

EEOC UPDATES PREGNANCY DISCRIMINATION GUIDANCE

By: Joette S. Doran

On June 25, 2015, the U.S. Equal Employment Opportunity Commission (EEOC) issued an update of its Enforcement Guidance on Pregnancy Discrimination and Related Issues (Guidance), along with a question and answer document and a fact sheet for small businesses based on the Supreme Court Decision in *Young v. United Parcel Service*, issued in March 2015. The *Young* decision reversed an appellate court decision in favor of a part-time employee who sued UPS for pregnancy discrimination wherein she alleged that UPS had acted unlawfully in refusing to accommodate her lifting restriction while it had accommodated other drivers who were unable to work for other reasons.

According to the EEOC, “The updated Guidance reflects the Supreme Court's conclusion that women may be able to prove unlawful pregnancy discrimination if the employer accommodated some workers but refused to accommodate pregnant women. The Court explained that employer policies that are not intended to discriminate on the basis of pregnancy may still violate the Pregnancy Discrimination Act (PDA) if the policy imposes significant burdens on pregnant employees without a sufficiently strong justification.”

The amendments to the EEOC Enforcement Guidance include revisions to the provision regarding disparate treatment of pregnant employees and a section on light duty work assignments for pregnant workers. However, the EEOC noted that, “Because the *Young* decision did not affect most of the July 2014 EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues, those topics regarding the PDA's application to current, past, and potential pregnancy; termination or refusal to hire someone because she is pregnant and other prohibited employment actions based on pregnancy; application of the PDA to lactation and breastfeeding; prohibition of forced leave policies; the obligation to treat women and men the same with respect to parental leave policies; and access to health insurance remain the same.”

The EEOC explained that, “The Court's opinion did not address the effect of the ADA Amendments Act of 2008 on workers with pregnancy-related impairments. Therefore that discussion in the Guidance also remains the same. The Guidance notes that, “Changes to the definition of the term 'disability' resulting from enactment of the ADA Amendments Act of 2008 make it much easier for pregnant workers with pregnancy-related impairments to demonstrate that they have disabilities for which they may be entitled to a reasonable accommodation under the ADA.” The Court of Appeals held that the plaintiffs were not protected employees under the Act. The Supreme Court granted certiorari and reversed.” For the particulars of the updated EEOC Pregnancy Discrimination Guidance, see the EEOC's website at http://www.eeoc.gov/laws/guidance/enforcement_guidance.cfm.

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