Pregnancy Discrimination Update for Health Care Employers*

Jennifer H. Gonzalez
Hall Render Killian Heath & Lyman PLLC
Troy, MI

On March 25, 2015, the U.S. Supreme Court published its long-awaited opinion in the case of *Peggy Young v. UPS*,[1] reviving an employee's claim under the Pregnancy Discrimination Act (PDA)[2] that the Fourth Circuit previously dismissed on summary judgment. Though the case occurred outside of the health care arena, the opinion potentially has huge ramifications for health care employers where the workforce predominantly is female.

The Facts

The employee, Peggy Young, worked as a part-time delivery driver. Her position required her to lift parcels weighing up to 70 pounds. Due to her history of repeated miscarriages, when Young learned she was pregnant, her physician restricted her from lifting more than 20 pounds during the first 20 weeks of her pregnancy and more than ten pounds for the remainder of her pregnancy.

United Parcel Service Inc. (UPS) had a number of workplace policies in place to accommodate workers with lifting restrictions. Specifically, UPS readily accommodated three different groups of workers:

1. Drivers who had become disabled on the job;
2. Employees who had lost their U.S. Department of Transportation (DOT) certification (regardless of the source of the underlying injury or medical condition); and
3. Employees who suffered from a disability under the Americans with Disabilities Act (ADA), regardless of whether the condition was work-related.

Because Young's lifting restriction did not impact her DOT certification and arose by virtue of her pregnancy rather than a workplace injury, or disability, she was told that she did not qualify for a workplace accommodation under UPS policy. As a result, Young spent much of her pregnancy at home, not working and without pay. Eventually, she lost her employee medical coverage. She returned to work as a driver approximately two months after the birth of her baby, with no restrictions.

The Arguments

Peggy Young alleged that by accommodating other workers but refusing to accommodate pregnant workers, her employer discriminated against her because of her pregnancy. Young's PDA claim was limited to a claim of disparate treatment. She did not assert a disparate impact claim, nor did she claim that UPS had a "pattern and practice" of discriminating against pregnant women. This was a critical distinction, as the plaintiff's burden of proof—and the available remedies—in each type of case differs dramatically.[3]

With respect to an employer's obligation under the PDA, both parties agreed that the first clause specifies that a claim for discrimination "because of sex" under Title VII of the Civil Rights Act includes claims of "discrimination because of pregnancy." The dispute pending before the U.S. Supreme Court centered on the interpretation of the PDA's second clause, which provides, "[W]omen affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes. . . as *other*

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