



Weston Hurd Employment and Labor Alert October 2015

The Continuing Story of What to Do if Your Employee is Due

Prepared by Rema A. Ina

Employers have employees who become pregnant, so it is important to know how to properly handle employment situations that arise during an employee's pregnancy. As we pointed out in our previous newsletter on this topic, [What To Do If Your Employee Is Due](#), this area of the law continues to evolve. Here is an update on recent developments.

In 2013, the Fourth Circuit Court of Appeals, which covers Maryland, North Carolina, Virginia, and West Virginia, heard a case involving a pregnant UPS employee who was placed on a weight restriction that kept her from lifting the 70 pounds required of her job.[1] UPS decided that due to the weight restrictions, the employee, Peggy Young, could not perform an essential function of her job. UPS allowed workers who had a work injury or a disability to temporarily work light duty. However, UPS would not allow Young the same opportunity to work light duty because she was not injured or disabled. Therefore, Young took unpaid leave during her pregnancy. The Fourth Circuit Court of Appeals originally said UPS's policy was "pregnancy-blind" and not discriminatory and found no violation under the Pregnancy Discrimination Act since it did not target only pregnant women. Young appealed the case to the United States Supreme Court.

The United States Supreme Court disagreed with the Fourth Circuit Court of Appeal's decision and vacated it.[2] The Supreme Court did not support either UPS's or Young's interpretation of the Pregnancy Discrimination Act. In the Supreme Court's opinion, Justice Stephen G. Breyer wrote, "Viewing the record in the light most favorable to Young, there is a genuine dispute as to whether UPS provided more favorable treatment to at least some employees whose situation cannot reasonably be distinguished from Young's." The Supreme Court sent the case back to the Fourth Circuit Court of Appeals for reconsideration.

In addition, two weeks after the Supreme Court decided to review Young's case, the Equal Employment Opportunity Commission ("EEOC") issued new pregnancy discrimination guidance (July 2014). The new guidance states that an employer cannot deny light duty work to an employee based on a policy that limits light-duty work to only employees with work injuries.

In September 2015, UPS settled the case with Young before the Fourth Circuit Court of Appeals could reconsider the issue. One factor that contributed to the settlement was a change to the UPS pregnancy accommodation policy. In January 2015, UPS voluntarily changed its temporary light duty policy to include pregnant employees who had medically certified restrictions. According to UPS spokeswoman Susan Rosenberg, "UPS changed its policy because the company recognized that state law, regulatory guidance and the general work environment in the U.S. have evolved. UPS believes it is appropriate to update its workplace policies so that the company can attract and retain the best workforce."

Though it is not a federal law that an employer must accommodate a pregnant employee's physical restrictions, it is the law in the Sixth Circuit Court of Appeals that covers Ohio, Kentucky, Tennessee, and Michigan.[3] And due to the recent opinions of the Supreme Court and the EEOC, it appears that the rest of the country may be moving towards that position as well.

What can you do as an employer to accommodate pregnant employees who have medically certified physical restrictions? Essentially, treat those employees the same as employees with a disability. If available, offer them the same light duty work that you would offer an employee who was injured on the job.

As this issue continues to develop, the employment attorneys at Weston Hurd are available to provide advice and address your concerns.

[1] *Young v. UPS*, 784 F.3d 192 (4th Cir. 2013).

[2] *Young v. UPS*, 135 S. Ct. 1338 (U.S. 2015).

[3] *Latowski v. Northwoods Nursing Ctr.*, 549 Fed. Appx. 478 (6th Cir. 2013).



Rema A. Ina is an Associate with Weston Hurd LLP. She focuses her practice on matters involving employment, insurance coverage and defense, and workers' compensation. Rema can be reached at 216.687.3336 or rina@westonhurd.com.

About Weston Hurd LLP

With offices in Cleveland, Columbus and Beachwood, Weston Hurd LLP provides comprehensive legal counsel to Fortune 500 companies, insurance carriers, financial institutions, healthcare providers, small- and medium-sized businesses, the real estate industry, governmental agencies, non-profit enterprises and individuals.

For additional information regarding Weston Hurd's Employment publications, please visit the [Publications](#) page on Weston Hurd's web site. Information about Weston Hurd's Employment Practice Group and its attorneys, can be found on the [Practice Areas](#) page.

As a reminder, this material is being provided to draw your attention to the issues discussed.

Although prepared by professionals, it should not be utilized as a substitute for legal advice and representation in specific situations.

www.westonhurd.com

Copyright 2015