PUBLICATION

Accommodations for Pregnant Employees Reaches Supreme Court

January 20, 2015

What accommodations must employers provide to pregnant employees? On December 3, 2014, the Supreme Court heard oral argument in a case, Young v. United Parcel Service, that may help clarify the answer to this question. The plaintiff in the case is Peggy Young, a former UPS delivery driver who became pregnant while still employed by UPS. Ms. Young's midwife recommended that she not lift more than twenty pounds during her pregnancy. UPS has a policy of only providing accommodations for delivery drivers who: (1) have suffered on-the-job injuries; (2) are disabled under the Americans with Disabilities Act; or (3) have lost their Department of Transportation certification. Because Ms. Young did not fall into one of those three categories, UPS refused to place Ms. Young on light-duty work. Ms. Young took an extended leave of absence and returned to work two months after she gave birth.

Ms. Young sued UPS alleging violations of the Pregnancy Discrimination Act ("PDA"). The PDA amended Title VII to clarify that women "affected by pregnancy . . . 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." But what does that language mean? The Supreme Court heard the case to resolve a split in the lower courts' decisions and determine what protections Congress intended to provide pregnant women when it enacted the PDA.

Not surprisingly, Ms. Young and UPS have vastly different interpretations of the language in the PDA. Ms. Young asserts the plain language of the PDA requires employers to give pregnant women who are unable to work the same accommodations as similarly-situated, non-pregnant employees who are unable to work (i.e. light duty.) Under Ms. Young's interpretation of the PDA, if an employer accommodates an employee who is not pregnant and who cannot lift more than twenty pounds due to an injury, the employer must also accommodate a pregnant employee who cannot lift more than twenty pounds due to her pregnancy. Not so, says UPS. UPS asserts that pursuant to the plain language of the PDA, an employer's policy only violates the PDA if the employer discriminates *because of* or *on the basis of* pregnancy. UPS argued that its policy is permissible because it is a neutral, pregnancy-blind policy; pursuant to UPS's policy, non-pregnant UPS employees could also be denied light-duty work despite an injury or other condition. For example, a UPS employee would not be accommodated if they sustained an off-the-job injury that did not amount to a disability under the ADA (employees with disabling conditions under the ADA are one of the three categories, discussed above, for which UPS will provide light-duty work). Furthermore, UPS asserts Ms. Young was not "similarly situated" to ADA-disabled employees, because her lifting restrictions were only temporary and not otherwise "a significant restriction on her ability to perform major life activities." Additionally, UPS asserts Ms. Young's interpretation of the PDA would cause pregnant employees to receive "preferential treatment," because it would extend the accommodations to pregnant women beyond the accommodations available for employees with non-work related disabilities.

At oral argument, the Court seemed conflicted over the grammatical structure of the PDA. Neither party seemed to be able to adequately reconcile their conflicting interpretations of the PDA.

The United States Department of Justice weighed into the dispute by filing a brief asking the Court to adopt Ms. Young's interpretation of the PDA in light of new EEOC guidelines. The EEOC, the agency that administers and enforces the PDA, issued new guidance in response to the Young litigation, stating that an

“employer may not refuse to treat a pregnant worker the same as other employees who are similar in their ability or inability to work by relying on a policy that makes distinctions based on the source of the employee's limitations.” The EEOC therefore agrees with Ms. Young's interpretation of the PDA. Despite the EEOC's guidance, the Supreme Court is certainly at liberty to create an interpretation of the PDA that differs from the EEOC's interpretation.

We will be watching this case to determine how the Supreme Court rules. If the Court agrees with Ms. Young's interpretation of the PDA, employers must review their accommodation policies to ensure that pregnant employees receive the same accommodations as their non-pregnant co-workers.