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Supreme Court Issues New Guidance to Employers in Pregnancy Discrimination Cases

By Moyenda M. Knapp

"Why, when the employer accommodated so many, could it not accommodate pregnant women as well?" With that telling reasoning, the Supreme Court last week sent a case back to a federal appellate court and served notice on employers of a potential new standard for seemingly neutral policies that affect pregnant employees. That is the end of the case, however; now, let us go back to the beginning.

The case, [Young v. United Parcel Service, Inc.](#), concerned the interpretation of the second provision of the Pregnancy Discrimination Act ("PDA"). The PDA is part of Title VII of the Civil Rights Act of 1964, which prohibits discrimination in the conditions, privileges and terms of employment based on a person's sex. The first part of the PDA provides that Title VII's sex discrimination prohibition applies to discrimination on the basis of pregnancy, childbirth, or medical conditions related to both. The second provision of the PDA provides that employers shall treat "women affected by pregnancy, childbirth, or related medical conditions...the same for all employment-related purposes...as other persons not so affected but similar in their ability or inability to work."

[As we previously wrote](#), Peggy Young was a pregnant, part-time UPS driver whose doctor placed her on a lifting restriction during her pregnancy. Because UPS required drivers to lift up to 70 pounds

without assistance and to help with lifting up to 150 pounds, UPS told Young that she could not work with her restrictions. Young remained out of work without pay during the majority of her pregnancy. UPS's policies at the time accommodated certain workers, such as workers with on-the-job injuries, workers covered by the Americans with Disabilities Act ("ADA"), and workers who lost their Department of Transportation certification. As Young did not fall under any of those policies, she was not eligible for light-duty work or other accommodation under UPS's policies. Young returned to the job in 2007 after giving birth. She sued UPS, claiming discrimination due to her pregnancy because UPS did not accommodate her weight lifting restriction but accommodated other drivers who could not work.

UPS argued that because Young was not covered by any of its other policies for accommodating workers, she was treated the same as other employees who did not qualify for those policies, and therefore she was not discriminated against due to her pregnancy. The federal district and appellate courts agreed with UPS.

The Supreme Court disagreed, and in doing so it set out a new framework within which employees can show pregnancy discrimination. A worker alleging that an accommodation denial violates the PDA may prove her case through the traditional burden-shifting approach used in employment discrimination cases but with a different way of showing that the employer's valid, non-discriminatory reason for its decision is pretext. Using this approach, Young could show pretext for discrimination by proving that UPS's policies were a "significant burden" upon pregnant workers and that UPS's reasons for its policies were "not sufficiently strong to justify the burden," but rather "when considered along with the burden imposed" gave rise to an inference of discrimination by the employer. An employee can create a genuine issue of material fact about whether a significant burden exists "by providing evidence that the employer accommodates a large percentage of nonpregnant workers while failing to accommodate a large percentage of pregnant workers."

As applied to Young's case, the Court explained, if Young's version of the facts are accurate, she could show that UPS accommodated "most" non-pregnant workers with lifting restrictions while "categorically failing" to do the same for pregnant workers. That, combined with the number of policies UPS had to accommodate non-pregnant employees with lifting restrictions, could imply that UPS's reasons to not accommodate Young are "not sufficiently strong" to the point a jury could conclude that UPS's reasons rose to the level of "an inference of intentional discrimination." The Court did not find that pretext existed, but rather left that to the appellate court.

There are two other items of note from the decision, both regarding the EEOC. In its decision, the Court noted that the ADA had an expanded definition of "disability" and that the EEOC interpreted the revised ADA to require accommodation of temporary restrictions, including temporary lifting restrictions. The Court did not offer an opinion on that interpretation, but noted that the revised ADA may "limit the future significance" of its interpretation of the PDA in *Young*. In addition, the Court recognized that the EEOC's [July 2014 guidelines](#) stated that employers cannot refuse to treat pregnant workers the same as other employees who have similar abilities or inabilities to work in reliance on a policy that provides light duty work to workers who are injured on the job. However, the Court pointedly denied the government's request that the EEOC's guidance be given any weight, noting that the July 2014 guidelines were issued after the Court decided to hear the case, addressed an area the EEOC was previously silent on, and contradicted the position long advocated by the government.

So, we have returned to the end of the case. What does the *Young* decision mean for an employer? First and foremost, employers who have multiple policies regarding which employees do and do not receive workplace accommodations, such as UPS had here, should review those policies in light of this decision. Additionally, employers should expect the contours of *Young* to be filled out in litigation. The Court was silent on what is exactly meant by terms such as "large percentage" and "substantial burden," and it will be left to federal trial and appellate courts to determine that in future years.

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