

Insights: Alerts

# Supreme Court Announces Standards for Analyzing Failure-to-Accommodate Claims by Pregnant Employees

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Written by **John W. Alden, Randall D. Avram and Susan W. Pangborn**

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Title VII of the Civil Rights Act of 1964 prohibits employment discrimination based on pregnancy and requires employers to treat women affected by pregnancy the same as it treats other persons not so affected but similar in their ability or inability to work. On Wednesday, March 25, 2015, the United States Supreme Court in *Young v. United Parcel Service, Inc.* clarified the appropriate standard for evaluating pregnancy discrimination claims alleging an intentional denial of equal treatment with respect to accommodations for pregnancy-related work restrictions. The Court found that the employer's former pregnancy-neutral accommodation policy, which treated employees with work restrictions caused by on-the-job injuries, disabilities covered by the Americans with Disabilities Act, and certain other situations differently than those with work restrictions caused by other conditions, was not inherently discriminatory and remanded the case to a lower court for consideration in light of the newly articulated legal standard.

## **The Supreme Court's Decision in *Young v. United Parcel Service, Inc.***

In its decision, the Supreme Court refused to apply the standard sought by the employee, which would have required employers to provide accommodations to pregnant workers whenever the same accommodations were provided to any other worker – even if other non-pregnant workers did not receive the same accommodations. Instead, the Court held that in the absence of direct evidence of a discriminatory intent, a pregnant worker may show disparate treatment with respect to accommodation by following an analytical framework that the Court set forth. That framework first requires a pregnancy discrimination claimant to make out a prima facie case of discrimination, which the claimant can do by showing that she belongs to the protected class, that she sought accommodation, that the employer did not accommodate her, and that the employer did accommodate others similar in their ability or inability to work. The employer can then justify its refusal to accommodate by showing that there was a legitimate nondiscriminatory reason for its action. After such a showing, the claimant can succeed on a pregnancy discrimination claim only if she can establish that the employer's reasons were merely a pretext for discrimination.

The Court held that applying this framework to a pregnancy discrimination claim, a claimant can create a viable claim "by providing evidence that the employer accommodates a large percentage of non-pregnant workers while failing to accommodate a large percentage of pregnant workers." However, the Court refused to give pregnancy discrimination claimants what it described as "most favored nation status," such that employers would be required to give all pregnant workers accommodations anytime similar accommodations are given to any other worker.

In its opinion, the Court also addressed the July 2014 guidelines on pregnancy discrimination issued by the Equal Employment

Opportunity Commission (“EEOC”). Specifically, the Court refused to rely on those guidelines or even give them the persuasive deference often afforded agency opinions. The majority took this position because the guidelines were inconsistent with the position that the government had taken in the past, the EEOC failed to explain the basis for its guidance, and the EEOC failed to give the guidelines thorough consideration.

### **Practical Implications**

The legal duty to provide accommodations for pregnancy-related conditions remains a thorny issue. Although the Supreme Court clarified that Title VII does not automatically require accommodation of pregnant employees simply because the employer has provided accommodations for some other employees, granting accommodations for a substantial number of other employees may provide support for a pregnancy-discrimination claim. It remains to be seen how the lower courts will apply the Supreme Court’s new standard. It should be noted that in *Young v. United Parcel Service, Inc.*, the Supreme Court addressed an accommodation claim only under the pregnancy-discrimination provisions of Title VII. Since this case arose, Congress amended the Americans with Disabilities Act (“ADA”) to broaden the scope of disabilities protected by that law. Under the amended ADA, many pregnancy-related conditions may be more likely to qualify as protected disabilities for which employers are obligated to provide reasonable accommodations short of undue hardship. Because a failure-to-accommodate claim under the ADA would not require evidence of a substantial number of more-favorably-treated comparators, unlike a similar claim brought under Title VII in light of Supreme Court’s new ruling, pregnant employees who have been denied an accommodation may be more likely to rely primarily on the ADA in pursuing their claims. Nevertheless, employers should review their accommodation policies and practices and consider whether, under the Supreme Court’s new standards, those policies and practices, as applied, may expose them to claims of pregnancy discrimination.

## Related People

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**John W. Alden**

Partner  
Atlanta, GA  
t 404.815.6058  
jalden@kilpatricktownsend.com



**Randall D. Avram**

Partner  
Raleigh, NC  
t 919.420.1812  
ravram@kilpatricktownsend.com



**Susan W. Pangborn**

Partner  
San Francisco, CA  
t 415.273.4763  
spangborn@kilpatricktownsend.com