CLIENT NEWS BRIEF

U.S. Supreme Court Addresses Separate Accommodation Policies and Pregnancy Discrimination Claims

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The United States Supreme Court has ruled that courts should analyze differences in accommodations for pregnant versus nonpregnant employees. In *Young v. United Parcel Service, Inc.* (March 25, 2015) 2015 U.S. Lexis 2121, the Supreme Court held that when an employee brings a pregnancy discrimination lawsuit under the Pregnancy Discrimination Act (PDA) (42 U.S.C. § 2000e(k)), courts must consider whether and how an employer's policy treats pregnant workers less favorably than nonpregnant workers with similar work restrictions. This case is a helpful reminder that separate accommodation policies (i.e., those that differentiate between on-the-job injuries, ADA disabilities, etc.) may open the door to litigation, especially since California's Fair Employment and Housing Act explicitly requires that employers provide reasonable accommodations for conditions related to pregnancy. (Gov. Code, § 12945, subd. (a)(3)(A).)

Peggy Young was employed as a UPS driver who delivered packages. When she became pregnant, her doctor advised that she should not lift more than 20 pounds at the beginning of her pregnancy and no more than 10 pounds thereafter. UPS required that drivers be able to lift packages weighing up to 70 pounds. When Ms. Young provided UPS with her medical restriction, UPS told her she could not be accommodated and therefore could not work while under the lifting restriction. However, UPS had a practice of accommodating employees with similar work restrictions who had become disabled on the job, lost their Department of Transportation certifications, or suffered from a disability under the ADA. As a result, Ms. Young brought a pregnancy discrimination suit alleging that she was intentionally treated less favorably than employees with her qualifications but outside her protected class. The trial and appellate courts both concluded that Ms. Young's case against UPS failed because the policy was "pregnancy-blind" and that the categories of employees UPS accommodated were too different to compare to a pregnant worker.

The Supreme Court disagreed and concluded that Ms. Young could proceed with her lawsuit against UPS. While the Supreme Court noted that the PDA does not grant pregnant employees "an unconditional most-favored-nation status," an employee bringing a pregnancy discrimination lawsuit may establish discrimination by showing: (1) she belongs to the protected class, (2) that she sought accommodation, (3) that the employer did not accommodate her, and (4) that the employer accommodated others "similar in their ability or inability to work." An employer may then justify its refusal to accommodate for legitimate and nondiscriminatory reasons. However, the reason cannot be that it is more expensive or less convenient to accommodate pregnant women. If an employer sets forth a legitimate, nondiscriminatory reason for denying her accommodation, the burden shifts to the pregnant employee to show that the reason is pretextual.

The Court determined that a pregnant employee can sustain a lawsuit "by providing evidence that the employer accommodates a large percentage of nonpregnant workers while failing to accommodate a large percentage of pregnant workers." Because the Court found Ms. Young had met this burden, the Supreme Court returned the case to the lower court to determine whether

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the reasons UPS treated Ms. Young less favorably than it treated nonpregnant employees were pretextual.

The *Young* decision reminds employers to be cautious when considering and maintaining separate accommodation policies. The Court noted that the lower courts did not consider "why, when the employer accommodated so many, could it not accommodate pregnant women as well?" Under *Young* it may now be easier for a pregnant employee to establish a case of employment discrimination under the PDA. In fact, before the Supreme Court issued its decision in *Young*, UPS changed its practice and now provides accommodations to pregnant workers in the same manner. Finally, while *Young* was decided under federal law, it may be instructive to California courts analyzing pregnancy discrimination cases because California law requires employers to accommodate pregnant workers.

If you have any questions regarding the *Young* decision, or other questions regarding employee accommodations, please contact one of our nine offices located statewide. You can also visit our website, follow us on Facebook or Twitter, or download our Client News Brief App.