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Young v. UPS: United States Supreme Court Endorses A Broad Concept Of Disparate Treatment Discrimination Claims Under The Pregnancy Discrimination Act

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Title VII of the Civil Rights Act, as amended by the Pregnancy Discrimination Act (PDA), prohibits intentional discrimination on the basis of pregnancy and requires that pregnant women "be treated the same for all employment-related purposes . . . as other persons not so affected *but similar in their ability or inability to work* . . . ." 42 U.S.C. § 2000e(k) (emphasis added). In *Young v. UPS*, the Supreme Court interpreted this clause of the PDA and held that a pregnant employee may establish disparate treatment discrimination by showing she was denied a job accommodation, such as light duty work, that was provided to others "similar in their ability or inability to work." In so holding, the Court reversed a grant of summary judgment in favor of UPS and remanded the case for further proceedings.

Young is an important decision, and one that is troubling in many respects. In *Young*, the Court set forth a roadmap for disparate treatment claims under the PDA that seems to broaden, and potentially relax, the standard and methods of proof ordinarily applicable to disparate treatment claims. However, as the Court itself noted, the practical impact of *Young* should be limited. Moreover, the Court confirmed that the PDA does not require employers to treat pregnant workers *more* favorably than nonpregnant workers.

Background

Peggy Young worked for UPS as a part-time driver picking up and delivering packages. Due to complications with her pregnancy, Young's doctor restricted her from lifting more than 20 pounds during the first half of her pregnancy, and 10 pounds thereafter. Young's job, however, required her to lift parcels weighing up to 70 pounds.

UPS, like many employers, provided light duty work to employees under certain circumstances. Under the applicable collective bargaining agreement, UPS provided light duty work to package car drivers: (1) who were disabled due to an on-the-job injury, (2) who lost their Department of Transportation certifications, or (3) for whom light duty work would be a reasonable accommodation under the Americans With Disabilities Act (ADA). UPS' approach to light duty was neutral on its face with respect to pregnancy.

Young requested light duty as an accommodation for her pregnancy-related lifting restriction. UPS denied her request because she did not fall into any of the categories eligible for light duty work. Young instead was granted leave for the remainder of her pregnancy.

Young sued UPS and claimed, among other things, that UPS unlawfully discriminated against her on the basis of sex (pregnancy) by denying her request for light duty. Young pursued an individual disparate treatment theory of discrimination.

Disparate Treatment Claims under the PDA

The majority in *Young* first found that the statutory language in question — that pregnant women "be treated the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work" — was not merely a clarification of the PDA's prohibition on pregnancy-related discrimination, as UPS argued. Rather, Congress intended that the clause require employers to treat pregnancy-related disabilities the same as nonpregnancy-related disabilities.

The statutory language, however, does not specifically define the comparator group. This ambiguity was apparent in *Young*, where the employer did not treat all nonpregnancy-related disabilities alike. Some nonpregnant disabilities, such as on-the-job injuries, were eligible for light duty, while others were not. In this context, with whom should employees with pregnancy-related disabilities be compared?

Young argued that a pregnant employee should be compared with any other similarly-limited employee, regardless of the reason for that employee's limitation. For example, under Young's approach, a pregnant employee should be entitled to the same accommodation as an employee who receives a special assignment because of an injury from extra-hazardous duty, or because of lengthy tenure. Under Young's interpretation, as long as an employer provides any employee with an accommodation, it must provide all similarly-limited pregnant employees with that same accommodation. The Court rejected Young's interpretation as too broad. Employers need not treat pregnant employees *more* favorably than other employees; in the Court's words, the PDA does not give "most-favored-nation" status to pregnant workers.

The Court also held, however, that employers cannot treat pregnant employees *less* favorably than (even some) nonpregnant employees with similar limitations. In *Young*, for example, the plaintiff argued that nonpregnant employees with similar limitations due to on-the-job injuries were eligible for light duty, while she was not. The Court found that Young raised a genuine dispute as to whether UPS provided more favorable treatment to at least some nonpregnant, similarly-limited workers, thus precluding summary judgment.

The Court went on to offer a roadmap to PDA plaintiffs pursuing disparate treatment claims, using the *McDonnell-Douglas* burden-shifting framework. A PDA plaintiff can establish a *prima facie* case by showing that she was pregnant, and that she sought and was denied an accommodation that the employer provided to other similarly-limited, nonpregnant employees.

The burden then shifts to the employer to articulate a legitimate, nondiscriminatory reason for its actions. The Court cautioned that expense or inconvenience normally will not be sufficient legitimate, nondiscriminatory reasons.

At the pretext stage, a PDA plaintiff can raise a triable issue "by providing sufficient evidence that the employer's policies impose a significant burden on pregnant workers, and that the employer's 'legitimate, nondiscriminatory' reasons are not sufficiently strong to justify the burden, but rather — when considered along with the burden imposed — give rise to an inference of intentional discrimination." To establish this "significant burden," a PDA plaintiff may rely on comparative and statistical evidence. According to the Court in *Young*, evidence that the employer accommodates a large

percentage of nonpregnant workers, while failing to accommodate a large percentage of pregnant workers, would present a triable issue. The majority opinion summed up: "[W]hen the employer accommodated so many, could it not accommodate pregnant women as well?"

EEOC Regulations

The Court declined to give deference to EEOC guidance supporting a broad reading of the PDA. The Court took aim at the July 2014 guidance, citing its timing (issued after the grant of *certiorari* in *Young*), lack of consistency with the Government's prior positions, and lack of thoroughness.

The EEOC since has acknowledged that portions of its July 2014 guidance are affected by *Young*. The EEOC's website states that it is "studying the decision and will make appropriate updates."

Practical Impact and Takeaways

Employers should be wary of *Young*. The majority opinion — written by Justice Breyer and joined by Chief Justice Roberts and Justices Ginsburg, Sotomayor, and Kagan — is most remarkable for its analysis of disparate treatment claims under the PDA. The majority focuses the pretext analysis on whether the employer's policies impose a "significant burden" on pregnant workers that is not justified by the employer's legitimate, nondiscriminatory reasons; it does not focus on whether the employer acted with pregnancy-based animus. Justice Scalia in his dissent correctly observes that the majority's holding conflates disparate treatment and disparate impact theories and effectively permits disparate impact claims to be brought under Title VII's disparate treatment provisions, which provide different and greater relief.

The majority's emphasis on impact, as opposed to intent, arguably introduces a different, and more relaxed, standard of proof in PDA disparate treatment cases than in other Title VII disparate treatment cases. For example, the Court's seeming endorsement of intent-blind, quantitative proof — *i.e.*, the fact that a large percentage of employees may receive an accommodation, regardless of the reason, could raise an issue of pretext — makes it easier for a PDA plaintiff to reach a jury. Under well-established disparate treatment law, the key issue is whether the employer acted with discriminatory intent; the fairness or effect of its actions is not the proper focus. *Young* casts doubt on these principles, at least for PDA claims. It remains to be seen how lower courts will interpret *Young*.

The silver lining is that the practical impact of *Young* should be limited. As the Court itself expressly noted, the opinion is limited to claims under the PDA. The Court also expressly noted that certain restrictions, including lifting restrictions, likely would be covered under the ADA, as amended by the ADA Amendments Act of 2008 (which expands the ADA's reasonable accommodation duty to cover employees with certain temporary disabilities). The other silver lining in *Young* is that the Court again declined to give deference to the EEOC's guidance.

Employers should take this opportunity to review their light duty and other employment policies in light of *Young*. Employers should review even facially-neutral policies with an eye towards their effect on pregnant workers. Employers who are litigating PDA claims should be prepared for broader discovery requests and greater challenges at the summary judgment stage.

If you have questions about *Young* or its effect on your policies or practices, please contact us.