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THE EEOC MODIFIES ITS WORKPLACE ACCOMMODATION GUIDANCE REGARDING PREGNANT EMPLOYEES WITH PHYSICAL RESTRICTIONS.

Three months after the United States Supreme Court ruled in *Young v. United Parcel Service* that UPS unlawfully discriminated against a pregnant employee by denying her a workplace accommodation that it made available to other workers with similar restrictions, the EEOC has modified its guidelines to comply with the Court's ruling.

The Pregnancy Discrimination Act (PDA) prohibits discrimination on the basis of pregnancy if an employee's pregnancy, childbirth or related medical condition was all or part of the motivation for an employment decision. Beyond intentional discrimination, discriminatory motives may be inferred from the surrounding facts and circumstances.

In its June 25, 2015 guidance, the EEOC stated:

> Discrimination on the basis of pregnancy includes failure to treat women affected by pregnancy "the same for all employment related purposes . . . as other persons not so affected but similar in their ability or inability to work." Employer policies that do not facially discriminate on the basis of pregnancy may nonetheless violate this provision of the PDA where they impose significant burdens on pregnant employees that cannot be supported by a sufficiently strong justification.

By way of example, the Supreme Court ruled in *Young* that evidence of an employer policy or practice of providing light duty to a large percentage of nonpregnant employees while failing to provide light duty to a large percentage of pregnant workers might establish that the policy or practice significantly burdens pregnant employees. If the employer's reasons for its actions are not sufficiently strong to justify the burden, that will "give rise to an inference of intentional discrimination."

As a result, employers who had limited certain accommodations, including light duty, to employees injured on the job may no longer rely on such a facially neutral policy to deny the accommodation to a pregnant worker similar in her ability or inability to work with that of a nonpregnant employee without a sufficiently strong justification.

<u>Bottom Line</u>: Employers should have a process in place to consider requests for reasonable accommodations made by employees with pregnancy related disabilities or impairments and to grant accommodations absent undue hardship. Given the breadth of coverage for pregnancy related impairments under the ADAAA, managers should treat requests for accommodations from pregnant workers as they do requests for accommodations under the ADAAA unless no impairment exists. Employers need to be ready to engage in the interactive process with pregnant workers who seek accommodations for a disability or impairment causing work-related limitations

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