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Supreme Court Takes Up UPS Pregnancy Discrimination Case

By Ashlea Ebeling, Forbes Staff

Peggy Young just wanted a break from heavy lifting on her job at United Parcel Service because of her pregnancy but her boss told her to take unpaid leave instead. Now, eight years later, the U.S. Supreme Court has decided to take up her case when it reconvenes this fall.

The question before the Court is whether, and in what circumstances, an employer that provides work accommodations to non-pregnant employees with work limitations must provide work accommodations to pregnant employees who are "similar in their ability or inability to work." In other words, should employers have to give pregnant workers a break?

Young's position is that the 1978 Pregnancy Discrimination Act says you have to treat pregnant women the same as others with short-term disabilities. UPS says its policy, which allows accommodations (or "light duty" assignments) for employees injured on the job, employees with a disability as defined by the Americans with Disabilities Act, and injured employees ineligible for commercial driver's licenses, is "pregnancy blind" and does not constitute discrimination.

"Really you couldn't find light duty for her? But you could find it for someone with a broken leg? What's the deal? It's preposterous," says Ellen Bravo, executive director of Family Values @ Work, a coalition of groups fighting for family-friendly workplace policies. "Fairness isn't always treating everyone the same; sometimes some groups need a particular accommodation," she says.

Young's petition to the Supreme Court makes two main points: first that the Fourth Circuit decision that ruled in favor of UPS directly conflicts with the text of the Pregnancy Discrimination Act, and second that there is longstanding disagreement in how courts across the country interpret it.

"This is a tough court for women and employees, but if you read the statute, it seems like the plaintiff has the better argument," says **Nicholas Fortuna**, an employment lawyer in New York City who helps companies shape employment policies and defends them in court.

Pregnancy accommodation on the job is a hot topic at the EEOC, in Congress, and in more states and cities, and the U.S. Supreme Court has just agreed to take up a case. (Photo credit: Wikipedia)

Advocates for pregnancy accommodations have been making progress while Young's case has been winding its way through the court system.

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"Many employers are offering a wider set of accommodations because they see the writing on the wall," says Dina Bakst, co-founder of A Better Balance, a work and family legal advocacy group that operates a free legal helpline (1-212-430-5982) for employees with questions about their workplace rights.

One setback for advocates–the Equal Employment Opportunity Commission was poised to issue guidelines on pregnancy accommodation under the Pregnancy Discrimination Act (the "PDA") and the American with Disabilities Act (the "ADA"), but it's possible that the guidelines will be delayed pending the Supreme Court case.

In an unusual twist, the U.S. Solicitor General actually asked the Supreme Court *not* to hear Young's case because of the pending EEOC guidance The

thinking is that workers will be protected by amendments to the ADA in 2008 that provided a wider range of pregnancy-related conditions that are covered by that Act. (A UPS spokesperson says that UPS complies with all requirements for accommodation under the ADA as well as any specific state laws.)

The EEOC has identified accommodating pregnancy-related limitations under the Americans with Disabilities Act Amendments Act and the Pregnancy Discrimination Act as a national enforcement priority through 2016. In the 10 years through 2012, the EEOC has filed more than 260 pregnancy discrimination lawsuits. Denial of workplace accommodations to pregnant workers in circumstances in which other employees receive them is a common fact pattern.

Advocates say that women need clarity now. In Congress, the Pregnant Workers Fairness Act (sponsored by Senator Bob Casey, D-PA) would provide a clear and unambiguous rule requiring employers to provide reasonable accommodations to pregnant workers who need them unless doing so would impose an undue hardship—the same standard that currently applies to workers with disabilities.

And in the meantime, 12 states and 4 cities (New York City, Philadelphia, Providence and Central Falls, R.I.) have passed laws requiring some employers to provide reasonable accommodations to pregnant workers.

In New Jersey for example, employers must provide reasonable accommodations (such as bathroom breaks, breaks for increased water intake, periodic rest, modified work schedules and temporary transfers to less strenuous or hazardous works) to women based on the advice of her physician, unless the employer can demonstrate an undue hardship. A Better Balance keeps track of the laws here.

Want to learn more? Young's story is one of eight told in a compelling report, "It shouldn't be a heavy lift: fair treatment for pregnant workers" put out last year by the National Women's Law Center and A Better Balance. Or check out the testimony of Armanda Legros (she was pushed out of a job driving an armored truck when she was 6 months pregnant and asked for accommodation for a pulled muscle) at the May Senate hearings on economic security for working women convened by Sen. Tom Harkin (D-Iowa).