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Course Correction: Young v. United Parcel Service Makes Courts Focus on Right Issues, but Also Reveals Limits of PDA

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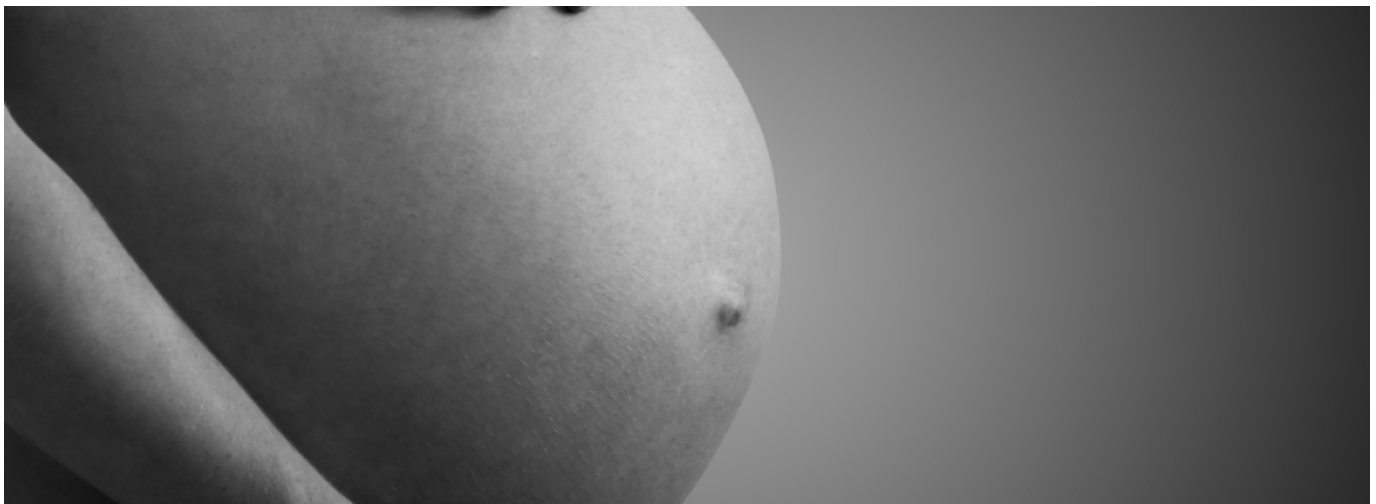
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VERDICT

LEGAL ANALYSIS AND COMMENTARY FROM JUSTIA

Course Correction: *Young v. United Parcel Service* Makes Courts Focus on Right Issues, but Also Reveals Limits of PDA

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POSTED IN: **CIVIL RIGHTS**

Last April, the Supreme Court ruled in favor of Peggy Young, a UPS driver who claimed she was the victim of unlawful pregnancy discrimination when she was denied a routine workplace accommodation that was made available to many other workers with similar limitations. The Court ruled in her favor, vacating the grant of summary judgment to United Parcel Service (UPS) and remanding for a new trial on whether the benefits to the employer outweighed the burden on the employees.

On remand, Peggy Young’s case was settled; UPS agreed to pay damages in an undisclosed amount. She deserves whatever she got (and probably more). But she is not the only beneficiary of this ruling. It provides a much-needed course correction to stop federal and state courts from dismissing pregnancy discrimination after a superficial review of the complaint and a misapplication of the law. Some recent opinions, which will be discussed in this column, make this effect evident.

But post-*Young* opinions also show the limitations of the Pregnancy Discrimination Act (PDA), the law under which she sued. At its best, it offers only a comparative right of accommodation, which means employers are free to deny even minor and costless accommodations as long as they haven’t provided them to other employees. This is not a problem that *Young* could have fixed because the problem is inherent in the scope of the underlying statute. A recent case makes apparent why that statute is too narrow to provide meaningful protection for pregnant workers—and why the law should be amended to expand that protection.

Young v. UPS: The Ruling and the Problem It Fixed

When Peggy Young finally became pregnant after a series of miscarriages, her doctor imposed a restriction on how much she could lift. Young was an “air driver” for UPS, meaning she delivered packages that arrived by plane rather than truck and, thus, were smaller and lighter. She was rarely required to lift anything heavy, but her written job description gave a minimum weight that she had to be able to lift,

and she was no longer allowed to lift that weight. She requested light duty, an accommodation made available by UPS policy to three large groups of employees. But because she did not fall into any of the three groups, she was denied the accommodation and forced out of her job.

Young sued under the PDA, the heart of federal protection for pregnant workers. The 1978 law protects against employment actions taken because of “pregnancy, childbirth, or related medical conditions.” This protects against the usual types of discrimination—actions reflecting animosity, bias, hostility, paternalism, or stereotypes. But a second clause in the PDA provides a unique type of protection, one that directs employers to treat those temporarily disabled by pregnancy the same as it treats employees who are temporarily disabled from other causes.

The Second Clause has been the course of recurring conflict among courts, particularly as applied to light-duty cases, like Peggy Young’s. Prior to the Supreme Court’s ruling last spring, several courts had held that an employer could lawfully offer light duty only to workers injured on the job, as long as they did not adopt the policy for the purpose of excluding pregnant workers from the accommodation. These rulings, which were a patent misreading of the PDA, collapsed the first and second clauses into a single question: did the employer act with animus against pregnant women?

In the *Young* ruling (which is analyzed in greater detail [here](#) and [here](#)), the Court restored the meaning of the second clause, by insisting that it be given some meaning beyond the first clause. But it didn’t do so in a straightforward way and, indeed, rejected the most straightforward

reading of the statute. In the majority's view, the statute, which calls for pregnant workers to be treated the same as comparably restricted workers, is ambiguous as to whether pregnant workers are entitled to the accommodations provided to any worker, or only those provided to all or nearly all workers.

The majority crafted a new approach to applying the Second Clause of the PDA, which makes use of the so-called *McDonnell-Douglas* test, which is used to smoke out discriminatory intent by employers accused of unlawful disparate treatment. Under that test, a plaintiff must first make out a prima facie case, demonstrating that she was treated differently from someone similarly situated but outside the protected class. A plaintiff can establish a prima facie case of pregnancy discrimination simply by showing that “she belongs to the protected class, that she sought accommodation, that the employer did not accommodate her, and that the employer did accommodate others ‘similar in their ability or inability to work.’”

Upon establishment of the prima facie case, the burden of production then shifts to the employer, who must articulate a legitimate, non-discriminatory reason for its differential treatment. But not just any non-discriminatory reason. The Court specified that the “reason normally cannot consist simply of a claim that it is more expensive or less convenient to add pregnant women to the category of those (‘similar in their ability or inability to work’) whom the employer accommodates.”

The plaintiff then has the opportunity to reach a jury by “providing

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.”

Applying the *Young* Ruling

On its face, the *Young* ruling seemed equipped to deal with the worst cases that had preceded it. Many of the cases in which courts upheld the denial of accommodations to pregnant workers would not survive scrutiny under the *Young* standard. But, as with all rulings in the discrimination context, the true scope of *Young* will not be known until enough lower courts have had the opportunity to apply it to different sets of facts.

Ten months is far too soon to assess the ruling’s impact, but the early signs are good. For example, in a recent case, *McQuiston v. City of Clinton*, the Supreme Court of Iowa applied basic PDA principles, as elucidated in *Young*, to vacate a grant of summary judgment to an employer and remand the case for deeper consideration of the facts related to the denial of an accommodation to a pregnant worker. (The claim was brought under the Iowa Civil Rights Act, but the court first decided that, at least on this point, Iowa law was consistent with the PDA as interpreted in *Young*.)

Karen McQuiston was employed as an engineer for the City of Clinton’s fire department. She requested light-duty assignments during her

pregnancy due to medical restrictions, but was denied because the light-duty positions were available only to those injured on the job and eligible for workers' compensation benefits.

Although the employer denied McQuiston a benefit that was available to other workers, the lower court granted summary judgment to the city. The Iowa Supreme Court vacated that ruling and did just what the Supreme Court in *Young* envisioned: it remanded the case for a careful examination of the facts and circumstances. The City's argument, "that the employer need not accommodate disability caused by pregnancy unless it falls within specifically defined categories singled out for accommodation," could not prevail under *Young*. The policy of exclusion cannot be used to defend the policy of exclusion. The court thus also rejected the City's argument that the proper comparators for McQuiston were only those workers who were also suffering from disability incurred off the job. On remand, she is to be compared with all temporarily disabled workers.

This opinion does not establish any new ground, but it does show that *Young* is doing the work it was intended to do. That is shown in other post-*Young* cases as well, such as *Martin v. Winn-Dixie Louisiana*, a case in which a woman's PDA claim was remanded for trial because of disputed facts about the employer's reasons for denying her an accommodation and about whether two other employees were proper comparators. Together, these cases show that *Young* is forcing courts to slow down, to think carefully about the challenged policy in front of them, to question employer motives for denying accommodations to pregnant women, and to give pregnant workers the full benefit of the

protections the law provides. This, alone, is a victory.

The Limits of *Young*: Still No Right to Reasonable Accommodation

The fight in light-duty cases, culminating in the *Young* opinion, was about something simple—giving the second clause of the PDA its due. But even when interpreted correctly, the PDA's scope is limited. It provides, at best, the accommodations that are available to other employees in the same workplace. That gives employers a lot of latitude to deny accommodations, even ones that are minor and costless, simply by denying them to everyone. *Young* did not—and could not—fix this problem.

A recent case, *Sanchez-Estrada v. Mapfre PRAICO*, considered a complicated pregnancy discrimination claim, with many different issues. But one illustrates the limited scope of the PDA. The plaintiff, among other complaints, stated that she had requested a maternity-fit uniform when she reached a certain point in her pregnancy. The employer refused to purchase one because it had exhausted its uniform budget for the year. It did allow her to wear regular clothing after she outgrew her regular uniform, but would not provide the accommodation she sought. A federal court in Puerto Rico held that the employer was under no obligation to provide the accommodation she sought because it had not provided a similar accommodation to anyone else. Now this might not seem like a compelling case, particularly as she was provided a different accommodation, but this same principle would apply in cases in which the failure to accommodate could result in the employee's

having to resign or take unpaid leave.

The lack of an absolute right of accommodation necessitates legislative action. Pregnant women should not have to rely on the whim or generosity of employers to gain the accommodations they might need to continue working, particularly when those accommodations can be made with little or no effort by the employer.

Efforts have been made in the past couple of years to lobby for the Pregnant Workers Fairness Act (PWFA), a bill introduced into the House that promised to “eliminate discrimination and promote women’s health and economic security by ensuring reasonable workplace accommodations for workers whose ability to perform the functions of a job are limited by pregnancy, childbirth, or a related medical condition.” PWFA is modeled on the Americans with Disabilities Act, which balances the employee’s need for an accommodation against the burden on the employer.

If enacted, the PWFA would make it unlawful to:

- Refuse to “make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of a job applicant or employee” without demonstrating “undue hardship” to the employer;
- Deny employment opportunities to a woman in order to avoid making required accommodations;
- Force a woman to accept an accommodation she does not want; and
- Force a woman to take leave “under any leave law or policy . . . if another reasonable accommodation can be provided” instead.

Conclusion

Young was an important ruling, breaking up a disturbing pattern in which courts were refusing to give the PDA its intended scope. It set the stage for courts to look more closely at denials of accommodation, and the early evidence suggests that they are doing just that. But it didn't, and couldn't, extend the scope of the PDA, which is the obvious next step.

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