

# EEOC Issues Enforcement Guidance on the Pregnancy Discrimination Act

## Labor & Employment Law Update

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Recently, the U.S. Supreme Court granted certiorari to review a Fourth Circuit opinion holding that an employer did not violate the Pregnancy Discrimination Act (PDA) when it did not offer light duty to a pregnant employee, even though the employer had an established light duty program for certain categories of employees, including those injured on the job. *Young v. United Parcel Service, Inc.* The following week, the EEOC released enforcement guidance that takes an opposite position to that reached in *Young*. The guidance was not offered for public comment prior to being released.

The enforcement guidance outlines the EEOC's position that an employer must offer pregnant employees the same benefits as it offers to employees with other medical-related conditions such as light duty, reasonable accommodations, modified tasks alternative assignments and leave.

The EEOC's position is that if non-pregnant employees are offered these options, an employer must also offer them to pregnant employees to be in compliance with the PDA; absent showing that the policy is job related and consistent with a business necessity. The EEOC also outlined that past, present and potential pregnancies are covered and can be the basis of pregnancy discrimination.

Additionally, the EEOC acknowledged that pregnancy itself is not a disability, but it outlined that employers have obligations under the ADA to accommodate pregnant employees. The EEOC noted that many pregnancy-related impairments could be considered disabilities and thus entitled to accommodations.

The enforcement guidance is the first issued on the PDA since 1983. A fact sheet and Q&A were also issued. It is important to note that the EEOC's enforcement guidance does not have the force of law and courts are not obligated to follow it. However, the EEOC will follow this enforcement guidance in cases argued before it. Note: If the Supreme Court upholds the Fourth Circuit's opinion, which contradicts the guidance in certain respects, the guidance will be moot and of no significance, even before the EEOC.

## Bottom Line

The EEOC enforcement guidance on the PDA attempts to quietly but significantly alter employer's obligations to pregnant employees and employers should be cognizant of the guidance when making decisions related to pregnant employees and also when defending a pregnancy charge before the EEOC.

As to the long-term implications of the enforcement guidance, the U.S. Supreme Court's decision on *Young* will determine whether employers need to re-think its employment policies as it relates to pregnant employees or not. As previously reported, Illinois employers are reminded that Illinois law was recently amended to provide broad coverage and protections for pregnant employees.

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