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EMPLOYMENT LAWSCENE ALERT: SUPREME COURT ISSUES RULING ON ACCOMMODATING PREGNANT EMPLOYEES

On Wednesday, March 25, 2015, a divided U.S. Supreme Court issued a ruling in *Young v. UPS*. The Supreme Court was asked to decide whether the Pregnancy Discrimination Act ("PDA"), which amended Title VII of the Civil Rights Act of 1964, allows an employer to have a policy that accommodates some, but not all, workers with non-pregnancy related disabilities but does not accommodate pregnancy-related conditions. We covered the background of the case here. The majority opinion from the Supreme Court overturned the Fourth Circuit's decision to affirm summary judgment for the employer and returned the case to the Fourth Circuit.

The employer argued that the PDA Act doesn't require accommodations or special treatment for pregnant employees and that it was, therefore, entitled to treat pregnant employees the same as it treated employees with restrictions stemming from off-the-job injuries. The employee argued that employers who provide work accommodations to non-pregnant employees must do the same for pregnant employees who are similarly restricted in their ability to work. The majority opinion did not find either the employee or the employer's interpretation of the PDA persuasive.

The majority opinion rejected the employee's interpretation of the PDA because it essentially gave pregnant employees an unconditional "most-favored-nations" status because pregnant employees would have to receive the same accommodations that any other employee received for any reason. The majority agreed with lower courts that this was not Congress' intent in passing the PDA. Although the EEOC had supported the employee's position and published guidelines in line with her arguments, the majority stated that the guidelines were promulgated after certiorari was granted, took a position on which previous EEOC guidance had been silent, were inconsistent with positions long advocated by the government, and the EEOC did not explain the basis for the guidance; therefore, they found such guidance unpersuasive.

The Supreme Court's majority opinion disagreed with the employer's interpretation as well, holding that it would cause the first clause of the PDA to be superfluous and would fail to carry out a key objective in passing the PDA.

The majority laid out that a pregnant employee can still use the *McDonnel Douglas* framework to prove a case of disparate treatment under the PDA by showing that she belongs to a protected class, that she sought an accommodation, that the employer did not accommodate her, and that the employer did accommodate others similar in their ability or inability to work. The employer may then justify its refusal to accommodate by relying on legitimate, nondiscriminatory reasons, although claims that it is more expensive or less convenient will generally not suffice. The employee may then show that the alleged legitimate, nondiscriminatory reason is pretextual. The Supreme Court sent the case back to the Fourth Circuit to determine whether there were genuine issues of material fact as to whether the employer's reasons for not accommodating her were pretextual.

The majority did make an interesting note that their holding may be of limited significance because of the change in the Americans with Disabilities Act expansion in 2008 and the EEOC's guidance that employers are required to accommodate employees whose temporary lifting restrictions originate off the job. Although the Court expressed no view on the statutory or regulatory changes and although pregnancy is generally not considered a disability but conditions related to pregnancy can be, this could cause employees to raise ADA claims when denied accommodations related to their pregnancies and pregnancy-related conditions.

Employers should carefully consider their policies on how to handle employee requests for accommodations. Although the ruling did not fully side with either party, it is likely to lead to additional litigation on accommodation requests by pregnant employees.