BARNES & THORNBURG LLP

ALERTS

Labor And Employment Law Alert - U.S. Supreme Court Returns Pregnancy Bias Case Back To Lower Court

March 25, 2015 | Atlanta | Chicago | Columbus | Delaware | Elkhart | Fort Wayne | Grand Rapids | Indianapolis | Los Angeles | Minneapolis | South Bend

On March 25, the U.S. Supreme Court, in a 6-3 opinion, vacated a Fourth Circuit decision (*Young v. United Parcel Service, Inc.*) that previously rejected a pregnancy bias claim against the employer for failing to provide light duty work to a pregnant employee.

In 2006, Peggy Young, a part-time delivery driver for UPS, became pregnant and experienced lifting restrictions. In particular, her physician recommended that she lift no more than 20 pounds during the first 20 weeks of her pregnancy and no more than 10 pounds for the remainder of her pregnancy. As part of the essential functions of the job, UPS delivery drivers were required to lift up to 70 pounds without assistance and up to 150 pounds with assistance.

After notifying UPS of her lifting restrictions, Young was informed that there were no temporary alternative work assignments available because she did not meet one of three categories in which she would qualify for this assignment. Specifically, at that time, under the collective bargaining agreement, UPS provided light duty assignments to employees: (1) "unable to perform their normal work assignments due to an on-the-job injury;" (2) as a reasonable accommodation "because of a permanent disability" under the Americans with Disabilities Act (ADA); or (3) to drivers who lost their Department of Transportation certifications because of a failed medical exam, lost driver's license or involvement in a motor vehicle accident. As a result, Young was required to take a leave of absence, most of which was unpaid, for the duration of her pregnancy.

Young eventually filed suit against UPS, alleging disparate treatment because of her pregnancy in violation of the Pregnancy Discrimination Act (PDA). The district court granted summary judgment in favor of UPS, concluding that Young failed to demonstrate intentional discrimination because of her pregnancy. The lower court also found that Young could not show that similarly-situated non-pregnant employees were treated more favorably than pregnant employees under UPS's policy for temporary alternative work assignments. The Fourth Circuit Court of Appeals agreed with the district court, and found UPS's policy as a "pregnancy-blind policy" that was "facially a 'neutral and legitimate business practice. . . . '"

In July 2014, the U.S. Supreme Court accepted review of this Fourth Circuit decision and oral arguments were heard in December 2014. In particular, the Court examined whether the PDA required UPS to provide the same light duty accommodations for pregnant employees as it did under its narrow policy. The inquiry involved the interpretation of the PDA's second clause, which states:

RELATED PEOPLE

Kenneth J. Yerkes
Partner
Indianapolis

P 317-231-7513
F 317-231-7433
ken.yerkes@btlaw.com

William A. Nolan
Partner
Columbus

P 614-628-1401
F 614-628-1433
bill.nolan@btlaw.com

Mark S. Kittaka
Partner
Fort Wayne, Columbus

P 260-425-4616
F 260-424-8316
mark.kittaka@btlaw.com

Robert W. Sikkel
Of Counsel (Retired)

P 616-742-3978
robert.sikkel@btlaw.com

"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 or inability to work . . . ."

According to the majority's opinion, delivered by Justice Stephen Breyer, the Court rejected the interpretations by both Young and UPS regarding this second clause. The majority found Young's interpretation provided for a "most-favored nation" status, requiring an employer to provide all pregnant workers with an accommodation if it provided an accommodation to another employee, regardless of the nature of their jobs, the employer's business needs, or other criteria. In contrast, the majority stated UPS's interpretation failed to carry out the Congressional intent of the PDA and, instead, allowed for discrimination if there was a purportedly neutral policy.

As a result, the majority outlined the standard in which disparate treatment claims under the PDA should be evaluated, absent direct evidence. According to the majority, the *McDonnell Douglas* framework would be utilized. For a failure to accommodate PDA claim, the plaintiff can establish a *prima facie* case by demonstrating (1) she is a member of a protected class (namely pregnant); (2) the employer did not accommodate her; and (3) the employer accommodated others "similar in their ability or inability to work." The employer may rebut by relying upon legitimate, nondiscriminatory reasons for denying the request. However, the employer cannot justify its actions simply by claiming it is more expensive or less convenient to add pregnant women to the category of those whom the employer accommodates.

If the employer is able to provide legitimate, non-discriminatory reasons, the plaintiff must demonstrate the proffered reasons are pretextual. According to the majority, the plaintiff can demonstrate pretext by providing sufficient evidence that the employer's policies "impose a significant burden on pregnant workers" and that the employer's 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." The plaintiff can demonstrate this burden by providing evidence that the employer accommodated a large percentage of non-pregnant employees in contrast to pregnant employees.

Utilizing this standard, the Court determined that the Fourth Circuit's judgment must be vacated as it found there was a genuine dispute as to whether UPS provided more favorable treatment to some non-pregnant employees who were similar in their ability or inability to work in comparison to that of Young. As a result, the matter has been remanded to the Fourth Circuit for further determination.

The dissent, authored by Justice Antonin Scalia and joined by Justices Anthony Kennedy and Clarence Thomas, declared the majority's decision as crafting "a new law that is splendidly unconnected with the text and even the legislative history of the act. …" The dissent continued by stating, "Dissatisfied with the only two readings that the words of the same-treatment clause could possibly bear, the court decides that the clause means something in-between. It takes only a couple of waves of the Supreme Wand to produce the desired result. Poof!"

Prior to this *Young* decision, the EEOC issued its Pregnancy Discrimination Enforcement Guidance in July 2014. Under this guidance,

John T.L. Koenig
Partner
Atlanta

P 404-264-4018
F 404-264-4033
john.koenig@btlaw.com

Peter A. Morse, Jr.
Partner
Indianapolis, Washington, D.C.

P 317-231-7794
F 317-231-7433
pete.morse@btlaw.com

Scott J. Witlin
Partner
Los Angeles

P 310-284-3777
F 310-284-3894
scott.witlin@btlaw.com

David B. Ritter
Partner
Chicago

P 312-214-4862
F 312-759-5646
david.ritter@btlaw.com

Teresa L. Jakubowski
Partner
Washington, D.C.

P 202-371-6366
F 202-289-1330
teresa.jakubowski@btlaw.com

the EEOC specifically outline light duty and other accommodations for pregnant workers and the obligations of employers. While the Supreme Court found the guidance to not be particularly useful in its examination of the *Young* case (and indeed, seemingly rejected consideration of such), employers should be aware of the guidance as it evaluates requests for accommodations by pregnant employees going forward. Having a facially neutral policy may not be sufficient if there is a statistically negative impact on pregnant employees.

To obtain more information, please contact the Barnes & Thornburg Labor & Employment attorney with whom you work, or a leader of the firm's Labor & Employment Law Department in the following offices:

Kenneth J. Yerkes
Department Chair
(317) 231-7513

John T.L. Koenig
Atlanta
(404) 264-4018

David B. Ritter
Chicago
(312) 214-4862

William A. Nolan
Columbus
(614) 628-1401

Mark S. Kittaka
Fort Wayne
(260) 425-4616

Robert W. Sikkel
Grand Rapids
616-742-3978

Peter A. Morse
Indianapolis
(317) 231-7794

Scott J. Witlin
Los Angeles
(310) 284-3777

Teresa L. Jakubowski
Washington, D.C.
(202) 371-6366

Janilyn Brouwer Daub
South Bend/Elkhart
(574) 237-1130

Visit us online at www.btlaw.com or @BTLawLE, and don't forget to bookmark our blogs at www.btlaborelations.com and www.btcurrents.com.

Janilyn Brouwer Daub
Partner
South Bend, Elkhart

P 574-237-1139
F 574-237-1125
janilyn.daub@btlaw.com

RELATED PRACTICE AREAS

Labor and Employment