

CLIENT ALERT

EEOC Issues Modified Enforcement Guidance on Pregnancy Discrimination after *Young v. UPS*

JULY 2015

The Equal Employment Opportunity Commission (EEOC) has issued a revised Enforcement Guidance on Pregnancy Discrimination to align its July 2014 version with the Supreme Court's recent decision in *Young v. UPS*. *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338 (2015); see our client briefing, Divided Supreme Court Revives Pregnancy Discrimination "Light Duty" Case. In *Young*, a divided Supreme Court reversed the U.S. Court of Appeals for the Fourth Circuit's decision dismissing a former United Parcel Service (UPS) driver's pregnancy bias claim, ruling that she could prove a Pregnancy Discrimination Act (PDA) violation if the employer's policies placed a "significant burden" on pregnant workers without a "sufficiently strong justification." Significantly, in *Young*, the Supreme Court expressly disagreed with the view—espoused by the EEOC in its 2014 enforcement guidance and amicus brief in the matter—that UPS' policy of limiting light duty to certain categories of employees was "facially discriminatory" on the basis of pregnancy. While most of the revised guidance remains unchanged from the EEOC's 2014 version, the EEOC makes changes, in response to *Young*, to sections concerning disparate treatment and light duty, as well as deleting a statement that "an employer may not deny light duty to a pregnant employee based on a policy that limits light duty to employees with on-the-job injuries."

Additionally, the revised guidance now states that disparate treatment may be shown by "evidence of an employer policy or practice that, although not facially discriminatory, significantly burdens pregnant employees and cannot be supported by a sufficiently strong justification." The guidance cites to *Young*, summarizing the Court's opinion that "evidence of an employer policy or practice of providing light duty to a large percentage of nonpregnant employees while failing to provide light duty to a large percentage of pregnant workers might establish that the policy or practice significantly burdens pregnant employees. If the employer's reasons for its actions are not sufficiently strong to justify the burden, that will 'give rise to an inference of intentional discrimination.'" Moreover, in the guidance's light duty section, the EEOC provides the method of proving disparate treatment pregnancy discrimination through the McDonnell Douglas burden-shifting framework, as set forth by the Court in *Young*. (See Divided Supreme Court Revives Pregnancy Discrimination "Light Duty" Case.)

The following topics, covered in the 2014 guidance, are not impacted by *Young* and remain the same:

- the PDA's application to current, past, and potential pregnancy;
- termination or refusal to hire someone because she is pregnant and other prohibited employment actions based on pregnancy;

- application of the PDA to lactation and breastfeeding;
- prohibition of forced leave policies;
- the obligation to treat women and men the same with respect to parental leave policies;
- access to health insurance; and
- the effect of the ADA Amendments Act of 2008 on workers with pregnancy-related impairments.

In addition to the modified enforcement guidance, the EEOC also issued a revised [question-and-answer document](#) on pregnancy discrimination issues and a new [small business fact sheet](#).

For more information regarding the EEOC's 2014 Guidance, see our briefing, [Equal Employment Opportunity Commission Releases New Guidance Regarding Pregnancy Discrimination](#).

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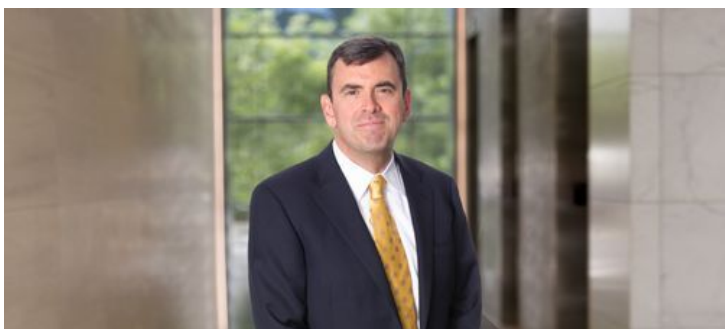
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