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High Court's Pregnancy Bias Decision Creates A New Standard

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In a 6-3 opinion, the U.S. Supreme Court vacated a decision that rejected a Pregnancy Discrimination Act (PDA) claim against the employer for failing to provide light duty work to a pregnant employee. In Young v. United Parcel Services, Inc., the Court not only vacated the Fourth Circuit's prior decision, but also rejected the arguments by both parties regarding the standard under which PDA claims should be analyzed. Instead, the majority embraced the *McDonnell Douglas* standard and modified it slightly. Now, absent direct evidence, a failure-to-accommodate claim under the PDA requires the plaintiff to establish a *prima facie* case by demonstrating (1) she is a member of a protected class; (2) the employer failed to accommodate her; and (3) the employer accommodated others "similar in their ability or inability to work." The employer may rebut this *prima facie* case by offering legitimate, nondiscriminatory reasons, provided the reasons are not based on cost or inconvenience. Finally, the plaintiff must show these reasons are pretextual. This includes sufficient evidence that the employer's policies "impose a significant burden on pregnant workers" and the reasons "are not sufficiently strong to justify the burden, but rather . . . give rise to an inference of intentional discrimination." This may include statistical evidence. Obviously, this new standard creates some new issues for employers, as companies can no longer rely upon facially neutral policies or provisions of collective bargaining agreements to justify the refusal to accommodate a pregnant employee. Instead, similar to a request for accommodation under the Americans with Disabilities Act (ADA), an employer will need to engage in the interactive process with the pregnant employee, understand the requested accommodation, and determine if it can reasonably provide the requested accommodation. In this interactive process, the company will need to examine what accommodations it provided to other employees who were similar in their ability or inability to work. For example, if the company allowed a male employee with a temporary impairment (e.g., leg fracture limiting his ability to walk such as that in the Summers v. Altarum Institute Corp. case) to work remotely, then the employer should consider providing the same for the pregnant employee. In other words, employers should avoid rejecting the requested accommodation until the interactive process has been exhausted and the historical treatment is statistically the same. For more information regarding the *Young* decision, please see this legal alert.

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