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Supreme Court Revives Pregnant UPS Employee's Claim

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On Wednesday, March 25, 2015, the Supreme Court of the United States sided with a former UPS driver who accused the company of violating the Pregnancy Discrimination Act when it refused to lighten her work duties while she was pregnant.

Peggy Young was employed as a UPS delivery driver. In 2006, she took a leave of absence to undergo *in vitro* fertilization. The procedure was successful and Young became pregnant. During her pregnancy, Young was advised not to lift more than twenty pounds. UPS's employee policy requires its employees to be able to lift up to seventy pounds. Because Young could not fulfill this work requirement, and because she had used all her available family and medical leave and did not qualify for short-term disability, UPS forced her to take an extended, unpaid leave of absence. During this time, she eventually lost her medical coverage. Young gave birth in April 2007 and later resumed working at UPS.

Young sued UPS and claimed she had been the victim of gender- and disability-based discrimination under the Americans with Disabilities Act (ADA) and the Pregnancy Discrimination Act (PDA). Specifically, UPS had policies in place to accommodate employees who were injured on the job, suffered from a "disability," or could not drive commercial vehicles due to a lack of certification, but no accommodation was made for Young. UPS moved for summary judgment and argued that Young could not show that its decision was based on her pregnancy or that she was treated differently than a similarly situated co-worker. UPS also argued that it did not have to accommodate Young under the ADA because Young's pregnancy was not a disability. The district court dismissed Young's claim, and the United States Court of Appeals for the Fourth Circuit affirmed.

The Supreme Court reversed. Writing for the 6-3 majority, Justice Stephen Breyer opined that the lower courts failed to assess UPS's justification for accommodating other workers, while refusing to accommodate pregnant workers, as well. Justice Breyer wrote that Young created a "genuine dispute" as to whether UPS treated other employees "whose situation(s) cannot be reasonably distinguished from hers," more favorably. The Court's holding permits Young to go back to the Fourth Circuit and argue that she is a member of a protected class, that she sought an accommodation which was refused, and that UPS accommodated others with similar jobs in the same manner. Notably, and despite UPS's denial of Young's request for light duty work, UPS changed its policy earlier this year and announced that, as of January 1, 2015, it will offer temporary light duty positions to pregnant employees who need the accommodation. While UPS's policy revisions do not constitute an admission of liability, it highlights the need for review and reconsideration of company policies nationwide.

The *Young* case has yet to be fully resolved. However, the Court's decision emphasizes the importance of internal policy review. Specifically, where employers make accommodations for other employees who are unable to fulfill their assigned job duties, they should treat pregnant employees similarly, where they are also limited in their ability to perform the essential functions of their job.

If you require further advice on employee accommodation policies, or the effect *Young* may have on other employee policies, contact Nancy Conrad (610.782.4909; conradn@whiteandwilliams.com), Ashley Park (610.782.4903; parka@whiteandwilliams.com), or any member of our Labor and Employment group for further advice.

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questions.