

# What We Know

## ARTICLES & INSIGHTS

### ABOUT THE AUTHOR



[Connie Elder Carrigan](#) is a partner in the firm, with a practice concentration in Business Law. Her focus is assisting clients with issues regarding employment law, business advice and litigation, construction law, equipment leasing and creditor bankruptcy. Connie has lectured on topics ranging from employment law, bankruptcy, and equipment leasing to construction law.

## What North Carolina Employers Need to Know about Young v. UPS

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### *Pregnancy Complications: Supreme Court Clarifies What Is Appropriate In Accommodating Pregnant Workers*

On March 25, 2015, the United States Supreme Court issued its long-awaited ruling in the case of [Young v. UPS](#). In determining the scope of the federal Pregnancy Discrimination Act (PDA), the Justices expanded the potential for pregnant employees to secure workplace accommodations by endorsing a balancing test in order to determine under what circumstances a pregnant employee may prevail on a claim that her employer failed to provide appropriate workplace accommodations.

The case was filed by Peggy Young, a driver for UPS who became pregnant in 2006 and who was instructed by her medical provider to avoid lifting items in excess of 20 pounds. Young was rarely required to deliver packages that were that heavy, but UPS refused to excuse her from those duties or to reassign her for the remainder of her pregnancy for a light duty job. UPS had a policy allowing such temporary assignments but limited them to three circumstances, none of which applied to pregnancy.

Unwilling to disregard her doctor's directive, Young took an unpaid leave for the remainder of her pregnancy. She lost her medical coverage before having her baby because she didn't work the number of hours that UPS required to maintain medical benefits for its employees.

Under the Pregnancy Discrimination Act, employers are required to treat pregnant workers the same as workers who are "*similar in their ability or inability to work*" Young's argument was that because UPS accommodated workers with physical limitations other than pregnancy – i.e., UPS granted light duty to workers who were similar to Young in their inability to perform all job functions – UPS was in violation of the Pregnancy Discrimination Act. Young argued that the statutory language should be interpreted literally – meaning, that an employer must provide the *same* accommodations to pregnant employees as it does to those who are similar to pregnant employees in their inability to work. UPS argued that as long as an employer provides accommodations to pregnant workers in the same way it provides accommodations to

other workers in a facially neutral way, it could not be liable for pregnancy discrimination.

Both the United States District Court and the 4<sup>th</sup> Circuit agreed with UPS's argument that its policy didn't specifically state a bias against pregnant workers and that Young wasn't similar to any of the three categories of workers to whom UPS granted accommodation and thus wasn't entitled to be treated the same as they were. The 4<sup>th</sup> Circuit ruled that the Pregnancy Discrimination Act requires only that an employer not discriminate against a pregnant employee, but does not place an affirmative duty on the employer to provide accommodation.

**The Supreme Court rejected both parties' arguments.** It found that Young's views grant pregnant workers a "most-favored-nation" status, under which an employer would have to provide similar accommodations to all pregnant workers, regardless of the nature of their jobs, the employer's requirements, or any other criteria, anytime the employer made an accommodation for any employee. On the other hand, the Court found that UPS's argument would permit employers to treat pregnancy less favorably than disabilities resulting in a similar "inability to work."

The Supreme Court adopted a balancing test to be used in employment discrimination cases to determine whether a pregnant employee has suffered discrimination on the basis of her pregnancy. The employee must first demonstrate the following:

- *She belongs to a protected class*
- *She sought an accommodation*
- *Employer did not provide an accommodation*
- *Employer accommodated others similar in their inability to work*

**The burden then shifts to the employer.** The employer must demonstrate that its refusal to accommodate was for a legitimate, non-discriminatory reason. If the employer succeeds in this regard, the pregnant employee must then demonstrate that the employer's proffered reason for refusing to grant the accommodation is a pretext for discrimination.

The Supreme Court determined that Young created an issue of fact as to whether UPS provided more favorable treatment to at least some employees whose situations cannot reasonably be distinguished from hers, thus sending the case back to the 4<sup>th</sup> Circuit to decide.

The Supreme Court's decision makes it clear that an accommodation policy that is neutral on its face will generally not insulate an employer from a pregnancy-related sex discrimination claim. Employers must individually evaluate all employee requests for pregnancy-related accommodations on a case-by-case basis and engage in an interactive process with the employee. It is also worth noting that this holding may be of limited significance in light of the ADA Amendments Act of 2008 (ADAAA), which was

enacted after this case was filed and, therefore, did not govern its ruling. The Equal Employment Opportunity Commission has interpreted the expanded definition of disability under the ADA to require employers to accommodate employees whose temporary lifting restrictions originate off the job, and courts have applied this requirement to pregnant employees.

If you have questions or concerns about this case or other legal issues, please feel free to contact Connie Carrigan at [ccarrigan@smithdebnamlaw.com](mailto:ccarrigan@smithdebnamlaw.com).

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