MARCH 26, 2015

SUPREME COURT REVIVES PREGNANT WORKER'S DISCRIMINATION CLAIM

Yesterday, March 25, 2015, the U.S. Supreme Court published its long-awaited opinion in the case of *Peggy Young v. United Parcel Service*. The issue in this case was whether an employer must reasonably accommodate a pregnant worker as it does other workers who are not pregnant. The Court vacated the Fourth Circuit's decision affirming summary judgment for UPS. Now, because the Court finds a genuine dispute as to whether UPS provided more favorable treatment to at least some employees whose situation cannot reasonably be distinguished from hers, the case may have to go to a jury.

A PREGNANT EMPLOYEE WITH LIFTING RESTRICTIONS

The employee, Peggy Young, worked as a part-time driver for UPS. Her position required her to lift parcels weighing up to 70 pounds. Due to her history of repeated miscarriages, when Ms. Young learned she was pregnant, her physician restricted her from lifting more than 20 pounds during the first 20 weeks of her pregnancy and more than 10 pounds for the remainder of her pregnancy.

UPS policy accommodated three categories of workers: 1) drivers who had become disabled on the job; 2) employees who had lost their Department of Transportation certification; and 3) employees who suffered from a disability under the ADA.

Ms. Young was told she could not work during the time she was restricted from lifting because she did not qualify for a workplace accommodation under UPS policy. As a result, Young spent much of her pregnancy at home without pay and eventually lost her employee medical coverage. She returned to work as a driver approximately two months after the birth of her baby.

THE ARGUMENT IS ABOUT PREGNANCY ACCOMMODATION

Ms. Young's claim was limited to a claim of disparate treatment under the Pregnancy Discrimination Act ("PDA"). Her claim centered around the second clause of the PDA, which states, "[W]omen 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*." (emphasis added)

Ms. Young argued that this language requires employers "to provide the same accommodations to workplace disabilities caused by pregnancy that it provides to workplace disabilities that have other causes but have a similar effect on the ability to work."

UPS argued that the language in the second clause did no more than define sex discrimination to include pregnancy discrimination.

THE COURT DOESN'T BUY EITHER ARGUMENT

The Court rejected both parties' interpretations of the PDA. Although technically a 6-3 decision, the opinion of the Court was extremely fractured, including four different opinions.

The majority found that the language in the second provision of the PDA goes to an employee's ability to establish a PDA claim for disparate treatment through circumstantial evidence.

The Court remanded the case back to the Fourth Circuit to consider the combined effects of UPS's accommodation policies on pregnant workers. In other words, the Court indicated that the question becomes, "Why, when the employer accommodated so many other employees, could it not accommodate pregnant women as well?" The Court did not rule on whether Young had created a genuine issue of fact as to whether UPS's reason for not accommodating her was pretext. That determination was left to the Fourth Circuit on remand.

EEOC PREGNANCY DISCRIMINATION GUIDANCE IN QUESTION

Shortly after the Court granted certiorari in this case, the EEOC promulgated updated, broad-reaching Guidance on the Pregnancy Discrimination Act. See our July 14, 2014 HR Insights blog post, Pregnancy Discrimination – EEOC Issues Important Enforcement Guidance. A number of the examples contained in the EEOC's Guidance raised considerable concern for employers. The Guidance intimated that an employer's duty to accommodate pregnancy-related conditions was little different than the obligation to reasonably accommodate disabled employees, wholly ignoring the fact that that the ADA expressly *excludes* ordinary pregnancy from the definition of disability.

The Court was extremely critical of the EEOC's Guidance. The Court flatly rejected any level of deference to the new Guidance, criticizing the

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timing (released only after the grant of certiorari to cover an area on which the prior guidance was silent) and finding it directly contradictory to the position previously taken by the Department of Justice that "pregnant employees with work limitations are *not* similarly situated to employees with similar limitations caused by on-the-job injuries." The Court ultimately concluded that, given these problems, it could not rely significantly on the EEOC's determination.

ADA IMPLICATIONS

Ms. Young's claims arose prior to the ADA Amendments Act of 2008. In 2008, Congress expanded the definition of disability under the ADA to make clear that physical or mental impairments that substantially limit an individual's ability to lift, stand or bend are ADA covered disabilities. Had her case been filed after the amendments took effect, her claims may well have included disability discrimination and failure to accommodate based on her history of repeated miscarriages under the rationale that the definition of disability includes pregnancy-related complications despite their temporary nature. The Court's majority took pains to distinguish that, at the time Ms. Young's claim arose, the ADA protected *only* those with permanent disabilities. Consequently, the Court's opinion is technically limited to cases before 2008. However, the clear implication for the majority opinion is that regardless of the underlying cause of a given disability, or its duration, an employer may *not* deny a request for reasonable accommodation solely because the impairment is temporary.

IMPACT ON EMPLOYERS

While employers can take some comfort in the Court's criticism of the EEOC's Pregnancy Discrimination Guidance, this decision confirms that employers must seriously consider accommodation requests of pregnant workers in the context of other workplace accommodations it provides to other employees with similar restrictions. Though the Court makes clear that an employer's decision to accommodate some employees – or some groups of employees – does not *necessarily* require accommodation of all employees, it does suggest that the more employees who are accommodated, the more courts may conclude that a failure to accommodate pregnant workers gives rise to an inference of intentional discrimination. The bottom line is that this decision makes it easier for a pregnant employee to successfully establish a claim for disparate treatment.

Reference: Young v. United Parcel Service, Inc., (U.S. Supreme Court, No. 12-1226, March 25, 2015).

If you have any questions about how this decision will impact your duty to accommodate members of your workforce, please contact Jennifer Gonzalez at jgonzalez@hallrender.com, Steve Lyman at slyman@hallrender.com or your regular Hall Render attorney.

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