

One Minute Memo®



SCOTUS Issues Decision in Pregnancy Accommodation Discrimination Case Against UPS

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In a 6-3 decision handed down this morning in *Young v. United Parcel Service, Inc.*, No. 12-1226, the U.S. Supreme Court overturned a Fourth Circuit decision that affirmed a grant of summary judgment to UPS in a Pregnancy Discrimination Act lawsuit brought against it by Young, a female delivery driver. The Supreme Court remanded the case to the Fourth Circuit to determine whether Young created a genuine issue of material fact as to whether UPS' reasons for having treated Young less favorably than it treated other non-pregnant employees were pretextual.

First, a brief summary of the facts: When Young became pregnant, her doctor advised her that she could not lift more than 20 pounds, but UPS required drivers like Young to be able to lift up to 70 pounds. UPS told Young that she could not work while under a lifting restriction. Young then filed a federal lawsuit claiming that UPS acted unlawfully in refusing to accommodate her pregnancy-related lifting restriction. In response to UPS's motion for summary judgment, Young pointed to UPS policies that accommodated workers who were injured on the job, had lost Department of Transportation certifications, or had disabilities covered by the Americans with Disabilities Act.

In vacating the judgment of the Fourth Circuit and remanding the case, the Supreme Court held as follows:

- A pregnant worker who seeks to show disparate treatment through indirect evidence may do so through application of the *McDonnell Douglas* burden-shifting framework, meaning that she must first establish a prima facie case of pregnancy discrimination, which requires her to show that she belongs to the protected class, she sought an accommodation, the employer did not accommodate her, and the employer did accommodate others who were "similar in their ability or inability to work."
- If the plaintiff establishes a prima facie case, then the burden shifts to the employer to articulate a legitimate, nondiscriminatory reason for denying the plaintiff the accommodation, and the reasons 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.
- If the employer articulates a legitimate, nondiscriminatory reason, then the burden shifts back to the plaintiff to show that the employer's reason is a pretext for unlawful discrimination.
- A plaintiff can show pretext by providing evidence that the employer's policies impose a "significant burden" on pregnant workers and the employer's legitimate, nondiscriminatory reasons are "not sufficiently strong" to justify the burden. A plaintiff may do so by providing evidence that the employer accommodates a large percentage of non-pregnant workers while failing to accommodate a large percentage of pregnant workers.

Applying the above to the facts of this case, the Supreme Court held that Young had created a genuine dispute as to whether UPS provided more favorable treatment to at least some employees whose situation could not reasonably be distinguished from hers, and the Fourth Circuit did not consider why, when UPS accommodated so many (those with on-the-job injuries, who had lost DOT certifications, and those with disabilities under the ADA), it could not accommodate pregnant women as well. The Court therefore remanded the case to the Fourth Circuit to determine whether Young had also created a genuine issue of material fact as to whether UPS's reasons for treating her less favorably than other non-pregnant employees was a pretext for discrimination.

The Supreme Court rejected Young's contention that as long as an employer provides one or two workers with an accommodation, then it must provide similar accommodations to pregnant workers with comparable physical limitations, irrespective of the nature of their jobs, the employer's need to keep them working, or any other criteria.

While the decision was split, the Supreme Court unanimously rejected the EEOC's position. As we have previously noted ([here](#)), the Commission issued updated pregnancy discrimination guidance on a partisan basis in July 2014 in a bald attempt to jump over a pending *Young* decision. The Supreme Court recognized as much, and disregarded the EEOC's guidance because of its timing, inconsistency with past positions, and the lack of a thorough consideration of the issue. In fact, the Supreme Court noted that the government had previously argued that a theory similar to the one set forth in *Young* was "simply incorrect." The Court determined that it could not "rely significantly on the EEOC's determination" contained in its guidance.

Regardless of the decision, both employers and employees will have difficulty making sense of the Court's new standard, which as Justice Scalia points out is "splendidly unconnected" to the text of Title VII. Without a doubt, given the broad expansion of covered disabilities under the ADAAA, many more pregnancy-related impairments now likely rise to the level of an ADA-covered disability (e.g., anemia, pregnancy-related sciatica, pre-eclampsia, gestational diabetes), something the majority alluded to in its opinion. In these instances, a pregnant employee would be afforded the same right to reasonable accommodation under the ADA as any other individual with a disability, regardless of whether the impairment was related to pregnancy.

While litigation will provide greater clarity in the coming years, employers should strongly consider adopting practices that consider accommodation of women with "normal" pregnancies, determine whether the individual can perform the essential functions of the job, and consider requests for accommodations accordingly.

Finally, regardless of these federal law developments, for those employers in states and municipalities that have passed pregnancy accommodation laws, they need to adopt policies and practices consistent with those laws in terms of providing accommodations to pregnant workers. The laws differ, some requiring a showing similar to the ADA for purposes of providing accommodations and others provide accommodations to pregnant workers, regardless of whether the pregnancy is normal or has complications.

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