Patterson Belknap Webb & Tyler LLP

Employment Law Alert January 2013

Pregnancy Discrimination Law Update

In an important ruling for employers, the Fourth Circuit recently underscored that the Pregnancy Discrimination Act (PDA) does not require employers to provide pregnant workers with special accommodations. *Young v. United Parcel Service, Inc.*, No. 11-2078 (4th Cir. Jan. 9, 2013). When Peggy Young became unable to lift heavy packages due to her pregnancy, she asked UPS, her employer, to accommodate her by putting her on the light work duty that it offered to disabled workers and those injured on the job. Young filed suit after UPS refused.

Young and amicus supporters like the American Civil Liberties Union argued that, because UPS offered light duty work to certain nonpregnant workers, the PDA required it to extend the same treatment to pregnant workers. The Fourth Circuit found, however, that Young was treated the same as the general category of employees who were unable to lift as a result of an off-the-job injury or illness but were not disabled within the meaning of the Americans with Disabilities Act (ADA). The *Young* Court found that Young was not entitled to protection under the ADA and emphasized that, where a policy treats pregnant employees and nonpregnant employees alike, the employer has complied with the PDA, even if the effect of the neutral policy is that the pregnant employee is prevented from continuing to work.

The Fourth Circuit's decision confirms that pregnant workers are not entitled to accommodation merely by virtue of their pregnancy. Employers should be careful to note, however, that pregnant workers may still be entitled to accommodation due to disability. While the Fourth Circuit found that the plaintiff in *Young* was not disabled, the plaintiff in that case was not covered by the Americans with Disabilities Amendments Act (ADAAA), which became effective on January 1, 2009, and expanded the definition of a disability under the ADA. Under the ADAAA and the Equal Employment Opportunity Commission's (EEOC) related regulations, an impairment can be "substantially limiting" even it is expected to last for only a limited period. The EEOC's Interpretive Guidance explicitly notes that an employee with an impairment resulting in a 20-pound lifting restriction that lasts for several months – which is similar to the restriction Young was under during her pregnancy – would be considered to be substantially limited in the major life activity of lifting for purposes of the ADAAA.

Employers should keep in mind the need to evaluate all requests for accommodation, including those by pregnant workers, on a case-by-case basis. While case law interpreting pregnancy accommodations required by the ADAAA is in its infancy, the EEOC has made it clear that it is keenly interested in the issue: at the end of 2012, the EEOC officially declared that accommodation of pregnant employees would be one of its enforcement priorities over the next four years. Congress, meanwhile, is considering a bill, The Pregnant Workers Fairness Act (PWFA), which, if passed, would require employers to provide reasonable accommodations to employees who are pregnant, or who have limitations related to childbirth. The PWFA would essentially be to pregnancy what the ADA is to disabilities: it would require an employer to make reasonable accommodations to limitations related to pregnancy or childbirth, unless the accommodation would impose an undue hardship. It would also forbid an employer from requiring a pregnant employee to take a leave if another reasonable accommodation can be provided instead.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.

Lisa E. Cleary	212-336-2159	lecleary@pbwt.com
Catherine A. Williams	212-336-2207	cawilliams@pbwt.com
YiLing Chen-Josephson	212-336-2532	ychenjosephson@pbwt.com
Adam Pinto	212-336-2156	apinto@pbwt.com