Pregnancy Discrimination Act Requires Employers to Accommodate Pregnant Workers in Most Cases

by Jillian Barron and Nate Bailey

On March 25, the U.S. Supreme Court issued its decision in *Young v. United Parcel Serv.*, in which it clarified that the federal Pregnancy Discrimination Act (PDA) requires employers to accommodate pregnant workers to the same extent as other similarly limited employees unless the employer has a legitimate, nondiscriminatory reason for doing otherwise.

Background. The plaintiff, Young, was a part-time UPS driver who picked up and delivered packages. When she became pregnant in 2006, her doctor advised her not to lift more than 20 pounds during her pregnancy because she had suffered several prior miscarriages. UPS, however, required its drivers to be able to lift 70 pounds unassisted and up to 150 pounds with assistance. Temporarily unable to meet these requirements, Young sought a light-duty assignment during her pregnancy. UPS denied her request because she did not qualify under its three policies providing accommodation for workers who: (1) had been injured on the job, (2) were permanently disabled under the Americans with Disabilities Act (ADA)[1], or (3) had lost their Department of Transportation (DOT) certifications for various reasons. As a result, Young was forced to take unpaid leave and eventually lost her employee medical insurance. She sued, claiming that UPS failed to accommodate her pregnancy under the PDA.

Lower Courts. The issue before the courts was whether UPS had violated the second clause of the PDA, which requires employers to treat "women affected by pregnancy . . . the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work." 42 U.S.C. § 2000e(k). The district court granted summary judgment to UPS, stating that Young could not make out a prima facie case of discrimination because the three categories of employees to whom Young compared herself (those falling under the on-the job-injury, ADA, or DOT policies) were not sufficiently similar to qualify as "similarly situated comparators." The Fourth Circuit Court of Appeals agreed, additionally finding that UPS's policy was facially neutral.

The Parties' Arguments. Young argued that "whenever an employer accommodates a subset of workers with disabling conditions," it must offer the same accommodation to pregnant workers "even if still other non-pregnant workers do not receive accommodations." In other words, Young contended that even though many non-pregnant employees with temporary lifting restrictions would not qualify for accommodations under UPS's policies, UPS must accommodate pregnant workers because *some* non-pregnant workers would qualify.

UPS, on the other hand, argued that the second PDA clause did "no more than define sex discrimination to include pregnancy discrimination." Under UPS's interpretation, a court would compare accommodations offered to pregnant workers to accommodations offered to others within facially neutral categories such as those with off-the-job injuries.

The Court's Decision. The Supreme Court reversed, finding that Young had made a prima facie case. However, the Court rejected Young's proposed standard because it would grant pregnant workers a "most-favored-nation" status: if an employer offered one or two employees an accommodation, it would then be required to provide a similar accommodation to all pregnant employees. The Court also rejected UPS's proposed standard, noting that it would render the PDA's second clause redundant, as the first clause already generally prohibited discrimination on the basis of pregnancy. Notably, the Court also rejected the Equal Employment Opportunity Commission's recent guideline that forbade employers from refusing to accommodate pregnant employees on the basis of policies that make distinctions based on the source of an employee's limitations, such as on-the-job versus off-the-job injuries.

Instead, the Court held that employers must accommodate pregnancy-related work limitations to the same extent that it accommodates non-pregnant employees with similar limitations unless it has a valid business reason for refusing to do so. Thus, claims for failure to accommodate under the PDA should be analyzed under the familiar *McDonnell Douglas* framework. Under that framework, to make a prima facie case of failure to accommodate under the PDA, a plaintiff must now show that the employer accommodated other non-pregnant workers "similar in their ability or inability to work." If she does so, the employer may rebut the presumption of discrimination by offering a legitimate, nondiscriminatory reason for its decision. The employee may then show pretext by providing "evidence that the employer's policies impose a significant burden on pregnant workers, and that the employer's 'legitimate, nondiscriminatory' reasons are not sufficiently strong to justify the burden, but rather . . . give rise to an inference of intentional discrimination." A plaintiff may show that a "significant burden" exists by showing that an employer accommodates a large percentage of non-pregnant workers and fails to accommodate a large percentage of pregnant workers.

Take Away for Employers. Washington law prohibits employers from discriminating against women on the basis of pregnancy and entitles women to unpaid leave during the period of disability related to pregnancy and childbirth. Moreover, given the expansive nature of the state's disability law, Washington employers are arguably already required to offer accommodations to pregnant workers with physical restrictions to allow them to keep working during pregnancy. The Supreme Court's ruling in *Young* provides further reason for businesses to ensure that their accommodation policies do not significantly burden pregnant workers without a strong, nondiscriminatory business reason. As with requests to accommodate other disabilities, Washington employers should consider each pregnancy-related accommodation request on its own merits, provide accommodation unless doing so would create undue hardship, and document its decision-making process. Failure to do so may well result in unnecessary litigation

1. Before the Americans with Disabilities Amendments Act of 2008, the ADA protected only those with permanent disabilities.