

Supreme Court Sets New Standard Governing Employer's Obligation to Accommodate Pregnant Workers

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On March 25, 2015, the U.S. Supreme Court addressed an employer's obligation to accommodate employees' pregnancy-related job restrictions. In *Young v. United Parcel Service, Inc.*, the Court recognized that employers who fail to accommodate employees with pregnancy-related job restrictions may be held liable for pregnancy discrimination if they accommodate non-pregnant employees with similar restrictions. The new standard articulated in *Young* provides pregnant employees with broader protection than previously recognized under federal law.

In *Young*, the plaintiff, a female UPS driver, claimed that UPS unlawfully discriminated against her when it refused to accommodate her pregnancy-related lifting restriction. The plaintiff's job required that she be able to lift packages weighing up to 75 pounds. After she became pregnant, her doctor restricted her from lifting more than 20 pounds during the first 20 weeks of her pregnancy and more than 10 pounds thereafter. UPS refused to provide her with light duty work, even though it had previously provided light duty accommodations to drivers who had become disabled on the job, who had lost their Department of Transportation certifications, and who suffered from disabilities covered by the Americans with Disabilities Act (ADA). The plaintiff sued in federal court for pregnancy discrimination on a disparate treatment theory, meaning that UPS intentionally discriminated against her. (She did not claim that UPS's policies had a disparate impact on pregnant workers.) The court granted summary judgment in UPS's favor. It found that the plaintiff had no direct evidence of pregnancy discrimination. It also concluded that the plaintiff could not establish a prima facie case of discrimination because the other employees UPS accommodated were too different to be similarly-situated comparators. The court also found that the plaintiff had not created a genuine issue of material fact as to whether UPS's reason for its refusal to accommodate her was pretext for pregnancy discrimination. The Fourth Circuit affirmed the decision.

The issue before the Supreme Court was the proper interpretation of language in the Pregnancy Discrimination Act (PDA), which provides 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 . . ." The Court rejected the plaintiff's contention that this language necessarily requires employers who offer accommodations to a limited subset of workers with disabling conditions to give the same accommodations to pregnant workers with similar restrictions, particularly if the employer denies the accommodations to other non-pregnant workers. In the Court's view, such a reading would grant pregnant employees a "most-favored-nation" status in the workplace, which Congress did not intend when passing the PDA. Yet, it also rejected UPS's argument that this language simply defines sex discrimination to include pregnancy discrimination. Other language in the PDA expressly provides that discrimination "because of sex" and "on the basis of sex" includes discrimination "because of or on the basis of pregnancy, childbirth, or related medical conditions."

Instead, the Court held that a plaintiff can establish a prima facie case of pregnancy discrimination under the PDA's "same-treatment" language where she shows that she belongs to the protected class, she sought an accommodation, her employer did not accommodate her, and the employer accommodated others "similar in their ability or inability to work." It also held that a plaintiff could defeat summary judgment by showing that her employer's policies "impose a significant burden on pregnant workers" and the employer's justifications for the policies are not "sufficiently strong to justify the burden" but instead "give rise to an inference of intentional discrimination." A "significant burden" on pregnant workers exists where an employer "accommodates a large percentage of non-pregnant workers while failing to accommodate a large percentage of pregnant workers."

Most employers already provide workers with pregnancy-related job restrictions the same accommodations they grant workers with

similar restrictions stemming from other causes, such as ADA-covered disabilities. Nevertheless, *Young* makes clear that employers who maintain policies that afford pregnant workers less favorable treatment than non-pregnant workers without a sufficiently strong justification for drawing such distinctions may be held liable for pregnancy discrimination. Note that changes made to the ADA after the *Young* case was filed make clear that physical impairments that substantially limit an individual's ability to lift, stand, or bend, even if temporary, are disabilities under the ADA and trigger the duty to accommodate under that statute as well.

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