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United States Supreme Court Decides Pregnancy Discrimination Act Case – *Young v. UPS*

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On March 25, 2015, the United States Supreme Court decided Young v. UPS. This case concerned the interpretation of the federal Pregnancy Discrimination Act ("PDA"). The Court's 6-3 decision vacated and remanded a lower court's grant of summary judgment in favor of the employer and interpreted the PDA to allow a plaintiff to demonstrate discriminatory intent by showing that an otherwise neutral light-duty policy places an unjustifiable "significant burden" on pregnant workers. This case is a reminder for all employers to carefully review their light duty/accommodation policies.

Pregnancy Discrimination Act

In 1978, Congress passed the PDA, which amended Title VII to specifically include pregnancy, childbirth, and related medical issues in the definition of "sex" under Title VII. In addition, the so-called "second clause" of the PDA provided 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."

Background Facts

Peggy Young was a part-time driver for UPS. UPS required all drivers to be able to lift packages up to 70 pounds. In 2006, Young became pregnant and her physician imposed lifting restrictions of 20, and later 10, pounds over the course of her pregnancy. UPS denied Young's request to continue working on a light duty assignment, and, as a result, Young stayed home during her pregnancy and eventually lost her health insurance coverage. Crucially for this case, UPS's policies allowed for light duty assignments in a variety of circumstances, but not pregnancy. Such circumstances included: employees injured on the job, employees with ADA-recognized disabilities, and drivers who temporarily lost their DOT certification. Young filed suit against her employer in 2007.

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The Decision

Interpreting the second clause of the PDA, which provides that employers shall treat pregnant workers the same as other workers "similar in the ability or inability to work," the Court rejected Young's interpretation that accommodating any group of non-pregnant workers, but not accommodating pregnant workers, is sufficient to violate the PDA. Similarly, the Court rejected UPS's position that facially neutral policies – as UPS's policies were – cannot violate the PDA. Instead, the Court held that, under the *McDonnel Douglas* burden shifting framework, an employee may survive summary judgment by providing sufficient evidence that (1) the employer's otherwise neutral policies impose a "significant burden" on pregnant workers; and (2) the employer's non-discriminatory justification for the policy is not sufficiently strong to justify the burden, and instead – when considered along with the burden imposed – gives rise to an inference of intentional discrimination. Importantly, the Court noted that a plaintiff may demonstrate that the employer's policies create a "significant burden" by providing evidence that an employer accommodates a "large percentage" of non-pregnant workers while failing to accommodate a large percentage of pregnant workers.

Impact on Employers

This decision is another reminder to carefully craft and review light duty and accommodation policies. As a general matter, this case stands for the proposition that employers should be able to provide a strong, legitimate business justification(s) for their light duty policies. In this case, the Court noted that cost or convenience is not generally sufficient justification.

Employers also need to be aware that since the time this case originated in 2007, Congress amended the Americans with Disabilities Act (ADA) to include lifting, standing, and bending restrictions as covered "disabilities." The Equal Employment Opportunity Commission (EEOC), who has its own guidelines on Pregnancy Discrimination, has interpreted this amendment to require employers to accommodate temporary lifting restrictions regardless of whether acquired on the job. Accordingly, failing to provide light duty accommodation to pregnant workers can violate the ADA, independently of the PDA.

Massachusetts law also similarly protects pregnancy and pregnancy-related disabilities. The Massachusetts Commission Against Discrimination (MCAD) has stated: "When an employee is unable to perform some or all of the functions of her job, such as heavy lifting, because of pregnancy or a related condition, an employer must offer her the opportunity to perform modified tasks, alternative assignments or a transfer to another available position if the employer offers such opportunities to employees who are temporarily disabled for other reasons." While case law in Massachusetts has not grappled with the specific facts in this case, employers should expect

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close scrutiny of any policy or practice which denies pregnant workers benefits afforded to non-pregnant workers in similar situations.

Employers should take this opportunity to review their light-duty and accommodation policies in light of this decision and all applicable laws.

If you have any questions about this issue, please contact Kier Wachterhauser or the attorney responsible for your account, or call (617) 479-5000.

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