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CLIENT ALERT

Divided Supreme Court Revives Pregnancy Discrimination "Light Duty" Case

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In a case closely watched by many employers, the Supreme Court has ruled, 6-3, that an employee may make out a prima facie case of disparate treatment under the Pregnancy Discrimination Act by comparing her own situation with the accommodations offered to employees who are not pregnant but suffer a similar inability to work. *Young v. United Parcel Service Inc.*, No. 12-1226 (March 25, 2015). As a practical matter, this development may expand the protections of the Act, which does not otherwise affirmatively require employers to provide pregnant employees with reasonable accommodations.

The case arose when plaintiff Peggy Young, a former part-time UPS driver, became pregnant and was deemed unable to perform the essential functions of her job because of a lifting restriction. When she asked for a "light duty" assignment, UPS informed her that she was ineligible, because its policies provided light-duty accommodations only to certain employees, including those with on-the-job injuries and disabilities under the Americans with Disabilities Act. Young filed a disparate treatment suit, alleging that UPS discriminated against her by refusing to accommodate her pregnancy-related restriction. In response to UPS's motion for summary judgment, Young argued that several of UPS's policies demonstrated discrimination against pregnant workers. Specifically, Young pointed to the light-duty policies that were in place for workers who were unable to work because of certain injuries or disabilities among other things, arguing that the same accommodations were unavailable to pregnant employees. In reply, UPS stated that because Young did not have an on-the-job injury or a qualifying disability, she was not discriminated against on the basis of pregnancy, but instead was treated the same as all other relevant employees.

The district court granted summary judgment for UPS, agreeing that Young could not make out a prima facie case of discrimination under the *McDonnell-Douglas* test because the employees with whom Young compared herself were too different to qualify as similarly situated. The court also held that UPS had a legitimate, nondiscriminatory reason for failing to accommodate pregnant employees. The Fourth Circuit affirmed.

The Supreme Court vacated and remanded the Fourth Circuit's decision, holding that Young had demonstrated a genuine dispute of fact as to whether UPS provided more favorable treatment to at least some nonpregnant employees who may have been similarly situated to Young. By so holding, the Court rejected interpretations of the Act offered by both parties and the EEOC.

Justice Breyer's majority opinion – joined by Chief Justice Roberts and Justices Ginsburg, Sotomayor, and Kagan – first rejected Young's claim that the Act requires employers to provide the same accommodations to pregnant employees as it provides to any other nonpregnant employee. The Court stated that Young's view would grant pregnant workers a "most favored nations" clause, a result clearly not intended by Congress.

The Court also rejected the interpretation offered by UPS, which contended that the Act accomplishes nothing more than to define sex discrimination to include pregnancy discrimination. The Court found this argument particularly unavailing given that Congress specifically passed the Act to overturn precedent that held that an employer plan that provided nonoccupational sickness and accident benefits to all employees without providing disability-benefit payments for any absence due to pregnancy did not discriminate on the basis of sex under Title VII.

Then, the Court considered the EEOC's new pregnancy discrimination guidance, issued on July 14, 2014, two weeks after the Supreme Court granted review of Young's case. The new guidance stated that employers should treat pregnancy-related disabilities like nonpregnancy-related disabilities. The Court declined to give the EEOC guideline any special or controlling weight, however, as it lacked the timing, consistency, and thoroughness of consideration necessary to give it the power to persuade.

Having thus rejected all of the interested parties' views, the Court held that a pregnant employee can set out a prima facie case of pregnancy discrimination under the *McDonnell-Douglas* shifting burden framework, by showing: (i) that she belongs to the protected class; (ii) that the employer did not accommodate her; and (iii) that the employer did accommodate others similar in their ability or inability to work. Upon this showing, an employer then has the opportunity to rebut the employee's prima facie case by offering a legitimate, nondiscriminatory reason for denying accommodation. At this point, the employee may then show that this proffered reason is pretextual by providing sufficient evidence that the employer's justification for the policy does not outweigh the significant burden it places on pregnant workers. Applying this holding, the Court concluded that the award of summary judgment in Young was inappropriate in light of the fact that the plaintiff had provided sufficient evidence that UPS accommodates nonpregnant workers in larger numbers than it does pregnant workers, giving rise to an inference of discrimination.

Justice Alito filed a concurring opinion, while dissenting Justices Scalia, Kennedy, and Thomas would have affirmed the Fourth Circuit. Writing for the dissenters, Justice Scalia said that the majority's interpretation of the Act is "splendidly unconnected with the text and even the [Act's] legislative history." He further wrote that the majority opinion was "[i]nventiveness posing as scholarship—which gives us an interpretation that is as dubious in principle as it is senseless in practice."

While the majority opinion finds that pregnant workers are not entitled to preferential treatment, it suggests that employers may not refuse to accommodate pregnant workers based on a facially neutral policy, inconvenience, or expense, particularly where similar accommodations are offered to other employees. The Court's road map of treating pregnancy discrimination claims under the classic disparate treatment theory raises the possibility that discrimination may be inferred by certain employer conduct. Thus, as a practical matter, employers should review pregnancy-related policies and practices and consider pregnant workers' accommodation requests, engaging employees in an interactive process if at all possible.

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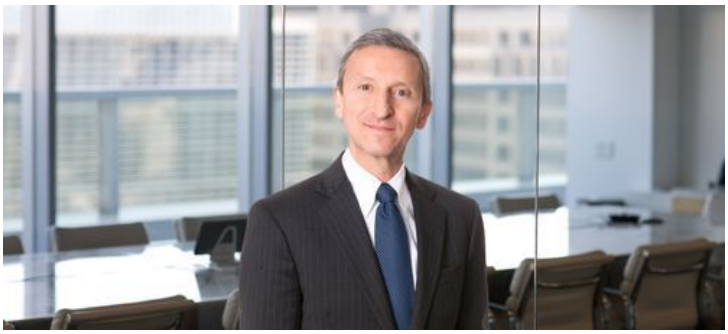

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