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Reporter

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U.S. Supreme Court rules that pregnant employees with light duty medical restrictions can sue and be awarded damages under the Pregnancy Discrimination Act when their employer denies them requested light duty work, but regularly assigns light duty work to non-pregnant employees with comparable medical restrictions.

The Pregnancy Discrimination Act ("PDA") amended Title VII by defining prohibited sex discrimination as follows: "The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; **and 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,…**" [Emphasis added.]

On March 25, 2015, the U.S. Supreme Court issued a decision interpreting the PDA's above-quoted definition of unlawful sex discrimination. In *Young v. UPS, Inc.*, the Supreme Court ruled that a judge or jury could reasonably conclude from the facts summarized below that UPS' stated reason for refusing to provide light duty work to the plaintiff, a pregnant employee with a 20 lb. lifting restriction, is a pretext for unlawful sex discrimination:

> The plaintiff (Peggy Young) was a driver for UPS who became pregnant after taking FMLA leave for other reasons, and extended her leave due to pregnancy. Three months into her leave, the plaintiff informed UPS that she wanted to return to work, and that she had a 20-lb. pregnancy-related lifting restriction. UPS informed her that under its policies, it offered light duty work in only three situations: (1) when employees have medical restrictions arising from work-related injuries, (2) when providing reasonable accommodation to disabled employees, as required by the ADA, and (3) when drivers lose their DOT certification. UPS also informed the plaintiff that she had exhausted her 12-week leave entitlement under the FMLA leave, and that UPS policy would not permit her to continue working as a driver with a 20-lb. lifting restriction. Because UPS did not permit the plaintiff to return to work, she took an extended leave of absence, lost her medical insurance, and returned to work at UPS after her child was born and the 20-lb. lifting restriction was lifted. The plaintiff thereafter sued for pregnancy discrimination and disability discrimination.

Based on these facts, both the district court and the Fourth Circuit Court of Appeals ruled that the UPS policy providing light-duty work only to employees with on-the-job injuries, employees with disabilities accommodated under the ADA, and employees who lose DOT certification was not direct evidence of pregnancy discrimination. And both courts ruled that the plaintiff could not establish a prima facie case of pregnancy discrimination because she was not similarly situated to employees with work-related injuries, or to ADA disabled employees, or to employees who lose DOT certification.

The Supreme Court, however, reversed the lower courts, holding that pregnant employees can prevail on a claim of pregnancy discrimination based on indirect evidence using the *McDonnell Douglas* burden-shifting analysis that originated nearly 40 years ago. Specifically, the Court held that pregnant employees can establish a prima facie case of pregnancy discrimination by establishing the following four elements:

1) Plaintiff belongs to the protected class;

2) Plaintiff sought accommodation;

3) the employer did not accommodate her; and

4) the employer did accommodate others "similar in their ability or inability to work."

If these four elements are established, the burden shifts to the employer to justify its refusal to accommodate pregnant employees with medical restrictions based on legitimate, nondiscriminatory reasons; however, the employer's reason cannot merely be that doing so would be more costly or inconvenient to the employer. If the employer articulates a legitimate business reason (other than additional cost or inconvenience) for refusing to accommodate the pregnant employee, the burden shifts to the em-

ployee to present evidence that the employer's stated reason is merely a pretext for pregnancy discrimination.

On the issue of pretext, the Court ruled that pregnant employees can overcome summary judgment and proceed to a jury trial by "providing sufficient evidence that the employer's policies impose a significant burden on pregnant workers," and that the employer's stated reasons for doing so "are not sufficiently strong to justify the burden." The Court ruled that such evidence can be enough to establish a reasonable inference of intentional pregnancy discrimination. And the Court explained that the existence of "a significant burden on pregnant workers" can be established by evidence that the employer accommodates a large percentage of non-pregnant employees with medical restrictions, but fails to accommodate a large percentage of pregnant employees with comparable medical restrictions.

The Supreme Court vacated the summary judgment previously entered in favor of UPS because the evidence raised a genuine issue of fact as to whether UPS provided more favorable treatment to non-pregnant employees with medical restrictions that cannot reasonably be distinguished from the plaintiff's medical restrictions. The Court reasoned that if the facts were as the plaintiff claimed, a judge or jury could reasonably conclude that UPS routinely accommodated non-pregnant employees with lifting restrictions (i.e., employees with restrictions arising from work-related injuries or from an ADA disability or employees with medical restrictions resulting in lost DOT certification), but categorically refused to accommodate pregnant employees with comparable lifting restrictions. The Court reasoned that because UPS may have, for many years, accommodated large numbers of employees in three separate categories, such evidence created the following genuine factual question for a judge or jury to decide -- "Why, when the employer accommodated so many, could it not accommodate pregnant women as well?" The Court remanded the case to the Fourth Circuit Court of Appeals to give the parties the opportunity to present competing evidence concerning UPS' stated reason(s) for refusing to provide light duty work to the plaintiff, and to issue a ruling as to whether UPS' stated reason(s) for refusing to do so is a pretext for unlawful pregnancy discrimination.

This case means that the scope and expense of discovery procedures conducted in court cases involving pregnancy discrimination claims will increase because the employer's overall policies and how they are applied to multiple segments of the entire workforce are now squarely at issue in such cases, including single plaintiff cases. And because such employer policies can apply to, and impact, a large number of employees equally, pregnancy discrimination claims under *Young v. UPS* may give rise an expanding area of class action lawsuits under Rule 23 of the Rules of Civil Procedure.

This case also means that employers should think long and hard about their existing employment policies to determine whether pregnant employees with medical restrictions are refused light duty work assignments, whether non-pregnant employees with comparable medical restrictions (including restrictions arising from workers' compensation claims) are regularly provided light duty work, whether aspects of the employer's policies impose "a significant burden on pregnant workers" in comparison with non-pregnant workers, and whether the employer has a "sufficiently strong justification" for any "significant burden" imposed on pregnant workers.

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