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United States Supreme Court Issues Ruling Regarding Treatment of Pregnant Employees

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On March 25, 2015, in *Young v. United Parcel Service*, the United States Supreme Court held that under the Pregnancy Discrimination Act (PDA), a pregnant employee alleging that an employer failed to provide her with a reasonable accommodation due to her pregnancy could establish a prima facie claim of intentional discrimination under Title VII of the Civil Rights Act by introducing circumstantial evidence that “employer’s policies impose a significant burden on pregnant workers” and that the employer’s “proffered legitimate, non-discriminatory reasons” for its policy are not sufficiently strong to justify that burden.

In *Young*, the plaintiff, a pregnant driver for the United Parcel Service (UPS), was told by her doctor that she could not lift more than 20 pounds during the first 20 weeks of her pregnancy. UPS generally required its drivers to be able to lift up to 70 pounds, but had a “light-duty-for-injury policy” to accommodate drivers unable to meet that requirement who: (1) had become disabled on the job, (2) lost their DOT certification; and (3) suffered a disability covered by the Americans with Disabilities Act. UPS, however, refused to extend that policy to Young and other pregnant employees.

Young filed suit, alleging that UPS acted unlawfully in refusing to accommodate her pregnancy-related lifting restriction. The trial court granted UPS’s motion for summary judgment and dismissed Young’s claim because (1) she “could not show intentional discrimination through direct evidence,” (2) the non-pregnant employees eligible for the “light duty” accommodation were too different from pregnant employees to be considered “similarly situated,” and (3) Young had failed to rebut UPS’s legitimate, non-discriminatory reason for failing to accommodate pregnant women.

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The Fourth Circuit affirmed the trial court's ruling, noting that "UPS has created a pregnancy-blind policy" and that Young could not prove that "similarly-situated" non-pregnant employees were treated more favorably than pregnant employees.

The Supreme Court, however, vacated the Fourth Circuit's judgment. The Court observed that the PDA not only extends Title VII's prohibition against sex discrimination to include discrimination based on pregnancy, but it also requires employers to treat pregnant women "the same for all employment-related purposes...as other persons not [pregnant] but similar in their ability or inability to work."

As a result, the Court held that a plaintiff can proceed with a disparate treatment claim under the PDA "by providing evidence that the employer accommodates a large percentage of nonpregnant workers while failing to accommodate a large percentage of pregnant workers" and that there was "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." The Court also remanded the case to the Fourth Circuit for a determination of whether UPS's allegedly non-discriminatory reasons for treating Young less favorably presented any issue for a jury.

Employers should contact their employment counsel for guidance to ensure that their anti-discrimination policies and trainings are up to date and compliant with the standards set forth in *Young*. Employers are also encouraged to contact employment counsel any time a claim of discrimination or a request for an accommodation is made by an employee so that the appropriate measures can be implemented.

The authors of this Alert, **Justin P. Kolbenschlag** and **Stephanie G. Reckord**, are associates in the firm's Litigation Department. Mr. Kolbenschlag is a member of the firm's Employment Law Practice Group. Ms. Reckord is Chair-Elect of the Women in the Profession Section of the New Jersey State Bar Association, and will be moderating a panel discussing this case and other litigation affecting women in employment at the New Jersey State Bar Association's Annual Convention in Atlantic City on May 14, 2015.