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Supreme Court Debates Reach of Pregnancy Law

By Camille A. Olson and Lawrence Z. Lorber

In what has become one of the most highly anticipated employment law cases of the U.S. Supreme Court's 2014 October Term, today the Court heard oral argument in *Young v. United Parcel Service* over whether "light duty" work assignments must be provided to employees for non-work related conditions if the light duty is necessitated by pregnancy and whether such "light duty" assignments are deemed "accommodations." More specifically, the issue before the Court was whether the Pregnancy Discrimination Act ("PDA") mandates that an employer accommodate a pregnant employee who is unable to perform the essential functions of her job due to pregnancy-related restrictions if the employer provides accommodations to non-pregnant employees with similar restrictions but whose limitations were caused by work-related injury. Splitting time and arguing on behalf of Young was Michigan law professor, Samuel R. Bagenstos and U.S. Solicitor General Donald B. Verrilli. UPS was represented by Caitlin Halligan.

The Court engaged in a lively discussion during oral argument with their attention focused on three primary topics:

1. Whether there was a disputed issue of material fact perhaps requiring remand and trial;

2. That the analysis required to determine whether UPS's actions were discriminatory would be much simpler if the case had been brought as a disparate impact claim, and not one of disparate treatment; and,

3. Whether the PDA, 42 U.S.C 2000(e)(k), creates a distinct and independent cause of action requiring an employer to affirmatively treat a pregnant employee more favorably than other non-pregnant employees.

The Court exerted most of its effort attentive to the last of these issues. For context, the PDA added pregnancy-related discrimination to Title VII's general prohibition on sex discrimination by amending the "Definitions" section of Title VII to state:

"The terms 'because of sex' or 'on the basis of sex' include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; *and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work.*"

At issue is the italicized clause in the PDA and whether that language creates a distinct and additional cause of action. The Fourth Circuit rejected such an interpretation holding that the consequence of ruling to the contrary would cause pregnancy to be "treated more favorably than any other basis, including non-pregnancy-related sex discrimination, covered by Title VII." *Young v. UPS*, 707 F.3d 437, 447 (4th Cir. 2013). It appears from the tenor of today's questioning that the Justices are poised to follow suit. While the questioning from Justices Kagan and Ginsburg revealed some support for such a broad interpretation, the other Justices struggled with the notion that the PDA amended Title VII to create some additional, affirmative non-discrimination obligation only extending to pregnant employees.

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