

Supreme Court Makes New Rule in Analyzing Pregnancy Discrimination Act

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Employment

The Supreme Court held on March 25, 2015 in *Young v. UPS* that a plaintiff alleging pregnancy discrimination based upon the denial of an accommodation may proceed under the familiar McDonnell Douglas framework generally applied to Title VII discrimination claims. The Court's decision, which resulted in a remand to the Fourth Circuit, surprised many observers in rejecting the arguments set forth by both parties in the case and instead setting forth a new rule for applying the Pregnancy Discrimination Act ("PDA").

The decision involved a UPS driver who became pregnant and was not allowed to return to her job because of a 20-pound lifting restriction imposed by her physician as a result of the pregnancy. Young filed suit claiming that UPS acted unlawfully in refusing to accommodate her pregnancy-related lifting restriction. Young argued that UPS accommodated other drivers who were "similar in their ability or inability to work" as a result of different kinds of restrictions unrelated to pregnancy (for example, restrictions resulting from disabilities, Department of Transportation certification issues or workers compensation). She therefore claimed that UPS must accommodate her as well. UPS responded that the "other persons" whom it had accommodated fell into different categories and that because Young did not fall within any of those categories, it had not discriminated against Young on the basis of pregnancy but had treated her just as it treated all other relevant persons.

Young argued that a PDA violation occurs where an employer accommodates only a subset of workers but refuses those same accommodations for pregnant women similar in the ability to do work — even if other non-pregnant workers do not receive accommodations. UPS, on the other hand, argued that the PDA only requires employers to provide accommodations on a pregnancy-neutral basis. Under UPS's interpretation of the PDA, employers should be permitted to offer different accommodations to different subsets of employees as long as those accommodations were not decided on the basis of pregnancy.

The Court rejected both parties' interpretations of the PDA. The Court explained that Young's position would have the practical effect of granting pregnant workers "most-favored nation" status. That is to say, pregnant workers would be entitled to accommodations if only one or two similarly capable, non-pregnant workers were accommodated, even if most other non-pregnant workers did not receive accommodations. On the other hand, the Court noted, UPS's position ignored Congress's intent in adopting the PDA as a means of overturning the Supreme Court's prior decision in *General Electric Co. v. Gilbert*, which held that employers could treat pregnancy differently from other illnesses or disabilities as long as it did so on a neutral basis.

The Court also explicitly declined the Solicitor General's invitation to give weight to the 2014 Equal Employment Opportunity Commission Guidance on Pregnancy Discrimination issued last

July. The Court noted that that guidance lacked the timing, “consistency,” and “thoroughness of consideration” necessary to “give it power to persuade.” The Court also noted that the guidance was promulgated after certiorari was granted in this case, it took a position on which previous EEOC guidance was silent, it was inconsistent with positions long advocated by the Government, and the EEOC did not explain the basis for the change in guidance. The Court’s decision rendered the usefulness of the Guidance uncertain, as anticipated by some critics when the Guidance was issued last summer, although the agency has already indicated that it will update the Guidance to reflect the Court’s ruling. (See our summary of that issue [here](#).)

As a result of the Court’s decision, a plaintiff can establish a prima facie case of pregnancy discrimination by showing that she belongs to the protected class, that she sought accommodation, that the employer did not accommodate her, and that the employer did accommodate others similarly situated. Upon establishment of the prima facie case, the burden shifts to the employer, who must articulate a legitimate, non-discriminatory reason for its differential treatment. The Court noted that this reason “normally cannot consist simply of a claim that it is more expensive or less convenient to add pregnant women to the category of those . . . whom the employer accommodates.” After the employer articulates a legitimate, non-discriminatory reason for its treatment of a plaintiff, the plaintiff may still reach a jury if it can show that the employer’s policies impose a significant burden on pregnant workers and that the employer’s legitimate, non-discriminatory reasons cannot justify that burden.

Employers are advised to review policies for providing accommodations to pregnant women in the wake of the Court’s decision. Observers have noted that the Court’s decision makes it extremely difficult for an employer to deny a workplace accommodation to a pregnant woman — even under a pregnancy neutral policy — if that accommodation is routinely offered to other categories of employees. However, as commentators have pointed out, and as the EEOC explained in its Guidance, accommodations for pregnant women may already be required as a result of amendments to the Americans with Disabilities Act implemented since Young brought her claim. The EEOC’s guidance with regard to the intersection of the ADA and pregnancy is not affected by the *Young* decision.

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