejected its broad interpretation of the PDA which would have allowed for a per se violation of the PDA whenever an employer provided accommodations for some employees, but denied them to pregnant women who had similar limitations in their ability or inability to work. In refusing to give special or controlling weight to the EEOC's July 2014 guidelines, the Supreme Court noted that: the guidelines were promulgated after certiorari was

granted in the case; the EEOC was taking a position on which previous EEOC guidelines were silent; the guidelines were inconsistent with positions long advocated by the U.S. Government; and the EEOC did not explain the basis for its guidance.

### **The EEOC's Revised Enforcement Guidance**

On June 25, 2015, the EEOC issued a revised Enforcement Guidance, which supersedes the original guidance issued in July 2014, to reflect the Supreme Court's holding in *Young*. The revised guidance includes changes to the sections on disparate treatment and light duty and deletes a section from the prior guidance regarding how employers should treat pregnant employees and persons with similar abilities or inabilities to work.

As the updated guidance explains, women may be able to prove a violation of the PDA if an employer accommodates some employees but refuses to similarly accommodate pregnant women. Specifically, the revised Enforcement Guidance explains that a plaintiff can establish a *prima facie* case of discrimination by showing that: (1) she is pregnant, (2) she requested an accommodation, (3) her request was denied, and (4) her employer accommodated others who were similar in their ability or inability to work. The employer may then demonstrate a legitimate, nondiscriminatory reason for treating the pregnant employee differently. However, this reason normally cannot be that it is more expensive or less convenient to accommodate pregnant employees. Even if the employer meets the showing for a legitimate, nondiscriminatory reason for the different treatment, the employee may still demonstrate pretext by providing sufficient evidence to show the employer's policies imposed a "significant burden" on pregnant employees and that the reasons for the policies are not "sufficiently strong" to justify the burden. While these new standards have yet to be fully-defined, an example from the revised guidance suggests that an inference of pretext may be inferred where an employer accommodates a large percentage of non-pregnant employees with lifting limitations but does not similarly accommodate pregnant employees with lifting restrictions.

Other than the revisions to reflect the *Young* decision, the EEOC's guidance remains largely unchanged on other topics such as lactation and breastfeeding, prohibition of forced leave, the obligation to treat women and men the same with respect to parental leave policies, and access to health insurance, among others. In addition to the revised Enforcement Guidance, the EEOC issued a revised question-and-answer document on pregnancy

discrimination issues and a new small business fact sheet. The [Enforcement Guidance, Q & A document](#) and [Fact Sheet](#) are available on the EEOC's website at [www.eeoc.gov](http://www.eeoc.gov).

### **Key Takeaways**

The EEOC's revised Enforcement Guidance provides employers with insight into how the EEOC will enforce pregnancy-related issues under the PDA and ADA moving forward. As such, employers need to be aware of the new guidance and review their policies and procedures to ensure that they are compliant. As the recent activity demonstrates, both through the *Young* decision and the EEOC's issuance of its Enforcement Guidance, it is important for employers to stay abreast of the relevant law on these developing issues.

For any questions regarding compliance with the PDA, ADA, and other requirements affecting pregnant employee, employers should contact their MBJ attorney.

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