After *Young v. UPS:* What Employers Need to Know to Help Prevent Pregnancy Discrimination Claims

by Maital Savin

On March 25, 2015, the Supreme Court issued a much-anticipated opinion addressing pregnancy discrimination in the employment context in *Young v. UPS*. This case has widespread implications for employers across the nation. This article summarizes the Supreme Court's decision and provide practical suggestions for employers to help avoid pregnancy discrimination suits.

The Facts

While working for UPS, Young's doctor provided her with lifting restrictions due to her pregnancy. As her job required her to perform work exceeding these limitations, Young requested a temporary light duty assignment. UPS denied Young's request for light duty work, because its policies only provided such an accommodation to those employees who were injured on the job, had temporarily lost their federal certificate to drive a commercial vehicle or had a condition that was covered by the Americans with Disabilities Act (ADA). Ultimately, Young was forced to take an extended unpaid leave. Young brought suit against UPS, alleging that it discriminated against her in violation of the Pregnancy Discrimination Act.

What is the Pregnancy Discrimination Act?

In 1978, the Pregnancy Discrimination Act (PDA) was enacted as an amendment to Title VII of the Civil Rights Act of 1964. The PDA provides that sex discrimination under Title VII includes discrimination based on pregnancy, childbirth, or related medical condition. The PDA further requires that employers treat female employees "affected by pregnancy, childbirth, or related medical conditions … the same for all employment-related purposes … as other persons not so affected but similar in their ability or inability to work." In *Young*, the Supreme Court interpreted the meaning of this requirement.

The Decision

Young argued that all women affected by pregnancy, childbirth, or related medical conditions should be treated the same for all employment-related purposes as other employees with conditions that similarly impair their ability to work. The Court held that this interpretation was too broad.

On the other hand, UPS argued that the PDA added this requirement only to define sex bias to include pregnancy discrimination. The Court also rejected this view.

Instead, the Court held that an employer could not treat a pregnant employeedifferently than a non-pregnant employee, unless the employer had a sufficiently strong non-discriminatory reason for doing so. In so holding, the Court held that the McDonnell Douglas burden-shifting framework must be applied. The Court explained that a plaintiff must establish that: (1) she is in the protected group; (2) she asked to be accommodated; (3) her employer failed to accommodate her; and (4) her employer provided a similar accommodation to other, non-pregnant employees who were "similar in their ability or inability to work." If the plaintiff can establish these four points, the burden then shifts to the defendant-employer to show a legitimate business reason supporting its workplace policy. Finally, if the employer establishes a legitimate business reason for its policy, the burden then shifts back to the plaintiff to establish that the reason was not "sufficiently strong" to justify the burden imposed on pregnant employees and is merely a pretext for discrimination.

The Court concluded that Young created a genuine dispute as to whether UPS provided more favorable treatment to employees whose ability to work cannot reasonably be distinguished from her ability to work. Accordingly, the Court vacated the Fourth Circuit's decision, which had affirmed the district court's grant of summary judgment in favor of UPS, and remanded the case back to the Fourth Circuit.

What About the EEOC's Recent Guidance on Pregnancy Discrimination?

In 2014, the Equal Employment Opportunity Commission (EEOC) issued new guidance on pregnancy discrimination and took the position that the PDA requires employers to accommodate a pregnant employee's request for light duty work if it has a policy or practice of providing light duty work to other employees.

During oral arguments, the Solicitor General requested that the Court give the EEOC's guidance special weight. However, the Court found that it could not rely significantly on the EEOC's guidance because of the "timing, consistency, and thor oughness of consideration." With respect to the timing of the guidance, the Court noted that the guidance was promulgated after the Court granted certiorari.

As for consistency, the Court noted that the EEOC's guidance takes a position on which previous EEOC guidelines were silent and is inconsistent with positions the government had long advocated, without explaining the basis for its recent guidance.

ADA Considerations

The Court noted that the future significance of its decision may be limited by several statutory changes, including the 2008 amendments to the ADA, which arose after the events that gave rise to Young. The amendments expanded the definition of "disability" under the ADA. While pregnancy is still not considered to be a disability under the expanded definition under the ADA, a pregnancy-related impairment that substantially limits a major life activity is a disability under the ADA. However, the Court indicated that it expressed no view regarding these statutory changes.

Tips For Employers

The Supreme Court's decision in Young makes it easier for pregnant employees or those with related conditions who have temporary physical restrictions to pursue discrimination claims against employers (though not as easy as the EEOC had attempted to make it with its 2014 guidance). Employers should carefully review and revise their employment policies and practices to help avoid discrimination suits.

First, employers should consider ensuring that any light duty accommodations made for certain categories of employees are also available to pregnant employees; if not, employers should be prepared to articulate a sufficiently strong justification for not doing so. Employers should also revise their employment handbooks accordingly. Second, employers should make sure that managers and human resources personnel know how to respond to a pregnant employee's request for an accommodation. Finally, many local laws provide for even greater protections for pregnant employees; employers should ensure that their policies and practices comply both with the Young decision and any local laws.

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