Pregnancy Discrimination Claims after *Young v. UPS*

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It was a difficult delivery, but the Supreme Court in *Young v. UPS*[1] gave birth to a new test in determining whether an employer has violated the Pregnancy Discrimination Act ("PDA")[2].

The PDA set out two clauses – the first expanded Title VII of the Civil Rights Act of 1964 to expressly include pregnancy and related conditions as an unlawful form of discrimination. This clause came about in answer to the Supreme Court case of General Electric v. Gilbert, which excluded pregnancy as a form of sex discrimination. The second clause became the central issue of Young, providing that "women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes...as other persons not so affected but similar in their ability or inability to work."[3] Federal courts have struggled to determine the meaning of this clause, wrestling with the appropriate groups for comparison with pregnant women for purposes of the statute.

In *Young*, the Supreme Court set out a new rule that walked the line between the arguments of the parties. UPS argued that its rule is pregnancy-neutral, as it does not single out pregnant employees since other disabilities aren't accommodated, either. Young argued that women should receive accommodations that any other worker under a disability or temporary disability receives. The Court rejected both approaches, deciding instead that a plaintiff can make a prima facie case of discrimination by showing that "she belongs to the protected class, that she sought accommodation, that the employer did not accommodate her, and that the employer did accommodate others 'similar in their ability or inability to work.'"[4] The employer must then articulate a legitimate, non-discriminatory basis for failing to accommodate the pregnant worker. The plaintiff, however, can then show that the policy reasons put forth by the employer do not justify the significant burden on pregnant woman to the point where it would appear that "reasons for failing to accommodate pregnant employees give rise to an inference of intentional discrimination."[5]

Where this decision truly affects employers, however, is where the court explicitly takes apart recently-released EEOC guidance on the issue. The EEOC released guidance in July of 2014 that adopted a broad reading of the protection in the PDA along the lines of Young's argument to the court. The court explicitly rejected that interpretation, suggesting that it granted pregnant women "most favored nation" status. The reading of the statue in Young falls short of EEOC guidance, providing a bit of ease to employers who do not have to accommodate pregnant woman in the same way as any other employer under a disability. Employers must instead have a policy rationale that substantially justifies the burden on pregnant workers from non-accommodation, but employers should be on the safe side and accommodate pregnancy where possible.

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1 *Young v. United Parcel Service, Inc.*, 575 U.S. ___(2015)

2 Pregnancy Discrimination Act, Pub..L. No. 95-555 (1978)

3 42 USC 2000e (k)

4 *Young* at 20

5 *Id.* at 22

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