Employers Take Note: The Supreme Court's Game-Changing Decision in *Young v. UPS* Requires Review of Pregnancy Accommodation Policies and Practices

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Earlier today, the Supreme Court issued a much-anticipated decision in the closely watched case of *Young v. UPS,* holding that a plaintiff may be able to prove unlawful failure to accommodate a pregnancy-related condition through evidence that other non-pregnant employees were provided with the requested accommodation. As further explained in this Alert, the Young v. UPS decision promises dramatic changes in how pregnancy discrimination and accommodation claims are viewed and handled by courts nationwide, and requires employers to review and, if necessary, change their relevant policies and practices.

Young v. UPS involves former UPS driver Peggy Young, who, upon becoming pregnant, was put on a lifting restriction by her doctor: no lifting of more than 20 pounds during the first 20 weeks of pregnancy, and no lifting of more than 10 pounds through the remainder of the pregnancy. At that time, UPS required its drivers to be able to lift a minimum of 70 pounds. As a result, the company told Young that she could not return to work until the restriction was released. The lower federal court granted summary judgment in favor of UPS, holding that no pregnancy discrimination had occurred, and the Fourth Circuit Court of Appeals affirmed. In one of its most important employment discrimination decisions in decades, today the Supreme Court vacated the Fourth Circuit's decision, allowing Young to proceed in her pregnancy discrimination claim.

The Supreme Court held that an individual may establish a *prima facie* case of pregnancy discrimination by "showing actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were based on a discriminatory criterion." Put another way, an employee may establish her *prima facie* case of pregnancy discrimination by pointing to some evidence that the employer's actions were discriminatory. As the Court explained, the burden of making this showing is "not onerous," and, significantly, does ***not*** require the plaintiff to show that non-pregnant employees who were allegedly treated more favorably were in similarly situated positions. Rather, the employee needs only to show that: (1) she was pregnant at the relevant time; (2) her employer did not accommodate her; and (3) her employer did accommodate others who are similar ***only*** "in their ability or inability to work." The Court reasoned that Young could satisfy her *prima facie* burden by pointing to evidence that UPS had policies accommodating non-pregnant employees' lifting restrictions – for example, its Americans with Disabilities Act (ADA) and job injury policies provided for light duty-type arrangements – but the same accommodation was not extended to pregnant employees.

The Court went on to explain that once the plaintiff meets the initial burden of establishing her *prima facie* case, then, as is typical in discrimination cases, the burden shifts to the employer to articulate a legitimate, non-discriminatory reason for denying the requested accommodation. While this burden traditionally set a comparatively low bar for employers to overcome, the Court cautioned that an employer's reasoning that "it is more expensive or less convenient" to extend protection to pregnant women will not suffice, though the Court did not elaborate as to what articulated reasoning will, in fact, be deemed to be legitimate and sufficient. If an employer is able to satisfy its burden of articulating a legitimate, non-discriminatory reason, the final burden shifts back to the plaintiff to show that reason to be pretextual. While showing "pretext" traditionally has presented a comparatively high bar for plaintiffs to overcome, here again the Court lent a helping hand to plaintiffs in pregnancy discrimination cases by holding that this burden may be met if the employee can point to evidence that the employer's policies "impose a significant burden on pregnant workers, and that the employer's 'legitimate, non-discriminatory' reasons are not sufficiently strong to justify the burden, but rather – when considered along with the burden imposed – give rise to an inference of intentional discrimination." In Young's case, for example, the Court reasoned that if the

facts are as Young says they are, she may be able succeed in her claims by proving "that UPS accommodates most non-pregnant employees with lifting limitations while categorically failing to accommodate pregnant employees with lifting limitations," thereby giving rise to an inference of intentional discrimination based on pregnancy.

Today's Supreme Court's decision in *Young v. UPS* is a game changer for pregnancy discrimination and accommodation cases. Setting lower burdens for plaintiffs and a higher burden for employers to overcome than, arguably, ever before seen from the Court in employment discrimination cases, at a minimum employers can expect that going forward it will be substantially easier for plaintiffs to succeed in pregnancy discrimination and accommodation claims, and that policies that tend to negatively impact pregnant employees – particularly where there is evidence that the requested accommodations have been provided to non-pregnant employees – are likely to be scrutinized and may well be deemed to be unlawful. It is important for employers to review their policies and practices with today's ruling in mind, and to make whatever changes necessary to ensure appropriate accommodation of, and no adverse effect with respect to, pregnant employees. Any requests for pregnancy-related accommodations must be taken seriously and evaluated thoughtfully, so as to ensure compliance and help prevent claims.

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