HINSHAW

Supreme Court Vacates fourth Circuit in UPS Pregnancy Discrimination case, but Rejects EEOC's "Most Favored Employee" Argument

4 min read

Mar 26, 2015

By: Aimee E. Delaney

Since the case was argued on December 3, 2014, practitioners and clients alike have been anxiously awaiting the Supreme Court's decision in *Young v. United Parcel Service, Inc*.That wait is over as the Supreme Court **issued a divided opinion** yesterday. The majority opinion vacated the 4th Circuit Court of Appeals decision that had affirmed summary judgment in UPS's favor in a suit that arose out of the company's decision to deny leave to a pregnant driver in accordance with the terms of its leave provisions set out in a collective bargaining agreement.

Peggy Young was a part-time driver for UPS who in 2006, was placed under a lifting restriction by her physician due to a pregnancy. UPS required drivers such as Young to be able to lift up to 70 lbs and advised Young that she could not work while under a lifting restriction. Pursuant to the terms of a collective bargaining agreement, UPS had agreed to provide temporary alternative (light-duty) work assignments to those who could not perform their normal duties due to an on the job injury. Additionally, UPS would make accommodations or offer "inside jobs" in two other contexts: 1) for those employees with a permanent disability under the Americans with Disabilities Act and 2) for those drivers who lost their DOT certification due to a failed medical exam, lost driver's license or involvement in a motor vehicle accident. The effect of these provisions was that UPS provided light duty work or similar accommodation only in these limited circumstances and employees who required a temporary alternative work assignment who did not fall into these limited categories (i.e. injured on-the-job, permanent disability under the ADA, loss of DOT certification) were not eligible for such assignments.

The Pregnancy Discrimination Act ("PDA") confirms in its first clause that Title VII's prohibition against sex discrimination applies to discrimination based on pregnancy. The PDA's second clause, which was the focus of the dispute and decision, further states 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." 42 U.S.C 2000e(k). The debate in the UPS case ultimately decided by the Supreme Court centered on what

© 2025 Hinshaw & Culbertson LLP

employees constituted the "other persons not so affected" to which the pregnant worker should be compared when proving her case and, more specifically, how this second provision of the Act applied in the context of an employer's policy that accommodated many, but not all workers with nonpregnancy-related disabilities.

Young filed a disparate treatment (intentional) discrimination claim against UPS alleging that the company unlawfully discriminated against her on the basis of her pregnancy. The District Court entered summary judgment in the company's favor and the 4th Circuit affirmed. The case was being closely watched by employers as a consequence of the arguments made on the employee's behalf, which advocated for the Court to interpret the PDA as placing an affirmative obligation on employers to provide preferential treatment (or "most favored nation" status) to pregnant workers seeking an accommodation. Specifically, Young and the Solicitor General argued that the second clause of the PDA requires an employer to provide the same accommodations to workplace disabilities caused by pregnancy that it provides to workplace disabilities that have other causes but have a similar effect on the ability to work. Young argued that whenever an employer accommodates a subset of workers with disabling conditions, a court should find a Title VII violation if pregnant workers who are similar in ability to work do not receive the same accommodation, even if other nonpregnant workers also do not receive the accommodation.

The high court rejected Young's argument despite its the reversal of the 4th Circuit decision; further, in so doing, the Court implicitly rejected the position taken by the EEOC in its 2014 pregnancy guidance, which endorsed the or "most favored nation" interpretation of the PDA. So too, however, did the Court reject UPS' argument that the second clause simply defined sex discrimination to include pregnancy discrimination and did not impose any further obligations.

Instead, striking a balance between these two positions, the Supreme Court concluded that a *prima facie* case for pregnancy discrimination may be established by showing that the employee is a member of a protected class, that she sought an accommodation, that the employer did not accommodate her, and that the employer *did* accommodate others "**similar in their ability or inability to work**." The employer will then have an opportunity to justify the refusal to accommodate by relying on a legitimate, non-discriminatory reason for denying the accommodation, which must be something more than the accommodation was more expensive or less convenient to add pregnant women to the category of those accommodated. Of course, consistent with *McDonnell Douglas*, the employee will have the opportunity to demonstrate that the employer's reason is pretextual. Because Young presented a question of fact on the fourth and final element of her case—that the employer did accommodate others similar in their ability or inability to work—the 4th Circuit's decision was vacated.

In short, the clearest guidance in the decision comes from Judge Alito's concurring opinion, which stated that "[t]he treatment of pregnant employees must be compared with the treatment of nonpregnant employees whose jobs involve the performance of the same or very similar tasks." What does that mean? If an employer provides leave or other accommodation for an employee whose job requires lifting because that employee cannot perform that task due to an illness or injury, the employer does not have to provide the same leave or accommodation to a pregnant worker who cannot perform lifting but whose job is a desk job and does not entail

heavy lifting. It is difficult to know whether such an application of policy will comply with the Court's interpretation of the PDA.

This case is sure to be further discussed and dissected by courts and court watchers alike. Of particular interest is how the EEOC will respond, now that its 2014 guidance has been at least partially undermined by the Court. Hinshaw will continue to review the case's impact on employers and monitor its impact on the EEOC and in district courts nationwide. At this time, all employers are advised to handle any pregnancy accommodation requests with great care; with the Supreme Court having designed a new standard for pregnancy discrimination claims, it remains to be seen how that standard is implemented. With questions, contact **Aimee Delaney** of Hinshaw's Chicago office.

Hinshaw & Culbertson LLP is a U.S.-based law firm with offices nationwide. The firm's national reputation spans the insurance industry, the financial services sector, professional services, and other highly regulated industries. Hinshaw provides holistic legal solutions—from litigation and dispute resolution, and business advisory and transactional services, to regulatory compliance—for clients of all sizes. Visit www.hinshawlaw.com for more information and follow @Hinshaw on LinkedIn and X.

Topics

Pregnancy Discrimination, Supreme Court Of The United States