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EMPLOYMENT LAW ALERT

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THE SUPREME COURT DELIVERS FOR PREGNANT WORKERS IN *YOUNG v. UPS*

In *Young v. United Parcel Service, Inc.*, the Supreme Court determined that employers may be on the hook for discrimination claims under the Pregnancy Discrimination Act ("PDA"), 42 U.S.C. § 2000e(k), if they accommodate nonpregnant employees but do not provide accommodations for pregnant employees who have similar work limitations. However, the Court specifically rejected the idea that the PDA gave pregnant workers a "most favored nation" status. That is, a pregnant employee will not be able to establish a PDA claim simply by pointing to one or two employees who received the accommodation that the pregnant employee was denied. The Court did not clarify how many nonpregnant workers needed to have been granted accommodations sought by pregnant workers. But employers should be mindful of the Court's closing question when assessing requests for accommodations: "why, when the employer accommodated so many, could it not accommodate pregnant women as well?"

After a series of miscarriages, Young, a part-time driver for UPS, became pregnant. Young's doctor recommended that Young not lift anything over 20 pounds. UPS policies required drivers to be able to lift up to 70 pounds. As a result, UPS told Young that she could not work while under a lifting restriction. Young stayed home without pay through her pregnancy.

Young brought suit, arguing that UPS made light duty positions available to those who had similar limitations on their ability to lift heavy packages. UPS admitted that it made lifting accommodations for those who had become disabled on the job, had lost their driver's license, or suffered from a disability protected under the Americans with Disabilities Act ("ADA"). Because Young did not fall under any of those categories, UPS argued that it had not discriminated against Young on the basis of her pregnancy.

UPS moved for judgment before trial began. The district court granted UPS's motion, reasoning that those with whom Young compared herself (ADA disability, lost driver's license, on-the-job injury) were not similarly situated. The Fourth Circuit affirmed, calling UPS's policy "pregnancy-blind."

The Supreme Court granted review and ultimately rejected each party's position. It rejected Young's interpretation, which the Court concluded would give pregnant employees a "most- favored-nation" status – whereby a pregnant employee would be entitled to the same accommodations as any other employee, regardless of why the accommodation was made. The Court also rejected UPS's interpretation, concluding that it would make superfluous the second clause of the PDA – which requires that pregnant workers be treated the same as nonpregnant workers with similar work limitations. The Court also refused to rely on recent Equal Employment Opportunity Commission guidelines on pregnant workers (published after the Court granted review), which supported Young's position.

Instead, the Court reached a middle ground. It held that Young's case should have gone to trial. Even though

Young lacked direct evidence of discrimination, the Court concluded that she had created a genuine dispute of material fact as to whether UPS provided more favorable treatment to at least some employees whose situations could not be reasonably distinguished from Young's. The Court also left to the Fourth Circuit the question of whether UPS's reasons for having treated similarly situated pregnant employees less favorably than the nonpregnant employees were simply excuses.

The decision in *Young* is likely to expose employers to more requests for accommodation and to lead to more litigation when accommodations are denied. When faced with a request for an accommodation from a pregnant employee, employers should evaluate their policies to assess whether pregnant employees would receive the same accommodations as nonpregnant employees – and if not, why not. Employers should also be mindful of the enhanced protections for pregnant workers afforded by a growing number of states and cities. *See e.g.*, Cal. Gov't Code § 12945 (prohibiting employers from refusing to provide "reasonable accommodation for an employee for a condition related to pregnancy, childbirth, or a related medical condition, if she so requests, with the advice of her health care provider"); Philadelphia Fair Practices Ordinance § 9-1103(1)(l) (making it unlawful for "any employer to fail to provide reasonable accommodations to the needs of an employee for her pregnant, childbirth, or a related medical condition").

Please contact Gregg Marsano at 610-854-4321 or gmarsano@rubinfortunato.com for more information about the *Young* case or to discuss its impact on your policies regarding, and/or responses to, requests for accommodations.