

# Pregnancy Discrimination: A New Federal Standard

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The U.S. Supreme Court recently established a new standard for analyzing claims under the Federal Pregnancy Discrimination Act. In *Young v. United Parcel Service, Inc.*, the divided court held that a pregnant worker can show that the employer's legitimate, non-discriminatory justifications are pretextual under the McDonnell Douglas burden-shifting framework if its accommodation policies impose a "significant burden" on pregnant workers and its reasons are not "sufficiently strong." Over Justice Scalia's scathing dissent, the Court vacated the Fourth Circuit's decision granting summary judgment to UPS, and remanded the case for further consideration in light of the Court's new standard and interpretation of the statute.

Essentially, what the Court did was contemplate a "burden balancing" approach to pregnancy discrimination claims. Going forward the Court will balance the burden imposed by the employer's pregnancy accommodation policy against the employer's justification for that policy. In performing this analysis, the Court will ask this question – Is the employer's legitimate, non-discriminatory reasons for the policy sufficiently strong to justify the burden imposed by the policy? If the answer to this question is "yes", then the employee cannot meet her burden of showing the employer's policy was a pretext for discrimination.

An interesting aspect of this case is that the Court basically eviscerated the EEOC's Enforcement Guidance on Pregnancy Discrimination [See - [http://www.eeoc.gov/laws/guidance/pregnancy\\_guidance.cfm](http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm)] The Court refused to "significantly rely" on the EEOC Guidance because it was inconsistent with prior EEO positions, the EEOC failed to explain the basis for the Guidance, and the Guidance was issued after the Court decided to hear the Young case.

Going Forward - What does all this mean for employers? There is now an open question about what constitutes a legitimate, non-discriminatory reason for treating pregnant and non-pregnant workers differently. It is clear from this decision that savings and inconvenience alone are not normally sufficient. Hopefully, future cases will help clarify this issue.

What should you do? –

- Examine your policies and programs that benefit non-pregnant workers but do not include pregnant workers. [NOTE: This analysis should also include the recent amendments to the Illinois Human Rights Act].
- Evaluate the reasons underlying your policies that potentially differentiate between pregnant and non-pregnant workers.
- Examine whether your program or policy significantly burdens pregnant workers and, if so, whether the legitimate, non-discriminatory policy reasons are sufficiently strong to justify the burden.
- Train all of your managers and supervisors on pregnancy discrimination prevention.
- Train your decisionmakers on how to lawfully handle requests for accommodation from pregnant workers.