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The Pregnancy Discrimination Act and the Supreme Court: A Legal Analysis of *Young v. United Parcel Service*

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Introduction

In 2015, the Supreme Court issued a decision in *Young v. United Parcel Service*.¹ In the case, a United Parcel Service (UPS) worker named Peggy Young challenged her employer's refusal to grant her a light-duty work assignment while she was pregnant, claiming that UPS's actions violated the Pregnancy Discrimination Act (PDA).² In a highly anticipated ruling, the Justices fashioned a new test for determining when an employer's refusal to provide accommodations for a pregnant worker constitutes a violation of the PDA, and the Court sent the case back to the lower court for reconsideration in light of these new standards.

This report begins with a discussion of the facts in the *Young* case, followed by an overview of the PDA. The report then provides an analysis of the *Young* case, its implications, and a potential legislative response.

Background

According to Young, when she became pregnant, her doctor instructed her to lift not more than 20 pounds during the first half of her pregnancy and 10 pounds thereafter.³ However, UPS had a policy requiring drivers such as Young to have the ability to lift packages weighing up to 70 pounds. Furthermore, the collective bargaining agreement stipulated that employees who were disabled due to an on-the-job injury or who had lost their driving certifications were eligible for a temporary assignment if their disabilities prevented them from performing their normal work. In accordance with this provision, UPS offered light-duty work to employees injured on the job, but it refused to provide such an accommodation to Young on the grounds that her pregnancy did not constitute an on-the-job injury.⁴

Young sued, claiming that UPS's failure to accommodate pregnant employees while providing light-duty assignments to other workers violated the PDA. The U.S. Court of Appeals for the Fourth Circuit, however, ruled in favor of UPS, holding that the company's policy did not constitute unlawful pregnancy discrimination.⁵ According to the court, the policy was neutral with respect to pregnancy because pregnant workers were treated the same as other similarly situated employees who had suffered off-the-job injuries. Young appealed the ruling, and the Supreme Court agreed to review the case.⁶

The Pregnancy Discrimination Act

Originally enacted as an amendment to Title VII of the Civil Rights Act of 1964,⁷ the PDA prohibits pregnancy discrimination in employment. The amendment was adopted in response to the Supreme Court's decision in *General Electric Co. v. Gilbert*, in which the Court ruled that an employer's practice of excluding pregnant employees from receiving benefits under its temporary

¹ 135 S. Ct. 1338 (2015).

² 42 U.S.C. §2000e(k).

³ *Young*, 135 S. Ct. at 1344.

⁴ *Id.*

⁵ *Young v. UPS*, 784 F.3d 192 (4th Cir. 2013).

⁶ *Young v. UPS*, 134 S. Ct. 2898 (2014).

⁷ 42 U.S.C. §§2000e et seq. Title VII prohibits employment discrimination on the basis of race, color, sex, national origin, or religion.

disability plan did not constitute sex discrimination in violation of Title VII.⁸ Congress subsequently overruled the Court's decision by enacting the PDA, which amended Title VII to clarify that the statute's prohibition on discrimination in employment "on the basis of sex" includes discrimination "because of or on the basis of pregnancy, childbirth, or related medical conditions."⁹ In addition, under the statute, "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."¹⁰ As a result, employers are required to treat women affected by pregnancy or childbirth in the same way they treat other employees who are similarly situated. It was a dispute over how to interpret this latter provision that was at the crux of the *Young* case.

Prior to the Court's decision in *Young*, federal appellate court opinions interpreting this provision of the PDA generally reflected two important principles. First, the courts typically agreed that if a pregnant employee was temporarily unable to perform her job due to the pregnancy, her employer was required to treat her in the same way it treated other employees who were similarly situated.¹¹ Thus, an employer who provided accommodations for workers who are temporarily disabled after suffering an off-the-job injury was required to provide similar accommodations to temporarily disabled pregnant workers. Such treatment could include providing light-duty, alternative assignments, disability leave, or unpaid leave to pregnant employees if such accommodations were granted to other employees.

Second, the courts generally held that the PDA did not require employers to provide accommodations to pregnant employees unless such accommodations were also available to non-pregnant employees, reasoning that to do so would require employers to treat their pregnant employees more favorably than similarly situated non-pregnant employees.¹² As a result, pregnant employees who challenged policies restricting light-duty work to those injured on the job were unlikely to prevail if employers uniformly denied reassignments to all disabled workers who were not injured on the job. In contrast, the Equal Employment Opportunity Commission (EEOC) had taken the position that an employer's failure to accommodate a pregnant employee under such circumstances was a violation of the PDA.¹³

Meanwhile, it is important to note that pregnant workers may be eligible for protections or benefits offered by laws other than the PDA. Indeed, *Young*'s original lawsuit also contained a claim based on the Americans with Disabilities Act (ADA).¹⁴ Although pregnancy generally is not

⁸ 429 U.S. 125 (1976). For more information on Supreme Court decisions involving the PDA, see CRS Report RL30253, *Sex Discrimination and the United States Supreme Court: Developments in the Law*, by Jody Feder.

⁹ 42 U.S.C. §2000e(k). The statute does contain a narrow exception if an employer can establish that having a non-pregnant employee is a "bona fide occupational qualification that is reasonably necessary to the normal operation of that particular business or enterprise." 42 U.S.C. §2000e-2(e).

¹⁰ 42 U.S.C. §2000e(k).

¹¹ See, e.g., *Equal Emp't Opportunity Comm'n v. Horizon/CMS Healthcare Corp.*, 220 F.3d 1184 (10th Cir. 2000); *Adams v. Nolan*, 962 F.2d 791 (8th Cir. 1992). Courts have also ruled in favor of pregnant employees who can demonstrate that they are being treated differently than similarly situated employees in other contexts, such as the provision of disability or unpaid leave. See, e.g., *Byrd v. Lakeshore Hosp.*, 30 F.3d 1380 (11th Cir. 1994).

¹² See, e.g., *Serednyj v. Beverly Healthcare, LLC*, 656 F.3d 540 (7th Cir. 2011); *Spivey v. Beverly Enters.*, 196 F.3d 1309 (11th Cir. 1999); *Urbano v. Continental Airlines*, 138 F.3d 204 (5th Cir. 1998).

¹³ U.S. Equal Employment Opportunity Commission, *Enforcement Guidance: Pregnancy Discrimination and Related Issues*, July 14, 2014. The EEOC subsequently updated its guidance in light of the *Young* decision. U.S. Equal Employment Opportunity Commission, *Enforcement Guidance: Pregnancy Discrimination and Related Issues*, June 25, 2015, http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm#IC1.

¹⁴ *Young v. UPS*, 784 F.3d 192 (4th Cir. 2013). The ADA is codified at 42 U.S.C. §§12101 et seq.

considered to be a disability under the ADA, certain impairments that a woman experiences as a result of pregnancy may qualify as a disability for purposes of the statute.¹⁵ If a pregnant worker can demonstrate that she has such a disability,¹⁶ her employer must provide reasonable accommodations to her limitations unless such accommodation would impose an undue hardship on the employer.¹⁷ An appellate court, however, rejected Young’s ADA claim, ruling that “there is no evidence that Young’s pregnancy or attendant lifting limitation constituted a disability within the meaning of the ADA.”¹⁸ As discussed in more detail below, recent amendments to the ADA may make it easier for pregnant employees to establish such disability claims.

Young v. UPS

As noted above, the dispute in *Young* centered on how to interpret the second clause of the PDA, which provides that pregnant workers must be treated the same “as other persons not so affected but similar in their ability or inability to work....”¹⁹ In her argument to the Court, Young contended that the PDA’s second clause requires employers to accommodate workers disabled by pregnancy in the same way that they accommodate employees who are disabled in other ways but similar in their inability to work. In contrast, UPS argued that its policy did not violate the PDA because pregnant workers were treated the same as other workers who were disabled due to off-the-job injuries. In a 6-3 ruling, the Court rejected the argument of both parties.

According to the Court, Young’s interpretation of the statute would grant pregnant workers a “most-favored nation status” that would require employers who provided one or two employees with an accommodation to provide the same accommodation to all pregnant employees, regardless of any other relevant criteria, such as the nature of the jobs in question.²⁰ The Court rejected this approach as contrary to congressional intent, noting that disparate treatment law allows employers to establish policies that may negatively affect protected employees, subject to certain conditions. The Court also refused to defer to EEOC guidance that echoed Young’s position, noting that the agency had altered its interpretation after the Court granted review in the case.²¹ Likewise, the Court disagreed with UPS’s interpretation because it would render the PDA’s second clause “superfluous” and would be contrary to the unambiguous intent expressed by Congress when it overturned the *Gilbert* decision.²²

¹⁵ The EEOC has explained that complications during pregnancy, such as “a pregnancy-related impairment that substantially limits a major life activity,” may qualify a woman for protection under the ADA. *See* 29 C.F.R. §1630.2(h) App.

¹⁶ Under the ADA, an individual is deemed to have a disability if she (1) has “a physical or mental impairment that substantially limits one or more major life activities;” (2) has “a record of such an impairment;” or (3) is “regarded as having such an impairment.” 42 U.S.C. §12102(1). Major life activities include a wide variety of daily activities—including, for example, performing manual tasks, standing, lifting, etc.—and the operation of major bodily functions. 42 U.S.C. §12102(2).

¹⁷ 42 U.S.C. §12112(b)(5)(A). The ADA states that reasonable accommodations may include ensuring that facilities used by employees are readily accessible to and able to be used by individuals with disabilities. 42 U.S.C. §12111(9)(A). The EEOC has published regulations that provide additional guidance regarding the purpose and type of accommodations that may be required. 29 C.F.R. §1630.2(o) App.

¹⁸ *Young v. UPS*, 784 F.3d 192, 200 (4th Cir. 2013).

¹⁹ 42 U.S.C. §2000e(k).

²⁰ *Young v. UPS*, 135 S. Ct. 1338, 1349 (2015).

²¹ *Id.* at 1351-52.

²² *Id.* at 1352-53.

Instead, the Court relied on an alternative interpretation of the PDA that appears to strike a middle ground between the approaches advocated by *Young* and *UPS*. This analysis rested in part on a distinction between disparate treatment and disparate impact cases. The former require evidence of intentional discrimination, while the latter involve neutral employment practices that have a discriminatory effect. The fact that *Young*'s claim was based on an allegation of disparate treatment was central to the Court's ruling, which ultimately turned on the somewhat technical application of rules regarding the burden of proof in disparate treatment cases.

In general, a party seeking to establish a disparate treatment claim may prove discrimination in one of two ways: (1) by producing direct evidence that an employer policy or practice is explicitly based on a protected category or (2) by using a burden-shifting framework to create an inference of discriminatory intent.²³ Originally established in the 1973 case of *McDonnell Douglas Corp. v. Green*,²⁴ the burden-shifting model involves three steps. First, a plaintiff must establish a prima facie case of discrimination. Second, an employer must articulate a legitimate, nondiscriminatory reason for the disparate treatment. Third, the plaintiff must prove that the employer's rationale is a pretext for discrimination.²⁵

Adapting the *McDonnell Douglas* framework, the *Young* Court held that a pregnant worker who alleges a violation of the PDA's second clause when an employer denies her an accommodation must establish a prima facie case of discrimination by showing that she is a member of the protected class; that she sought an accommodation; that the employer denied the accommodation; and that the employer accommodated others similarly situated in their ability or inability to work.²⁶ At that point, the employer must show that it had a legitimate, nondiscriminatory reason for denying the accommodation, although the administrative convenience or expense of accommodating pregnant employees will not be deemed to be a legitimate excuse. Finally, the employee may rebut this claim by demonstrating that the employer's rationale is pretextual.²⁷

Further, the Court ruled, an employee may reach a jury on the issue of pretext if she provides "sufficient evidence that the employer's policies impose a significant burden on pregnant workers, and that the employer's 'legitimate, nondiscriminatory' 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."²⁸ According to the Court, a pregnant employee can establish that a "significant burden" exists if she can demonstrate that an employer provides accommodations to a large percentage of non-pregnant workers but denies such accommodations to a large percentage of pregnant workers. Based on this reasoning, the Court vacated the lower court's judgment and remanded the case so that the court could determine "whether the nature of the employer's policy and the way in which it burdens pregnant women shows that the employer has engaged in intentional discrimination."²⁹ Although the Court did not rule on the merits of *Young*'s claim, it did appear to indicate that she could meet her burden of proof by arguing that the "combined effects" of *UPS*'s policies accommodating three separate categories of non-

²³ *TWA v. Thurston*, 469 U.S. 111, 121 (1985).

²⁴ 411 U.S. 792 (1973).

²⁵ *Tex. Dep't of Cmty. Affairs v. Burdine*, 450 U.S. 248, 252-53 (1981).

²⁶ *Young*, 135 S. Ct. at 1354.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 1344.

pregnant employees, while simultaneously refusing to accommodate the majority of pregnant employees, imposed a significant burden on the latter.³⁰

Ultimately, the Court's ruling preserves the ability of pregnant workers to sue under the PDA when an employer refuses to accommodate pregnancy-related disabilities, but it does not require employers to automatically provide accommodations under all circumstances. However, the significance of the Court's decision may be limited by changes that were made to the ADA during the course of litigation. Specifically, under the ADA Amendments Act of 2008,³¹ Congress clarified that the definition of disability includes physical or mental impairments that substantially limit an individual's ability to perform major life activities, such as lifting, standing, or bending. The EEOC subsequently issued guidance stating that "[t]he effects of an impairment lasting or expected to last fewer than six months can be substantially limiting within the meaning of this [Act]."³² This interpretation appears likely to make it significantly easier for a pregnant employee subject to a temporary lifting restriction to establish a disability claim under the ADA in the future.

Legislative Response

The *Young* decision appears to have prompted several Members of Congress to propose legislation clarifying the meaning of the PDA. The most prominent of these bills is the Pregnant Workers Fairness Act (PWFA),³³ although other bills have been introduced as well.³⁴

Introduced prior to the Court's decision in *Young*, the PWFA was designed to end the debate over the meaning of the PDA by explicitly providing reasonable workplace accommodations for employees whose ability to perform their jobs is limited by pregnancy, childbirth, or a related medical condition. Specifically, the legislation would make it unlawful for an employer (1) to fail to make reasonable accommodations for such employees unless the employer can demonstrate that the accommodation will cause undue hardship; (2) to deny job opportunities to such job applicants or employees if the denial is due to the need to make reasonable accommodations; (3) to require such job applicants or employees to accept an accommodation; or (4) to require such employees to take leave if another reasonable accommodation can be provided. In addition, the bill would adopt the ADA's definitions of "reasonable accommodation" and "undue hardship" and would borrow much of its structure from Title VII, including the latter's remedies, procedures, and enforcement provisions.³⁵ Like Title VII, the PWFA would also prohibit retaliation against any employee who opposed practices made unlawful under the bill or who filed a complaint or otherwise took part in a proceeding relating to allegations of unlawful practices under the bill.

³⁰ *Id.* at 1354-55.

³¹ P.L. 110-325, §4(a). In addition, the amendments specified that "[t]he definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act." *Id.*

³² 29 C.F.R. §1630.2(j)(1)(ix) App.

³³ H.R. 2654/S. 1512 (114th Cong.).

³⁴ *See, e.g.*, H.R. 2800/S. 1590 (114th Cong.).

³⁵ The PWFA also incorporates multiple provisions found in several other employment discrimination statutes. Collectively, these statutes prohibit the same types of employment discrimination as Title VII, but cover employees who are not protected under Title VII, including congressional employees under the Congressional Accountability Act, 2 U.S.C. §§1301 et seq., presidential employees under Chapter 5, Title 3 of the *U.S. Code*, and federal employees under the Government Employee Rights Act, 42 U.S.C. §2000e-16.

Given the new legal landscape that has emerged in the wake of the Court's ruling in *Young*, it is unclear whether legislation related to the PDA will advance in Congress.

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