

Senior Living and Long-Term Care Blog

Perspectives on the legal trends, regulatory policy and other issues facing the senior living and long-term care industry



Pregnancy Discrimination Update: *Young v. United Parcel Service, Inc.*

By Joan Casciari

In 1979, the Pregnancy Discrimination Act (PDA) was enacted to amend Title VII of the Civil Rights Act of 1964, after an earlier Supreme Court case, *Gilbert v. General Electric*, essentially held that pregnancy discrimination was not a form of sex discrimination. The PDA leveled the playing field for employees with pregnancy related disabilities and requires employers to treat “women affected by pregnancy, childbirth and related medical conditions” the same “for all employment related purposes” . . . as “other persons not so affected but similar in their ability or inability to work.” 42 U.S.C. §2000(k).

For many years, the Equal Employment Opportunity Commission (EEOC) and courts interpreting the PDA have applied it as a non-discrimination law, not as a law that required women covered by the law to have special treatment. However, in July 2014, after the Supreme Court agreed to hear the *Young* case, the EEOC issued a detailed Enforcement Guidance on Pregnancy Discrimination and Related Issues. This Guidance, which reveals the EEOC’s enforcement agenda, contained a number of shifts in position on pregnancy discrimination. One of the many pronouncements in the Guidance is as follows:

The Commission rejects the position that the PDA does not require an employer to provide light duty for a pregnant worker if the employer has a policy or practice limiting light duty to workers injured on the job and/or to employees with disabilities under the ADA.

Guidance, p. 12.

The Supreme Court Decision

On March 25, 2015, the United States Supreme Court handed down its decision in *Young v. United Parcel Service, Inc.*, which was a closely watched case involving the PDA. The plaintiff in the *Young* case, a driver, had a 20 lb. lifting restriction due to her pregnancy. Drivers are required to lift up to 70 lbs. The UPS policy at the time (which has since been changed) was to accommodate three classes of workers with limitations: those with work related injuries/conditions, those who had lost DOT certifications, and those with ADA-covered disabilities. *Young*’s request for light duty was denied and she had to go on leave without pay for the remainder of her pregnancy. There also was evidence that the company was willing to accommodate other employees with short term limitations, but not pregnant women. Summary judgment for UPS was granted and then affirmed by the Fourth Circuit Court of Appeals.

The Supreme Court reversed, holding that the plaintiff had created a genuine dispute of fact as to whether the company's failure to accommodate pregnant employees was a pretext for discrimination. The case was remanded to the Fourth Circuit. However, the Court also rejected the EEOC's position in its Guidance, stating that the Guidance was suspect due to its timing, inconsistency with past positions and a lack of thorough consideration of the issues.

Recommendations

Many jobs in senior living and long-term care require physical ability, especially those that involve caring for residents/patients with serious medical conditions. Further, many of those jobs are filled by women of child bearing age. While the decision in *Young* was a narrow one and the long-term impact of *Young* remains unclear, employers should carefully review their job descriptions, policies, and practices with regard to pregnant employees in the workplace to lessen the risk of challenges under the PDA. Finally, employers should check applicable state and local law on pregnancy discrimination, as some states, including Illinois as of January 1, 2015, require accommodation of pregnant employees.

If you would like further information on this topic, please contact a member of the [Senior Living & Long-Term Care Team](#), your Seyfarth attorney, [Joan Casciari](mailto:jcasciari@seyfarth.com) at jcasciari@seyfarth.com, [Daniel Sternthal](mailto:dsternthal@seyfarth.com) at dsternthal@seyfarth.com or [Brian Ashe](mailto:bashe@seyfarth.com) at bashe@seyfarth.com.

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