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Accommodate women for workplace pregnancies like any other condition

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of sex, among other protected classifications. In 1978, Congress enacted the Pregnancy Discrimination Act, which provides that Title VII's prohibition against sex discrimination applies to discrimination "because of or on the basis of pregnancy, childbirth or related medical conditions."

The Pregnancy Discrimination Act further provides that employers must treat "women affected by pregnancy ... the same for all employment-related purposes ... as other persons not so affected but similar in their ability or inability to work."

On March 25, the U.S. Supreme Court analyzed the ability clause in the context of a United Parcel Service policy that did not accommodate pregnant employees with lifting restrictions but did accommodate other classes of workers with disabilities or lifting restrictions not due to pregnancy.

Peggy Young was a part-time UPS driver who picked up and delivered packages that had arrived by air carrier the previous night. In 2006, Young became pregnant. Young's doctor advised her that she should not lift more than 20 pounds during the first 20 weeks of her pregnancy and not more than 10 pounds in the remaining weeks of her pregnancy.

UPS required drivers, such as Young, to be able to lift, lower, push and pull packages weighing up to 70 pounds. When Young informed UPS of her lifting restriction, the occupational health manager at Young's UPS facility informed her that she could not work while under the lifting restriction because she was unable to satisfy the position's lifting requirements.

The manager also determined that Young was not eligible for a temporary alternative work assignment. Therefore, Young did not work during most of her pregnancy, was not get paid for the time off and eventually lost medical coverage. In 2007, Young returned to work at UPS after her baby was born.

Young filed a federal lawsuit, alleging that UPS discriminated against her on the basis of sex by refusing to accommodate her pregnancy lifting restriction.

To support her claim, Young relied on evidence showing that UPS had a light-duty policy that accommodated different classes of employees who weren't pregnant.

The trial court granted summary judgment for UPS, holding that the employees with whom Young compared herself — employees who had suffered on-the-job injuries, employees who lost their Department of Transportation certifications and employees who needed accommodations for Americans with Disabilities Act-covered disabilities — were too different from Young to qualify as "similarly situated comparators."

The 4th U.S. Circuit Court of Appeals affirmed.

If the employee establishes a prima facie case, the employer must then offer a legitimate reason for its actions.

The U.S. Supreme Court vacated the 4th Circuit's judgment. The court's ruling centered on the Pregnancy Discrimination Act clause stating that employers must treat "women affected by pregnancy ... the same for all employment-related purposes ... as other persons not so affected but



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similar in their ability or inability to work."

The court held that an employee alleging that the denial of an accommodation constituted disparate treatment under the Pregnancy Discrimination Act can make out a prima facie case by showing (1) she belongs to the protected class (pregnancy); (2) she sought an accommodation; (3) the employer did not accommodate her; and (4) that the employer accommodated others "similar in their ability or inability to work."

ilar in their ability or inability to work") whom the employer accommodates."

If the employer offers non-discriminatory reasons for its actions, the employee must then show that the employer's proffered reasons amount to a pretext.

The employee can meet this burden, the court stated, by providing evidence that the employer's policies impose a "significant burden" on pregnant employees, and that the employer's proffered 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."

Significantly, the court declared that employees can create a genuine issue of material fact as to whether a significant burden exists "by providing evidence that the employer accommodates a large percentage of non-pregnant workers while failing to accommodate a large percentage of pregnant workers."

To that end, the court stated, Young (on remand) can show that UPS accommodates most (i.e., a large percentage) non-pregnant employees with lifting limitations while "categorically failing to accommodate pregnant employees with lifting limitations."

Additionally, the court stated that Young could show that "the fact that UPS has multiple policies that accommodate non-pregnant employees with lifting restrictions suggests that its reasons for failing to accommodate pregnant employees with lifting restrictions are not sufficiently strong — to the point that a jury could find that its reasons for failing to accommodate pregnant employees gives rise to an inference of intentional discrimination."