NWLC

WORKPLACE JUSTICE

PREGNANCY ACCOMMODATION IN THE COURTS ONE YEAR AFTER *YOUNG V. UPS*

In March 2015, Peggy Young won her case at the Supreme Court in *Young v UPS*, a seminal decision that changed the legal landscape for pregnant workers seeking to secure workplace accommodations for medical needs arising out of pregnancy.[1] In the year since, the positive impact of the decision in cases challenging employers' failure to accommodate limitations arising out of pregnancy has become increasingly clear.

Peggy Young, a delivery driver, alleged that her employer engaged in pregnancy discrimination when it failed to accommodate her pregnancy-related lifting restriction even while it accommodated lifting restrictions arising out of on-the-job injuries or disabilities and provided alternate work for drivers who had lost their commercial drivers' licenses. Prior to the *Young v UPS* decision, the scope of the federal Pregnancy Discrimination Act's guarantee that workers affected by pregnancy be treated the same as other employees "not so affected but similar in their ability or inability to work"[2] had been disputed in the lower courts. In *Young*, the Supreme Court reversed the lower court decisions throwing out Peggy Young's case and held that when an employer accommodates workers who are similar to pregnant workers in their ability to work, it cannot refuse to accommodate pregnant workers who need it simply because it "is more expensive or less convenient" to do so.[3] The Court further held that when an employer's accommodation policies impose a "significant burden" on pregnant workers that outweighs any justification for the policies that the employer offers, a jury can conclude that the employer is intentionally discriminating against pregnant workers. The Court explained that a way of showing this significant burden is by presenting evidence that the employer "accommodates a large percentage of non-pregnant workers while failing to accommodate a large percentage of pregnant workers."[4]

Before *Young*: An Uphill Battle

A review of published federal court decisions reveals that between 2012 and March 2015—the years immediately prior to the Supreme Court's decision in *Young v. UPS*—over 70 percent of the accommodation claims under the Pregnancy Discrimination Act in which a court considered the merits of the claims were thrown out before trial. Indeed, in the eight pregnancy accommodation claims reviewed on their merits in federal courts between March 2012 and March 2013, *none* of the plaintiffs' claims survived motions to dismiss or motions for summary judgment.[5] The following year, plaintiffs likewise struggled to bring their claims, with more than half (6 out of 11) plaintiffs losing at the motion to dismiss or summary judgment stages.[6] And in the year immediately preceding the Young decision, two-thirds of plaintiffs' claims (4 out of 6) were not allowed to proceed to trial.[7]

After *Young*: New Success

In the year since *Young* was decided, women have already enjoyed greater success in bringing pregnancy accommodation claims forward. A review of published opinions since *Young* shows that, of the Pregnancy Discrimination Act federal cases alleging a discriminatory failure to provide accommodations, 3 out of 3 claims survived motions to dismiss,[8] and 5 out of 8 survived motions for summary judgment or judgment as a matter of law.[9] In other words, since Young, 73 percent of plaintiffs' pregnancy accommodation claims have been allowed to proceed instead of short-circuited at the initial stages of a lawsuit—a reversal of the previous trend.

While the numbers of published cases from year to year are small, making it difficult to draw conclusions from raw numbers alone, analysis of the decisions suggests the changing tide comes in substantial part from courts relying on *Young* to hold that when an employer has a policy of providing accommodations for workers injured on-the-job, and refuses to accommodate off-the-job injuries or conditions including pregnancy, a jury can conclude that the policy impermissibly places a "significant burden" on pregnant workers.[10] As a result, more plaintiffs have been given the opportunity to proceed in their pregnancy accommodation claims.

Questions Remain Post-*Young*

Taken together, lower court decisions in the year since *Young v. UPS* send a strong message to employers: if you are refusing to make workplace accommodations when pregnant workers need them, but are accommodating other categories of employees, you may well find yourself on the losing side of a lawsuit. Even so, significant questions remain to be answered by the lower courts in interpreting *Young,* which will be important in establishing the scope of protections the case will ultimately provide.[11]

As a result, while courts appear to be taking pregnant workers' accommodation claims more seriously, individual women may still face uncertainty about whether they have a right to a pregnancy accommodation in the specific context of their own workplaces. Laws that explicitly require reasonable accommodations for limitations arising out of pregnancy, childbirth, or related medical conditions can help resolve those uncertainties.[12] In the meantime, the increased success of plaintiffs in pregnancy accommodation cases is good news for pregnant workers.

1 Young v. United Parcel Serv., Inc., 135 S. Ct. 1338 (2015).
2 42 U.S.C. § 2000e(k).
3 35 S. Ct. at 1354.
4 *Id.* at 1354–55.
5 *See* Young v. UPS, 707 F.3d 437, 439 (4th Cir. 2013); Arizanovska v. Wal-Mart Stores, Inc., 682 F.3d 698, 700 (7th Cir. 2012); Jeudy v. Att'y Gen., Dep't of Justice, 482 Fed. App'x 517, 519 (11th Cir. 2012); Tillman v. Mem'l Hermann Hosp. Sys., No. H-12-1072, 2012 WL 5207592, at *1 (S.D. Tex. Oct. 22, 2012); Falk v. City of Glendale, No. 12-cv-00925-JLK, 2012 WL 2390556, at *1 (D. Colo. June 25, 2012); Selkow v. 7-Eleven, Inc., No. 8:11-cv-456-T-338AJ, 2012 WL 2054872, at *1 (M.D. Fla. June 7, 2012); Berrios v. Univ. of Miami, No. 11-CV-22586-UU, 2012 WL 7009642, at *7 (S.D. Fla. June 1, 2012); Hobbs v. Ketera Tech., 865 F. Supp. 2d 719, 721 (N.D. Tex. 2012).
6 For cases where plaintiffs lost, see Lara-Woodcock v. United Air Lines, Inc., 999 F. Supp. 2d 1027, 1028 (N.D. Ill. 2013); Reynolds v. Shady Brook Animal Hosp., No. 4:12-CV-2258, 2013 WL 5964564, at *1 (S.D. Tex. Nov. 7, 2013); Metzler v. Kentuckiana Med. Ctr., No. 4:11-cv-00101-TWP-TAB, 2013 WL 1619592, at *1 (S.D. Ind. Apr. 15, 2013); Gooding v. Walgreens Home Care, No. 3:11-cv-856, 2013 WL 3338568, at *9 (D. Conn. July 2, 2013); Genovese v. Harford Health & Fitness Club, Inc., No. WMN-13-217, 2013 WL 2490270, at *5 (D. Md. June 7, 2013); Veale v. Fla. Dep't of Health, No. 2:13-cv-77-FTM-38UAM, 2013 WL 5703577, at *7 (M.D. Fla. July 29, 2013). For cases where plaintiffs won, see Latowski v. Northwoods Nursing Ctr., 549 Fed. App'x 478, 480 (6th Cir. 2013); EEOC v. Houston Funding II, Ltd., 717 F.3d 425, 426 (5th Cir. 2013); Dean v. Christiana Care Health Servs., Inc., No. 12-059-RGA, 2013 WL 5176761, at *1 (D. Del. Sept. 16, 2013); EEOC v. Greystar Mgmt, Servs., No. ELH-11-2789, 2013 WL 6731885, at *28 (D. Md. Dec. 18, 2013); Meadors v. Ulster Cty., 984 F. Supp. 2d 83, 104–05 (N.D.N.Y. 2013).
7 For cases where plaintiffs lost, see Turner v. Eastconn, No. 3:12-cv-00788, 2013 WL 6230092, at *1 (D. Conn. Dec. 2, 2013); Abbott v. Elwood Staffing Servs., 44 F. Supp. 3d 1125, 1129 (N.D. Ala. 2014); Wilson v. Ontario Cty. Sheriff's Dep't, No. 12-cv-06706, 2014 WL 3894493, at *1 (W.D.N.Y. Aug. 8, 2014); Seig v. Mercy Franciscan at Schroeder, No. 1:13-cv-672, 2015 WL 1036085, at *11 (S.D. Ohio Mar. 10, 2015). For cases where plaintiffs won, see Hesse v. Dolgencorp of N.Y., No. 10-cv-421S, 2014 WL 1315337, at *1 (W.D.N.Y. Mar. 31, 2014); Cadenas v. Butterfield Health Care II, Inc., No. 12-C-07750, 2014 WL 3509719, at *1 (N.D. Ill. July 15, 2014).
8 Bray v. Town of Wake Forest, No. 5:14-CV-276-FL, 2015 WL 1534515, at *13 (E.D.N.C. Apr. 6, 2015); LaSalle v. City of New York, No. 13-civ-5109, 2015 WL 1442376, at *8 (S.D.N.Y. Mar. 30, 2015); Gonzales v. Marriott Int'l, Inc., 142 F. Supp. 3d 961, 986 (C.D. Cal. 2015).
9 For cases where plaintiffs won, see Legg v. Ulster Cty., 820 F.3d 67, 79–80 (2d Cir. 2016); Luke v. CPlace Forest Park SNF, L.L.C., 608 F. App'x 246, 246–47 (5th Cir. 2015); Allen-Brown v. District of Columbia, No. 13–1341, 2016 WL 1273176, at *1 (D.D.C. Mar. 31, 2016); Martin v. Winn-Dixie La., Inc., 132 F. Supp. 3d 794, 825 (M.D. La. 2015); Hicks v. City of Tuscaloosa, No. 7:13-cv-02063-TMP, 2015 WL 6123209, at *32 (N.D. Ala. Oct. 19, 2015). Cases where plaintiffs lost: Huffman v. Speedway LLC, 621 Fed. App'x 792, 793 (6th Cir. 2015); Agee v. Mercedes-Benz U.S. Int'l, Inc., No. 7:12-cv-4014-SLB, 2015 WL 1419080, at *11 (N.D. Ala. Mar. 26, 2015); Sanchez-Estrada v. MAPFRE PRAICO Ins. Co., 126 F. Supp. 3d 220, 233 (D.P.R. 2015).
10 *See* Legg, 820 F.3d at 76; *Luke,* 608 F. App'x at 247; *Bray,* 2015 WL 1534515, at *5–6; *Martin,* 2015 WL 5611646, at *15–18.
11 Nat'l Women's Law Ctr., Young v. Ups: What it Means for Pregnant Workers (2016), http://nwlc.org/resources/young-v-ups-what-it-means-for-pregnant-workers/.
12 Nat'l Women's Law Ctr., Pregnancy Accommodations in the States (2016), http://nwlc.org/resources/pregnancy-accommodations-states/; Nat'l Women's Law Ctr., The Pregnant Workers Fairness Act: Making Room for Pregnancy on the Job (2015), https://nwlc.org/wp-content/uploads/2015/06/NEW-PWFA-Making-Room-for-Pregnancy-on-the-Job-June-5-2015-1.pdf.