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Labor and Employment Law

Supreme Court Clarifies Pregnancy Accommodation Requirements

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In July 2014 the EEOC issued guidance on accommodating pregnant employees. Its focus was centered on a section of the Pregnancy Discrimination Act ("PDA"), which requires employers to treat pregnant employees in the same manner as non-pregnant employees who are "similar in their ability or inability to work." The EEOC basically took the position that under the PDA any accommodations given to disabled employees must also be made available to pregnant employees. Therefore, greater accommodations could not be provided to employees with non-pregnancy related disabilities than were given to pregnant employees. The EEOC also relied on the 2008 amendments to the ADA, which it argued extended reasonable accommodation protections to pregnant employees, even though pregnancy is not technically considered a "disability" under the law. By applying ADA concepts to pregnancies, it stated that employers could only deny reasonable accommodations to pregnant employees if the accommodation being sought met the undue hardship standard.

From a practical standpoint, the EEOC's position meant that pregnant employees would have to be provided light duty work, if non-pregnant disabled employees were given such work, and were also eligible for any other accommodations given to employees disabled for reasons other than pregnancy. In response, many employers disagreed with the EEOC's position, and argued pregnant employees are not entitled to reasonable accommodation. The U.S. Supreme Court recently weighed in on the matter and took a middle position. Young v UPS.

The Court held that the failure to accommodate pregnant employees must be analyzed under the burden shifting regime set forth in McDonnell Douglas v. Green. Under that standard, the employee must first show she was intentionally discriminated against by being treated less favorably than non-pregnant employees with a similar inability to work. Employers can overcome such allegations by stating a legitimate, non-discriminatory reason for the unequal treatment. For the plaintiff to ultimately prevail, she must prove the employer's proffered reason was pre-textual, a lie, or that the employer's policies impose a significant burden on pregnant employees, and that the reasons for differing treatment are not sufficiently strong, but are instead indicative of intentional discrimination.

In Young, the employee worked for UPS as a driver and was required to lift up to 70 pounds. Ms. Young's doctors provided documentation limiting her lifting to 20 pounds during her pregnancy. The plaintiff asked for a lifting accommodation, which the company denied, even though it provided such accommodations to those injured on the job, or those with non-pregnancy related disabilities covered by the ADA. As a result, Ms. Young was required to take time off from work until she could return following her delivery, without limitations.

The Court, in its ruling, recognized that not every accommodation given to any non-pregnant employee must be extended to pregnant employees. However, for an employer to prove a legitimate reason for the unequal treatment it cannot merely rely on greater cost or inconvenience. Further, the Court noted that an employer who accommodates a large percentage of non-pregnancy related disabled persons, but fails to assist a similar percentage of pregnancy related disabled employees will likely lose.

From a practical standpoint, employers should be prepared to accommodate the restrictions of pregnant women on the same basis as for non-pregnant disabled employees.

Unless an employer can justify a disparate approach based on legitimate business needs, it likely will find itself on the losing end of a lawsuit. In addition, Connecticut state law requires employers to provide pregnant employees with a reasonable leave of absence during their period of disability, and further requires employers to transfer pregnant employees to a temporary position if the employee reasonably believes her current position may cause harm to her, or her fetus. In general, dealing with pregnant employees is a technical area with broad legal exposure. It makes sense to seek legal counsel when faced with these issues.

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