

Supreme Court Articulates Standard For Assessing Pregnancy Discrimination Claims

By Jessica Summers

On Wednesday (March 25, 2015), the U.S. Supreme Court announced its decision in the closely watched pregnancy discrimination case of *Young v. United Parcel Service*. Rejecting both the employer's and employee's statutory interpretations of the Pregnancy Discrimination Act (PDA), the Supreme Court announced a middle-ground standard for assessing pregnancy discrimination cases and remanded the case to the Fourth Circuit to apply this standard.

The bottom lines from the Court's *Young* decision are:

- **An employee can establish a prima facie case of disparate treatment under the PDA by showing (1) that she belonged to the protected class, (2) she requested an accommodation, (3) the employer refused the accommodation and (4) the employer accommodated other employees "similar in their ability or inability to work."**
- **Once an employee has established a prima facie case of discrimination, the employer then has the opportunity to present a "legitimate, nondiscriminatory reason" for denying the accommodation.**
- **In response to the employer offering a "legitimate, nondiscriminatory reason," the Plaintiff may establish a triable issue of fact by introducing evidence that (i) the "employer's policies impose a significant burden on pregnant workers" and (ii) that the legitimate nondiscriminatory reason is not "sufficiently strong to justify the burden."**

Peggy Young was a driver for United Parcel Service (UPS). UPS requires its drivers to be able to lift up to 70 pounds. After Young became pregnant her doctor imposed a 20 pound lifting restriction. Young requested an accommodation which UPS denied. Instead, Young was placed on unpaid leave for the duration of her pregnancy. Young brought suit alleging that UPS had discriminated against her in violation of the PDA. As a key point to Young's claim, she asserted that UPS accommodated other non-pregnant drivers who were similarly unable to perform their normal jobs, specifically (i) drivers disabled on the job, (ii) drivers who lost their Department of Transportation certification, and (iii) drivers suffering from a disability covered by the Americans with Disabilities Act (ADA).

In addressing this case, the District Court granted UPS' motion for summary judgment holding that Young had not established a prima facie case of discrimination under the McDonnell Douglas standard (discussed further below) because the other employees that UPS accommodated were not similarly situated to Young and UPS had a legitimate non-discriminatory reason for accommodating those employees but not Young. On appeal, this decision was affirmed by the Fourth Circuit.

The heart of the legal debate in *Young* centers around the text of the PDA. The PDA was passed in 1978 amending Title VII of the Civil Rights Act. The key portion of the PDA provides that (i) sex discrimination, as prohibited under Title VII, includes discrimination on the basis of "pregnancy, childbirth, or related medical conditions," and that (ii) "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[.]" However, the PDA does not further articulate what it means for employers to treat pregnant employees the same as they would other employees similarly limited in their ability to work. In other words, the text of the PDA does not make it clear whether the ability or inability to work is the only relevant factor, or whether the employer may make an accommodation decision on other distinguishing characteristics unrelated to pregnancy.

Before expressing its own conclusion in the case, the Court, in a majority decision authored by Justice Breyer, first took the time to address, and reject, the two competing statutory interpretations of the PDA

offered by Young and UPS.

On the one hand, Young argued that the second clause of the PDA means that an employer must accommodate a pregnant employee if the employer has accommodated any other employee with a similarly disabling condition, regardless whether the employer has refused to accommodate other non-pregnant employees. On this basis, Young asserted that the fact that UPS accommodated other drivers similarly unable to perform their duties was direct evidence of pregnancy discrimination. The Court flatly rejected Young's interpretation as far too broad and literal a reading of the PDA. The Court noted that Congress had clearly not intended to create a "most-favored-nation status" for pregnant employees, requiring employers to accommodate all pregnant employees if they accommodate one non-pregnant employee, irrespective of other factors such as the nature of their job and the need to keep them working. In addressing Young's argument, the Court also declined to give special weight to the EEOC's 2014 PDA guidance (issued after the Court granted certiorari in the case) stating that employers may not refuse to accommodate a pregnant employee in the same manner as it has another employee under a policy which makes a distinction based on the source of the limitation.

On the other hand, UPS argued that the second clause of the PDA was simply a clarification of the first clause defining sex discrimination to include pregnancy discrimination. UPS asserted that, under the PDA, employers need only accommodate pregnant women in the same way that they have other employees within the same non-pregnancy related pregnancy category which UPS asserts it did by treating Young the same way as it did other employees with lifting restrictions arising from an "off-the-job injury or condition." The Court rejected UPS' argument noting that such a reading would not only make the second clause of the PDA superfluous but would undermine the very intent of the PDA which was to overturn a prior Supreme Court decision in holding that employers could treat pregnant employees less favorably than other employees so long as the employer distinguished between employees on a neutral basis (in that case only offering benefits to employees in cases of sickness or injury).

Having rejected Young's argument that UPS' accommodation of certain non-pregnant employees was direct evidence of discrimination, the Court focused its decision on the so-called McDonnell Douglas framework, which establishes a burden-shifting analysis under which a plaintiff may establish a prima facie case of disparate treatment in the absence of direct evidence of discrimination. To this end, the Court held that a pregnant employee may establish a prima facie case of discrimination by demonstrating that 1) she belonged to the protected class, (2) she requested an accommodation, (3) the employer refused the accommodation, and (4) the employer accommodated other employees "similar in their ability or inability to work." Under the burden shifting principles of McDonnell Douglas, the Court recognized that the employer would then have the opportunity to present a "legitimate, nondiscriminatory reason" for its decision. However, in a key point, the Court noted that, in response to the employer offering a "legitimate, nondiscriminatory reason," the Plaintiff may respond by demonstrating that (i) the "employer's policies impose a significant burden on pregnant workers" and (ii) that the legitimate nondiscriminatory reason is not "sufficiently strong to justify the burden."

The Court remanded the case to the Fourth Circuit stating that "there is a genuine dispute as to whether UPS provided more favorable treatment to at least some employees whose situation cannot reasonably be distinguished from Young's" and noting that the Fourth circuit had not considered the "combined effects of [UPS'] policies, nor did it consider the strength of UPS' justifications for each when combined."

In reaching its conclusion, the Court specifically noted that the impact of its decision may be limited by the ADA Amendments Act (ADAAA) which was passed in 2008 after this lawsuit had begun. The ADAAA amended the ADA to broaden the definition of disabilities to include disabilities of limited duration. The EEOC has taken the position that disabilities of limited duration may include certain impairments resulting from pregnancy. While recognizing this wrinkle, the Court specifically declined to take a position on whether the ADAAA extends protections to pregnancy-related disabilities in a manner that might impact a future case of this nature.

Bottom Line for Employers: The fact that accommodation decisions are made based on neutral non-pregnancy related policies will not always protect against a pregnancy discrimination claim. In light of this decision combined with the ADAAA and a number states laws (including in Maryland and DC) pertaining to pregnancy accommodation, employers should carefully review their process for accessing pregnant employee's accommodation claims to ensure that their policies are not placing an unreasonable burden on pregnant employees or improperly favoring other non-pregnant employees with similar limitations.