CLIENT ALERT: U.S. Supreme Court Clarifies Legal Test for Pregnancy Discrimination Cases

On March 25, 2015, in *Young v. United Parcel Service, Inc.*, the U.S. Supreme Court ruled in favor of a pregnant employee who claimed that her employer's denial of a request for light-duty work was unlawful under the Pregnancy Discrimination Act. In doing so, the Court clarified the standard used in analyzing pregnancy discrimination and accommodation claims under federal law.

Factual Background and Procedural History

Peggy Young was a part-time delivery driver for the United Parcel Service (UPS). When she became pregnant, Young's doctor advised her that she should not lift more than 20 lbs. UPS, however, required its drivers to be able to lift packages weighing up to 70 lbs. Per UPS's collective bargaining agreement, UPS provided light-duty assignments to employees with on-the-job injuries. Further, the company regularly provided light duty or other accommodations to employees who had disabilities and drivers who lost U.S. Department of Transportation certification and were unable to drive. Employees who did not fall into any of these categories—whether male or female—were not eligible for light-duty assignments.

UPS denied Young's accommodation request for light duty, and instead Young had to take an extended, unpaid leave of absence. During her leave, Young lost her medical coverage. Young returned to work two months after her child was born, and she subsequently filed a federal lawsuit (first with the Equal Employment Opportunity Commission) against UPS claiming that its policy of providing light-duty work to some employees but not to pregnant workers violated the Pregnancy Discrimination Act (PDA) and Americans with Disabilities Act (ADA).

Both the U.S. District Court for the District of Maryland and the Fourth Circuit Court of Appeals ruled in favor of UPS. The district court granted UPS's motion for summary judgment holding that Young failed to satisfy a *prima facie* case of disparate-treatment discrimination because Young could

not show that similarly-situated, non-pregnant employees received more favorable treatment than her. The Fourth Circuit affirmed that decision finding that: (1) UPS did not "regard" a pregnant employee as disabled under the ADA; and (2) employers are not required under the PDA to provide pregnant employees with light-duty assignments so long as the employer treats pregnant employees the same as non-pregnant employees with respect to offering accommodations. In sum, the Fourth Circuit held that requiring an employer to accommodate a pregnant employee but not employees with other off-the-job injuries would give the pregnant employee preferential treatment, which the PDA does not require.

Young appealed the dismissal of her claim to the U.S. Supreme Court on the following question: does the Pregnancy Discrimination Act require an employer to provide the same work accommodations to an employee with pregnancy-related work limitations as to employees with similar, but non-pregnancy related, work limitations?

Supreme Court's Decision

In interpreting the second clause of the Pregnancy Discrimination Act, 42 U.S.C. §2000e(k), the Supreme Court vacated and remanded the Fourth Circuit's decision, by a vote of 6-3. The PDA's second clause states that employers must treat "women affected by pregnancy . . . the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work."

Young argued that, under the second clause of the PDA, UPS must grant her the same accommodations available to other workers with similar restrictions. UPS argued that the second clause merely defined sex discrimination to include pregnancy discrimination, and that a policy could violate the PDA if it was pregnancy-neutral—that is, if it did not single out pregnancy as the only condition that did not merit some particular accommodation. Notably, during the course of the litigation, UPS voluntarily changed its accommodation policy to provide additional accommodations for pregnancy-related physical limitations.

The Supreme Court found both parties' interpretations of the PDA unpersuasive. The Court found that Young's interpretation is too broad, entitling pregnant women to a "most-favored-nation status" under which they could demand an accommodation that was offered to any other employee. On the other hand, the Court rejected UPS's interpretation as too narrow because it

ignored Congress's intent in adopting the PDA as a means of overturning the Supreme Court's prior decision in *General Electric Co. v. Gilbert*, 429 U.S. 125 (1976), which held that employers could treat pregnancy differently from other illnesses or disabilities as long as it did so on a neutral basis.

Instead, the Court held that a pregnant employee who seeks to show disparate treatment may do so by showing that: (1) she belongs to the protected class, (2) she sought accommodation, (3) the employer did not accommodate her, and (4) the employer did accommodate others "similar in their ability or inability to work."

Furthermore, the Court created a new "significant burden" standard by which if the employer articulates a legitimate, nondiscriminatory reason for its treatment of the plaintiff, the plaintiff has the opportunity to reach a jury by "providing sufficient evidence that the 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, but rather—when considered along with the burden imposed—give rise to an inference of intentional discrimination." In other words, a plaintiff may rebut the employer's nondiscriminatory reasons as pretextual by providing evidence that the employer accommodates a large percentage of non-pregnant workers while failing to accommodate a large percentage of pregnant workers. The Court also warned that the employer's 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."

Key Takeaways

In light of this case, employers should review and revise, if necessary, its policies which may impact pregnant employees including policies on light duty, accommodation, leave of absence, and attendance to ensure compliance with the Pregnancy Discrimination Act, the Americans with Disabilities Act, and state laws that may provide greater protection than federal law. This case should also stand as a reminder to employers of the importance of training supervisors on how to respond to pregnant employees' requests for accommodation.

Employers should consult their MBJ attorney with any questions regarding their compliance with the PDA, ADA, and other requirements affecting pregnant employees.

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