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EMPLOYMENT LAWSCENE ALERT: SUPREME COURT TO DECIDE PREGNANCY ACCOMMODATION CASE

On December 3, 2014, the United States Supreme Court will hear oral arguments in *Peggy Young v. United Parcel Service Inc.*, No. 12-1226, and the outcome could have a significant impact on employers and their pregnant employees.

Peggy Young was a UPS delivery driver. She went out on leave for in vitro fertilization and, when she returned, had lifting restrictions. Although workers who had temporary restrictions from on-the-job injuries, were disabled, or had lost their Department of Transportation certification were allowed temporary alternate assignments, Ms. Young was denied a similar accommodation for her pregnancy-related restriction. In 2008, she filed a discrimination suit based on the claim that UPS violated Title VII of the Civil Rights Act of 1964 and the Pregnancy Discrimination Act by refusing to accommodate her pregnancy by letting her perform light duty work. UPS rests its argument on the fact that federal law does not require special treatment or accommodations for pregnant employees, and that its facially neutral policy cannot become discriminatory simply because it does not extend the privilege to pregnant employees. Under UPS' policy, any worker who was injured or had a condition that did not stem from work was not accommodated. Although the United States District Court for the District of Maryland and Fourth Circuit Court of Appeals agreed with UPS, the United States Supreme Court granted certiorari in July 2014.

Interested parties on both sides have weighed in on the case by filing amicus briefs. Most recently, on October 31, 2014, the U.S. Chamber of Commerce filed a brief supporting UPS that stated that Ms. Young's interpretation would blur the line between intentional and unintentional pregnancy bias and should not be allowed to go forward. They, and other groups, have advocated that federal law requires only that pregnant and non-pregnant workers receive equal treatment, not that pregnant employees should get preferential treatment.

The outcome of this case will help guide employers on whether and when employers are required to provide work accommodations to pregnant employees when they provide them to non-pregnant employees who are similar in their ability or inability to work. The Supreme Court's decision could signal a shift in the law and enforcement of law related to pregnant

employees that has already been evident elsewhere. In July, the EEOC issued additional guidance on pregnancy discrimination and accommodations, which stated that employers should offer accommodations to pregnant employees in the same way that accommodations were offered to non-pregnant employees with similar abilities or inabilities to work. The EEOC's guidance is not binding legal authority but, instead, the agency's interpretation of how the law should be implemented. The Supreme Court now has the option to embrace the EEOC's more expansive interpretation of the PDA or to reign in the EEOC and limit what accommodations employers are required to give to pregnant employees. The Pregnant Workers Fairness Act, which would require reasonable accommodations for pregnant employees, is also pending in the House of Representatives.

Employers should monitor the outcome of this case and, depending on the outcome, review their policies to ensure that they are compliant with the law.