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U.S. Supreme Court Establishes New Framework for Pregnancy Accommodation Cases

Employers often have occasion to consider the scope of their responsibility to accommodate pregnancy-related work restrictions, and there have been sharp disagreements over the correct interpretation of federal law on this issue. On March 25, 2015, the U.S. Supreme Court clarified the employer's federal obligations in *Young v. United Parcel Service, Inc.*, No. 12-1266, 575 U.S. ____ (2015). The decision should prompt employers to reexamine their workplace accommodation policies.

Peggy Young's employment as a driver for UPS required her to lift parcels weighing up to 70 pounds. After several miscarriages, her doctor advised her during her next pregnancy not to lift more than 20 pounds during the first 20 weeks of her pregnancy or more than 10 pounds from then until her child was born. When Young conveyed this to UPS, she was told that she could not work if she had a lifting restriction, and her request for a temporary accommodation was denied. UPS provided light duty assignments to drivers who became disabled on the job, who lost their Department of Transportation certification, or who had disabilities covered by the American with Disabilities Act of 1990 (ADA). Young did not fall into any of these three categories, and so was forced to spend her entire pregnancy on unpaid leave. She sued, arguing that UPS's failure to accommodate her work restrictions, while accommodating others who had similar work restrictions for different reasons, was discrimination on the basis of pregnancy in violation of the Pregnancy Discrimination Act (PDA).

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During the lawsuit, Young and UPS advanced completely different interpretations of the employer's obligations under the PDA. Young asked the Court to rule that whenever an employer accommodated an employee's work restriction, the same accommodation had to be available to pregnant employees with similar restrictions. UPS argued that the PDA simply prohibited discrimination based on pregnancy, and did not require employers to extend a neutral accommodation policy to cover pregnancy-based needs.

The Supreme Court, by a 6-3 majority, rejected both approaches. It held that where a pregnant employee claims she has been denied, because of pregnancy, accommodations available to other employees, the traditional *McDonnell Douglas* burden shifting framework will apply. Under this framework, she must show that (1) she was pregnant or undergoing fertility-related treatments, (2) she requested accommodation of a pregnancy or fertility-related medical restriction, (3) she was denied an accommodation, and (4) other employees who were similar in their ability or inability to work received accommodations. In response, the employer will be called upon to explain its legitimate reasons for denying the accommodation, and the employee will have the opportunity to show this reason was a pretext for discrimination.

By way of example, the Court explained that an employee may be able to establish pretext by showing that the employer's policies impose a significant burden on pregnant workers compared to non-pregnant workers. Although this approach was specific to the PDA, the Court explained that it followed from the general principle that pretext can be established through circumstantial evidence – here, how a policy is applied in practice. The Court commented that if UPS accommodated most non-pregnant employees with lifting limitations while categorically denying accommodations to pregnant employees with lifting limitations, this might support Young's claim.

Employers already required to accommodate pregnancy-related disabilities, for example under the New York Human Rights Law, may be tempted to assume that local requirements already meet or exceed the new federal standards announced in this decision. This is correct only to

a point. Nothing in the Court's decision specifically requires the employer defending a pregnancy discrimination claim to show that it provided a reasonable accommodation or that doing so would impose an undue hardship, although those requirements might apply under local law and be sound defenses here; rather, the employer's obligation under *Young v. UPS* is to be ready to defend on legitimate business grounds any material discrepancy between its accommodations for pregnant employees and its accommodations to other employees with similar restrictions.

Companies might reasonably ask what kinds of legitimate business reasons would justify different scopes of accommodation for pregnancy and other conditions. That remains to be seen; the Court's decision theoretically allows the employer to present a defense, but notes that arguments that pregnancy accommodations are more expensive or less convenient would not be acceptable. Employers should, in any event, treat *Young v. UPS* as an opportunity to review their leave and accommodation policies to ensure continuing compliance with standards for pregnancy discrimination. In particular, employers who draw distinctions in benefits and accommodations based on the cause of an employee's work restrictions should examine whether their business reasons for this approach remain current and viable.

If you have any questions about ensuring that your workplace accommodation policies comply with this decision, please contact John P. Keil at (212) 758-7862, or any other attorney at the Firm.

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