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Supreme Court Gives New Life to Pregnancy Discrimination Claim

Yesterday, a divided Supreme Court allowed a delivery driver to pursue a discrimination claim based on her employer's denial of a request for light duty due to pregnancy-related lifting restrictions. Without deciding the merits of her claim, the Court sent the case back to the Fourth Circuit Court of Appeals to determine whether the company failed to reasonably accommodate this driver by refusing her request. The decision leaves open questions on the extent to which employers must accommodate pregnant workers – and what types of accommodations they must provide.

Background

Title VII of the Civil Rights Act of 1964 bans employment discrimination on the basis of race, color, religion, sex or national origin. The Pregnancy Discrimination Act (PDA) amended Title VII to extend its prohibition against sex discrimination to discrimination based on pregnancy, childbirth, or related medical conditions. The PDA requires employers to treat "women affected by pregnancy" the same as other non-pregnant employees "similar in their ability or inability to work."

Peggy Young worked as a part-time driver for United Parcel Service (UPS), responsible for picking up and delivering packages. UPS required drivers like Young to be able to lift and manipulate packages that weighed up to 70 pounds (and up to 150 pounds with assistance). After Young became pregnant in 2006, her doctor advised her not to lift more than 20 pounds during the first 20 weeks of her pregnancy or more than 10 pounds thereafter.

Company policy offered light duty to three categories of employees — those who (1) were injured on the job; (2) lost their Department of Transportation certifications; or (3) had a disability within the meaning of Americans with Disabilities Act (ADA). Because Young did not fall into any of those categories, the company denied her request for light duty and placed her on unpaid leave. She returned to work after her baby was born and, shortly thereafter, filed a pregnancy discrimination charge with the Equal Employment Opportunity Commission (EEOC). She later brought suit, claiming the company violated the PDA by refusing to accommodate her lifting restriction.

Failed Claim in Lower Courts

The trial court dismissed the case, concluding that Young had shown neither direct evidence of discrimination nor that similarly situated non-pregnant employees had received more favorable treatment with respect to accommodation requests. In affirming that decision, the Fourth Circuit Court of Appeals ruled that an employer complies with the PDA when it has a “neutral, pregnancy-blind policy” governing light duty work that treats similarly situated pregnant workers and non-pregnant workers alike, but that an employer is not required to give special treatment to pregnant employees.

In the opinion of the Fourth Circuit, Young could not show that she was treated less favorably than similarly situated non-pregnant employees because “a pregnant worker subject to a temporary lifting restriction is not similar in her ‘ability or inability to work’ to an employee disabled within the meaning of the ADA or an employee either prevented from operating a vehicle as a result of losing her DOT certification or injured on the job.” According to the court, compelling the company to treat pregnant employees the same as employees in those three categories would be tantamount to granting “pregnant employees a ‘most favored nation’ status.” Young appealed the decision to the Supreme Court.

EEOC Guidance

Soon after the Supreme Court agreed to hear this case, the EEOC issued its first comprehensive update of enforcement guidance on pregnancy discrimination in more than 30 years. Contrary to the EEOC’s prior position that pregnancy is not a disability, the new guidance interprets the PDA as granting the same reasonable accommodation rights to pregnant employees who have any kind of work restrictions as the ADA grants to individuals with disabilities. The guidance expressly provides that “an employer may not deny light duty to a pregnant employee based on a policy that limits light duty to employees with on-the-job injuries.” (See our September 4, 2014 *For Your Information*.)

> **Comment.** In 2008, Congress amended the ADA to expand the definition of “disability” to include physical or mental impairments that substantially limit an individual’s ability to lift, stand or bend. According to the EEOC, employers must accommodate an employee’s temporary lifting restriction due to an off-the-job injury. Because Young’s lawsuit predated the ADA amendments, the Court did not address the issue.

Supreme Court Weighs In

In a 6-3 decision, the Supreme Court vacated the Fourth Circuit’s ruling. The Court noted that employers need not provide all pregnant workers with accommodations similar to those granted to non-pregnant workers. However, in this case, the Court found that there was a genuine question whether the company’s policy impermissibly provided *more* favorable treatment to some non-pregnant employees whose work restrictions were indistinguishable from those of Young. In reaching that conclusion, the Court disregarded the EEOC’s 2014 guidance, citing its timing, inconsistency with previous government positions, and the agency’s “failure to explain the basis” for its new guidance.

The Court decision, however, did not resolve this case. Rather, the Court sent the case back to the Fourth Circuit to determine whether the company had a legitimate, nondiscriminatory, non-pretextual reason for its light duty policy.

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In Closing

The Supreme Court's decision left open questions on the extent to which employers must accommodate pregnant workers and what types of accommodations they must provide. The Fourth Circuit may offer more clarity on these issues. Meanwhile, as employers review their current policies and practices in light of this and future rulings, they should also factor in applicable requirements under state and local pregnancy accommodation laws that are now in place in a number of jurisdictions.

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