

## 7.5: YOUNG v. UNITED PARCEL SERVICE, INC.,

### SUPREME COURT OF THE UNITED STATES

#### YOUNG v. UNITED PARCEL SERVICE, INC.,

575 U. S. \_\_\_\_ (2015)

(Case Syllabus edited by the Author)

The Pregnancy Discrimination Act added new language to the definitions subsection of Title VII of the Civil Rights Act of 1964. The first clause of the Pregnancy Discrimination Act specifies that Title VII's prohibition against sex discrimination applies to discrimination "because of or on the basis of pregnancy, childbirth, or related medical conditions." 42 U. S. C §2000e(k). The Act's second clause says that employers must treat "women affected by pregnancy . . . the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work." This case asks the Court to determine how the latter provision applies in the context of an employer's policy that accommodates many, but not all, workers with nonpregnancy-related disabilities.

Petitioner Young was a part-time driver for respondent United Parcel Service (UPS). When she became pregnant, her doctor advised her that she should not lift more than 20 pounds. UPS, however, required drivers like Young to be able to lift up to 70 pounds. UPS told Young that she could not work while under a lifting restriction. Young subsequently filed this federal lawsuit, claiming that UPS acted unlawfully in refusing to accommodate her pregnancy-related lifting restriction. She brought only a disparate-treatment claim of discrimination, which a plaintiff can prove either by direct evidence that a workplace policy, practice, or decision relies expressly on a protected characteristic, or by using the burden-shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U. S. 792. *Texas Dept. of Community Affairs v. Burdine*, 450 U. S. 248, 253.

After discovery, UPS sought summary judgment. In reply, Young presented several favorable facts that she believed she could prove. In particular, she pointed to UPS policies that accommodated workers who were injured on the job, had disabilities covered by the Americans with Disabilities Act of 1990 (ADA), or had lost Department of Transportation (DOT) certifications. Pursuant to these policies, Young contended, UPS had accommodated several individuals whose disabilities created work restrictions similar to hers. She argued that these policies showed that UPS discriminated against its pregnant employees because it had a light-duty-for-injury policy for numerous "other persons," but not for pregnant workers. UPS responded that, since Young did not fall within the on-the-job injury, ADA, or DOT categories, it had not discriminated against Young on the basis of pregnancy, but had treated her just as it treated all "other" relevant "persons."

The District Court granted UPS summary judgment, concluding, *inter alia*, that Young could not make out a *prima facie* case of discrimination under *McDonnell Douglas*. The court found that those with whom Young had compared herself—those falling within the on-the-job, DOT, or ADA categories—were too different to qualify as "similarly situated comparator[s]." The Fourth Circuit affirmed.

Held:

1. An individual pregnant worker who seeks to show disparate treatment through indirect evidence may do so through application of the *McDonnell Douglas* framework.

(a) The parties' interpretations of the Pregnancy Discrimination Act's second clause are unpersuasive.

(i) Young claims that as long as "an employer accommodates only a subset of workers with disabling conditions," "pregnant workers who are similar in the ability to work [must] receive the same treatment even if still other nonpregnant workers do not receive accommodations." Her reading proves too much. The Court doubts that Congress intended to grant pregnant workers an unconditional "most-favored-nation" status, such that employers who provide one or two workers with an accommodation must provide similar accommodations to all pregnant workers, irrespective of any other criteria. After all, the second clause of the Act, when referring to nonpregnant persons with similar disabilities, uses the open-ended term "other persons." It does not say that the employer must treat pregnant employees the "same" as "any other persons" who are similar in their ability or inability to work, nor does it specify the particular "other persons" Congress had in mind as appropriate comparators for pregnant workers. Moreover, disparate-treatment law normally allows an employer to implement policies that are not intended to harm members of a protected class, even if their implementation sometimes harms those members, as long as the employer has a legitimate, nondiscriminatory,

nonpretextual reason for doing so. See, e.g., *Burdine, supra*, at 252-258. There is no reason to think Congress intended its language in the Pregnancy Discrimination Act to deviate from that approach.

(ii) The Solicitor General argues that the Court should give special, if not controlling, weight to a 2014 Equal Employment Opportunity Commission guideline concerning the application of Title VII and the ADA to pregnant employees. But that guideline lacks the timing, “consistency,” and “thoroughness” of “consideration” necessary to “give it power to persuade.” *Skidmore v. Swift & Co.*, 323 U. S. 134, 140. The guideline was promulgated after certiorari was granted here; it takes a position on which previous EEOC guidelines were silent; it is inconsistent with positions long advocated by the Government; and the EEOC does not explain the basis for its latest guidance.

(iii) UPS claims that the Act’s second clause simply defines sex discrimination to include pregnancy discrimination. But that cannot be right, as the first clause of the Act accomplishes that objective. Reading the Act’s second clause as UPS proposes would thus render the first clause superfluous. It would also fail to carry out a key congressional objective in passing the Act. The Act was intended to overturn the holding and the reasoning of *General Elec. Co. v. Gilbert*, 429 U. S. 125, which upheld against a Title VII challenge a company plan that provided nonoccupational sickness and accident benefits to all employees but did not provide disability-benefit payments for any absence due to pregnancy.

(b) An individual pregnant worker who seeks to show disparate treatment may make out a prima facie case under the *McDonnell Douglas* framework 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 may then seek to justify its refusal to accommodate the plaintiff by relying on “legitimate, nondiscriminatory” reasons for denying accommodation. That reason normally cannot consist simply of a claim that it is more expensive or less convenient to add pregnant women to the category of those whom the employer accommodates. If the employer offers a “legitimate, nondiscriminatory” reason, the plaintiff may show that it is in fact pretextual. The plaintiff may reach a jury on this issue by providing sufficient evidence that the employer’s policies impose a significant burden on pregnant workers, and that the employer’s “legitimate, nondiscriminatory” reasons are not sufficiently strong to justify the burden, but rather—when considered along with the burden imposed—give rise to an inference of intentional discrimination. The plaintiff can create a genuine issue of material fact as to whether a significant burden exists by providing evidence that the employer accommodates a large percentage of nonpregnant workers while failing to accommodate a large percentage of pregnant workers. This approach is consistent with the longstanding rule that a plaintiff can use circumstantial proof to rebut an employer’s apparently legitimate, nondiscriminatory reasons, see *Burdine, supra*, at 255, n. 10, and with Congress’ intent to overrule *Gilbert*.

2. Under this interpretation of the Act, the Fourth Circuit’s judgment must be vacated. Summary judgment is appropriate when there is “no genuine dispute as to any material fact.” Fed. Rule Civ. Proc. 56(a). The record here shows that Young created a genuine dispute as to whether UPS provided more favorable treatment to at least some employees whose situation cannot reasonably be distinguished from hers. It is left to the Fourth Circuit to determine on remand whether Young also created a genuine issue of material fact as to whether UPS’ reasons for having treated Young less favorably than these other nonpregnant employees were pretextual.

707 F. 3d 437, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed an opinion concurring in the judgment. SCALIA, J., filed a dissenting opinion, in which KENNEDY and THOMAS, JJ., joined. KENNEDY, J., filed a dissenting opinion.

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