Special Focus Employment Law:

Young v. United Parcel Service, Inc.: A Small Step for Pregnant Employees

On March 25, 2015, the United States Supreme Court in *Young v. United Parcel Service, Inc.* held that a plaintiff may survive a motion for summary judgment when an employer provides more favorable treatment to at least some nonpregnant employees who have similar lifting restrictions as pregnant employees. — U.S. —, 2015 WL 1310745 (Mar. 25, 2015). This 6-3 opinion sheds some light on the hotly debated fight over the Pregnancy Discrimination Act ("PDA") in relation to reasonable accommodation.

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In *Young*, the plaintiff, Peggy Young, brought a lawsuit against her employer, United Parcel Service, Inc. ("UPS"), alleging UPS had subjected her to pregnancy discrimination in violation of the Americans with Disabilities Act ("ADA") and the PDA for refusing to accommodate her pregnancy-related lifting restriction.

The PDA specifically prohibits sex discrimination "because of or on the basis of pregnancy, childbirth, or related medical conditions." 42 U.S.C. § 2000e(k). The Act further provides that employers must treat "women affected by pregnancy . . . the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work." *Id.* The *Young* Court determined how the latter provision applies when an employer's policy accommodates many, but not all, workers with nonpregnancy-related disabilities.

Young's doctor placed her on lifting restrictions of no more than 20 lbs. However, UPS required drivers like Young to be able to lift up to 70 lbs. and refused to accommodate her. Young argued that UPS's policies accommodated employees who were injured on the job, had disabilities covered by the ADA, or had other certifications that gave rise to accommodation, and as such, UPS had accommodated several individuals whose disabilities created work restrictions similar to hers. In essence, Young argued that UPS's policies discriminated against pregnant employees because it had a light-duty-for-injury policy for many other employees but not pregnant employees. UPS argued that since Young did not fall within the on-the-job injury, ADA, or other certification categories, it did not discriminate against Young, but had treated her as it treated all "other" relevant "persons".

The Court rejected both Young and UPS's interpretations of the ADA, stating that Young's interpretation of the second clause—that the PDA requires an employer to provide the same accommodations to workplace disabilities cause by pregnancy that it provides to workplace disabilities that have other causes but similar effect on one's working abilities—is too broad. The Court also stated that UPS's interpretation—that the second clause simply defines sex discrimination to include pregnancy discrimination—would fail to carry out an important objective of Congress and ignores precedent.

In so finding, the Court reiterated the burden that a plaintiff must meet to establish a *prima facie* case: by showing that: (1) she belongs to the protected class, (2) she sought accommodation, (3) the employer did not accommodate her, and (4) the employer did accommodate others "similar in their ability or inability to work." To survive a motion for summary judgment, which was on appeal in *Young*, a plaintiff can provide evidence showing the employer accommodates a large percentage of nonpregnant workers while failing to accommodate a large percentage of pregnant workers. The Court did not actually rule as to whether Young met her burden to survive summary judgment, leaving it to the lower court to make the final determination on remand in light of the interpretation of the PDA set forth in the opinion. In the 6-3 opinion, Chief Justice Roberts, in the majority, was joined by Justices Breyer, Ginsberg, Sotomayer and Alito – not the typical liberal/conservative split.

There appears to be a strong indication from the U.S. Supreme Court as well as Congress favoring employee's rights as protected by the PDA and ADA in light of an employer's policies accommodating nonpregnant employees with similar restrictions. In 2008, Congress expanded the definition of "disability" under the ADA to clarify that "physical or mental impairment[s] that substantially limi[t]" an individual's ability to lift, stand, or bend are ADA-covered disabilities. This new definition, as interpreted by the Equal Employment Opportunity Commission, requires employers to accommodate employees whose temporary lifting restrictions originate off the job. The future of PDA and reasonable accommodations for pregnant workers may be hopeful after all.

My fingers are crossed for Young, who will be going to trial in attempts to prove that UPS refused to accommodate her while accommodating others with similar restrictions. This case is a step forward for women who seeking accommodations at their jobs — and to keep their jobs — when they become pregnant.

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