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KD Alert: Supreme Court Gives New Life to UPS Pregnancy Bias Case

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Last Wednesday's surprising U.S. Supreme Court decision in Young v. United Parcel Service Inc. revived a lawsuit brought by former delivery driver Peggy Young who was denied light-duty work by her employer, UPS, while pregnant in 2006. The Court's decision was, unfortunately, essentially a "non-decision", inasmuch as the case was vacated and remanded back to the Fourth Circuit Court of Appeals. Striking down a perceived prior win for UPS, the Court, voting 6-3, said both UPS and Young's interpretations of the Pregnanc Discrimination Act ("PDA") were unpersuasive. The Court determined it did not have enough evidence upon which to make an informed determination because the Court of Appeals' analysis was flawed, specifically, in its failure to properly apply the McDonnell Douglas burden shifting framework.

The ruling is the Supreme Court's first since 1991 on employers' duties toward their pregnant workers. Despite the Court not ruling completely in Young's favor, many, including the EEOC, see it is a "clear win for women and families" and a "significant win for the rigl of pregnant workers." The EEOC's praise of the decision is rather interesting given that the Court dismissed the EEOC's 2014 Pregnancy Guidance as "inconsistent with positions for which the Government has long advocated" and faulted it for not explaining th basis of the Guidance.

WHAT TO EXPECT WHILE YOU'RE EXPECTING THE FOURTH CIRCUIT'S NEW REVIEW?

Not surprisingly, the first push resulting from the decision will be towards changes to the EEOC's 2014 Pregnancy Discrimination Enforcement Guidance. In an emailed statement, the EEOC acknowledged some conflict between the majority's decision and the pregnancy guidance issued by the EEOC just two weeks after the Supreme Court granted certiorari to Young's case. "The Commission's pregnancy discrimination guidance comports with some but not all aspects of the court's decision. The Commission will make necessary changes to the guidance in accordance with the decision," according to the agency's statement, though it also noted that the Guidance covered a range of issues not impacted by Court's decision.

Among the issues for reconsideration is the EEOC's firm stance that it "rejects the position that the PDA does not require an employer to provide light duty for a pregnant worker if the employer has a policy or practice of limiting light duty to workers injured on the job and/or to employees with disabilities under the ADA." Justice Stephen Breyer, writing for the majority, went as far as to state the Guidance's "power to persuade was severely limited." Many feel that the Court's criticism will actually be helpful for employers in the long run because it will force the EEOC to prove its consistency with earlier decisions, and result in a much clearer directive to be followed with respect to pregnant employees.

Though the Supreme Court didn't offer a definitive answer to the question of whether and when employers had to accommodate pregnant employees under the PDA, the decision will likely give life to further protections for working women across the board. Even UPS told the high court in an October 2014 oral argument brief that it was voluntarily changing its approach to pregnancy accommodations and would make temporary light duty work available to pregnant workers with medically certified restrictions, starting in January 2015. UPS's decision would effectively treat pregnant employees with restrictions the same as workers with on-the-job injuries.

Changes in the law— most notably the Americans with Disabilities Act ("ADA") Amendments Act of 2008 — have already expanded pregnancy protections, by stating that pregnancy-related impairments can qualify as disabilities and expanding the definition of the term disability. This heightens the burdens placed on employers despite pregnancy not qualifying as a disability on its own, and there being no accommodation obligation written into the PDA like there is in the ADA.

Many state laws and local jurisdictions now also explicitly require accommodations for pregnant workers. Early last year, Philadelphia Mayor Michael Nutter signed Bill No. 130687 into law, requiring reasonable workplace accommodations for employees who have needs related to pregnancy, childbirth, or a related medical condition. And many companies, like UPS, are

following suit by offering accommodations for pregnant workers voluntarily. With the momentum seemingly shifting in the pregnant employees' favor, employers should now, more than ever, be engaging in a reasonable accommodation analysis with their pregnant employees as regularly as taking their prenatal vitamins.

KD provides employers with guidance in formulating and implementing employment practices and decisions to stay ahead of new and complex statutory regulations and to minimize their potential liability exposure. If you have questions pertaining to the Pregnancy Discrimination Act, the Americans with Disabilities Act, as amended or need assistance with preparing your organization to engage in a reasonable accommodation analysis with your pregnant employees, please contact Philip R. Voluck, Esq. or Irina V. Rabovetsky, Esq. at 215-461-1100.