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COMPLYING WITH UPS DECISION SHOULD BE LIGHT DUTY

by Adam Kemper


Diego M. Radzinschi

When it comes to pregnancy in the workplace, most employers think of maternity leave rights under the Family and Medical Leave Act of 1993 or the prohibition against discrimination based on pregnancy under the Pregnancy Discrimination Act of 1978.

Many do not realize that the PDA actually has two clauses. The first clause provides, "unlawful sex discrimination includes discrimination because of pregnancy, childbirth, or related medical conditions." The second clause states, "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 to work." The second clause contemplates an employer's obligations with respect to a pregnant employee who desires to continue performing services during her pregnancy.

In light of a recent U.S. Supreme Court decision, employment lawyers across the country will be counseling their corporate clients on how to comply with the second clause of the PDA.

In the case of Young v. United Parcel Service, the Supreme Court held that the second clause of the PDA requires that employers offer workplace accommodations to pregnant workers in the same manner as non-pregnant workers. Thus, if an employer offers an accommodation to certain classes of workers who are disabled or are otherwise limited in their abilities to perform their jobs, then the employer must offer the same type of accommodation to a pregnant worker if she is similarly limited in her ability to perform her job.

In Young, UPS had a policy in place which provided accommodations to workers under

one of three scenarios (i.e. drivers who had become disabled on the job, employees who lost their Department of Transportation certifications and employees who suffered from disabilities under the ADA). Notably, the policy did not include workers who became pregnant and limited in their abilities to perform their jobs.

Peggy Young, a UPS driver, had a lifting restriction during her pregnancy and requested a light duty accommodation. UPS denied the accommodation request because pregnancy did not fall within its accommodation policy. UPS notified Young that she could not work while she was under a lifting restriction. The lower court entered summary judgment in favor of UPS and the U.S. Court of Appeals for the Fourth Circuit affirmed in large part because UPS had a "pregnancy blind" policy and because UPS treated pregnant workers the same as "all other persons" not identified in UPS' accommodation policy. The Supreme Court reversed and remanded the decision due in part because Young introduced evidence that UPS accommodated several other individuals not included within its policy. The Supreme Court also noted that if a policy significantly burdens pregnant workers, it will likely not withstand scrutiny by the courts.

Light Burden

With the decision, employers should revisit their workplace policies to ensure that any accommodations offered to nonpregnant workers are offered to pregnant workers as well. Otherwise, employers will need to justify the difference in treatment by a legitimate, nondiscriminatory reason.

Employers should also be cognizant of how the American with Disabilities Act of 1990 may apply if a pregnant worker becomes disabled within the meaning of the ADA and requests an accommodation.

An employer's obligation to offer an accommodation to a pregnant worker under the PDA or ADA is a factual determination that should be analyzed on a case-by-case basis. The requirement to offer a particular accommodation to an employee will depend on: the nature of the job the employee is performing (i.e. physical in nature or sedentary), what if any physical or mental restrictions or limitations the employee has during her pregnancy (which should be supported by medical documentation), and what if any reasonable accommodations are available for the employee. Not every requested accommodation is reasonable and employers are not obligated to accommodate every request for an accommodation.

With any case that is decided before the Supreme Court, the expectation is that a flood of litigation will commence. Employers, however, need to keep in mind that Young does not require anything other than equal enforcement of a workplace policy permitting an accommodation to pregnant workers that is already offered to others.

While it is only an "exceedingly light burden" under case law to show a legitimate nondiscriminatory reason for a difference in treatment, it is much less of a duty for employers to simply revise their workplace policies to include accommodations for pregnant workers.

Adam Kemper is a labor and employment law attorney in the Fort Lauderdale office of Greenspoon Marder, where he counsels employees and employers on a variety of workplace issues, including consulting on compliance issues with the employment relationship and assisting employers with DOL audits and workplace lawsuits.