

SCOTUS Pregnancy Discrimination Ruling Could Have Wide Impact On Discrimination Cases

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Employers should re-evaluate any employment policies that exclude – intentionally or not – pregnant employees from job accommodations, leave or other benefits in the face of Wednesday’s U.S. Supreme Court decision in *Young v. UPS*. This includes policies such as limiting accommodation or other benefits to occupationally related injuries, lifting restrictions, seniority restrictions on leave, time off or sick pay and other similar policies.

In *Young*, the U.S. Supreme Court set forth a new standard for liability under the Pregnancy Discrimination Act (PDA). Under this new standard, which follows the traditional burden-shifting model often used in discrimination cases, a plaintiff can make a prima facie “disparate treatment” pregnancy discrimination case by showing:

- a. She was pregnant;
- b. Requested an accommodation and was denied; and
- c. The requested accommodation had been made available to some non-pregnant employees.

The employer would then have the opportunity to offer a legitimate reason beyond cost or convenience for offering accommodation to the non-pregnant employees but not the plaintiff. The plaintiff can prove pretext by showing the supposed legitimate factor led to a substantial burden on pregnant employees, in that they were excluded at higher rates than non-pregnant employees, and that the employer’s legitimate rationale for the decision was not “sufficiently strong to justify the burden.”

The decision breaks new ground in suggesting that employers have an affirmative duty to accommodate pregnancy, at least in some circumstances, and is a radical departure from the settled Title VII principle that a lack of wisdom, decency or objective correctness of an employer’s policies is not evidence of pretext.

Together with last summer’s EEOC Enforcement Guidance on Pregnancy Discrimination, which emphasizes use of disparate impact theory in pregnancy cases, employers should review any policies or rules that might have a disproportionate effect on pregnant workers. In addition to limiting job accommodations, employers should be particularly careful to examine restrictions on use of sick pay/sick time; leave eligibility outside of FMLA; lifting restrictions; and light duty assignments to determine 1) if they disparately affect pregnant employees while accommodating others, and 2) what “strong” business rationale you will offer to defend the distinction.

Pregnancy discrimination developments and other hot employment law issues will be discussed at our annual employment law seminars, HR Spring Training 2015, coming to Kalamazoo (April 28), Troy (May 12) and Chicago (June 3).

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