Are Accommodation Rights for Pregnant Employees Expanding?

3.26.2015

The United States Supreme Court issued a 52-page decision yesterday in *Young v. United Parcel Service, Inc.*, clarifying an employer's obligation to accommodate pregnant workers. A divided Supreme Court ruled that pregnant workers can claim the same accommodations that their employers grant to large numbers of workers who have similar but non-pregnancy related restrictions.

Former UPS driver Peggy Young was denied light duty as a driver because her pregnancy was not the result of an on-the-job injury, or a disability recognized by federal law or the loss of her driver's certification. The company's then policy (since revised to accommodate pregnancies) treated pregnant women the same as those injured outside of work. Both the trial court and the Fourth Circuit Court Federal Court of Appeals held that UPS's policy did not violate the 1978 Pregnancy Discrimination Act, which says pregnant workers should be treated equally to those who are "similar in their ability or inability to work." The Supreme Court's overturned the lower courts' decisions which had dismissed the case against UPS, and reinstated the claim.

The decision held that an individual pregnant worker who seeks to prove disparate pregnancy discrimination based on failure to accommodate, must demonstrate that the employer did not accommodate the pregnant employee but did accommodate others with similar non-pregnancy related restrictions or limitation. The U.S. Supreme Court's ruling did not hold that pregnant workers deserve the same treatment as any similarly restricted worker. Rather, it said if a large number of other workers were accommodated, then pregnant workers would have a strong claim for equal treatment.

Although Young's lawyer and women's groups have claimed the decision as a major victory, the Supreme Court rejected the argument that UPS's pregnancy-neutral policy was inherently discriminatory. Instead, the Supreme Court adopted a new

Related Services

Employee Benefits

Labor and Employment

standard for evaluating pregnancy discrimination claims without ruling for either party and sent the case back to the lower courts for further consideration.

Pregnancy Laws: Title VII of the 1964 Civil Rights Act prohibits discrimination in employment "because of sex" or "on the basis of sex." Congress passed the Pregnancy Discrimination Act in 1978 in order to specify the meaning of these terms, and to provide that the terms include, but are not limited to, pregnancy, childbirth, or related medical conditions (42 U.S.C. § 2000e-(k)).

Recent years have seen a trend in favor of pregnant workers. Congress amended the ADA in 2008 to include pregnancy-related lifting restrictions as a disability. Additionally, some states have enacted laws that require employers to provide reasonable accommodations to pregnant employees. In 2014, four states and the District of Columbia enacted new provisions pertaining to the prohibition of discrimination based on pregnancy—Delaware, Illinois, New Jersey and West Virginia.

Preemptive Strike: In July 2014, while the case was pending before the Supreme Court, the Equal Employment Opportunity Commission issued a revised enforcement guidance to clarify the terms of the PDA, and provided that employers must offer pregnant employees reasonable accommodation when, because of their pregnancy, they are unable to perform their jobs.

Practical Guidance: The Supreme Court's ruling did not say pregnant workers automatically must receive the same treatment as any similarly restricted worker. Instead, employers must examine the request of a pregnant worker relative to its methods of accommodations for other employees.

Employers must examine their policies and the practices for considering accommodation requests by pregnant employees with work restrictions, as compared to accommodations granted to non-pregnant but restricted employees. Employers must also remember that they cannot require pregnant workers to accept accommodations. For example, a company cannot force a pregnant employee who can perform the essential functions of her position onto a leave of absence. Likewise, employers may be liable for discrimination for changing a pregnant woman's job responsibilities against her wishes (unless there is a legitimate business necessity to do so). Forced accommodations, even if based on concerns about the worker's or her baby's health, can result in discrimination claims.

Rebecca Davies