

Pregnancy Discrimination

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Pregnancy Discrimination

Title VII and PDA

US Supreme Court - Young v UPS

ADAAA



Title VII of the Civil Rights Act of 1964

- (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
- (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

-JFK-

-LBJ-



Pregnancy Discrimination Act of 1978

- First clause - Title VII's prohibition against sex discrimination applies to discrimination because of or on the basis of pregnancy, childbirth, or related medical conditions.
- Second clause - 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.”



Peggy Young v. UPS

- Peggy Young was a pregnant employee of UPS who was put on lifting limitations by her doctor.
- She requested light duty from UPS
- UPS had a policy of allowing light duty only for those:
 - Injured on the job
 - disabled under the ADA
 - Drivers who lost DOT cert
- UPS denied her request and she filed suit



Young v. UPS

- 4th Circuit denied her claim
- Consistent with law of the land at the time
 - Facially neutral policies for light duty



SCOTUS - *Young v UPS* –

Burden of Proof

PDA Denial of Accommodation

Disparate Treatment Claim

- prima facie case by showing:
 - belongs to the protected class
 - sought accommodation
 - employer did not accommodate her
 - employer did accommodate others “similar in their ability or inability to work.”



SCOTUS - *Young v UPS* – burden of proof

PDA Denial of Accommodation

Disparate Treatment Claim

- Burden Shifts to Employer to Offer a legitimate non-discriminatory reason for its actions
 - Employer's reason normally cannot consist of claim more expensive or less convenient to add pregnant women to the category of those (similar in their ability or inability to work) whom the employer accommodates
- Burden Shifts back to Employee to show pretext



SCOTUS - *Young v UPS* – burden of proof

- Employee can show pretext (reach a jury) by
 - providing sufficient evidence that the employer's policies impose a significant burden on pregnant workers and
 - the proffered legitimate, nondiscriminatory reasons are not sufficiently strong to justify the burden but,
 - instead, give rise to an inference of intentional discrimination

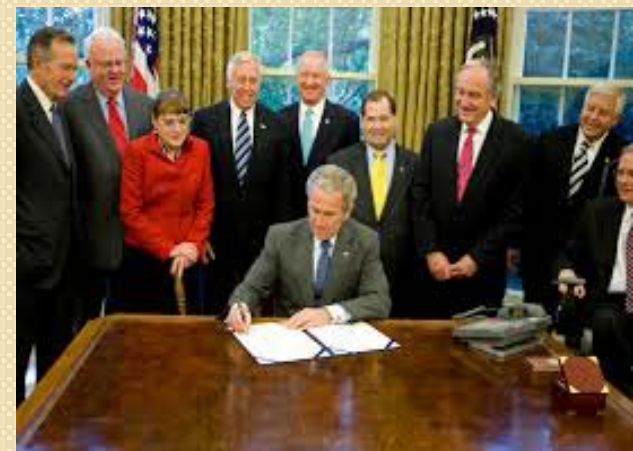


American's with Disabilities Act Amendments Act of 2008 (ADAAA)

- Easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA.
- The Act retains the ADA's basic definition of "disability" as
 - an impairment that substantially limits one or more major life activities,
 - a record of such an impairment,
 - or being regarded as having such an impairment.
 - However, it changes the way that these statutory terms should be interpreted.

5th Circuit – Neely v. PSEG Texas, Ltd

- ADAAA did not eliminate the term disability from the ADA - Plaintiff still has to prove a disability
- Makes it easier to prove disability but not absolved from proving one



American's with Disabilities Act Amendments Act of 2008 (ADAAA)

- Directs EEOC to revise that portion of its regulations defining the term "substantially limits" (but EEOC has not);
- expands the definition of "major life activities" by including two non-exhaustive lists:
 - the first list includes many activities that the EEOC has recognized (e.g., walking) as well as activities that EEOC has not specifically recognized (e.g., reading, bending, and communicating);
 - the second list includes major bodily functions (e.g., "functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions");
- states that mitigating measures other than "ordinary eyeglasses or contact lenses" shall not be considered in assessing whether an individual has a disability;
- clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;
- changes the definition of "regarded as" so that it no longer requires a showing that the employer perceived the individual to be substantially limited in a major life activity, and instead says that an applicant or employee is "regarded as" disabled if he or she is subject to an action prohibited by the ADA (e.g., failure to hire or termination) based on an impairment that is not transitory and minor;
- provides that individuals covered only under the "regarded as" prong are not entitled to reasonable accommodation.



American's with Disabilities Act Amendments Act of 2008 (ADAAA) – Pregnancy

- Pregnancy itself is not a disability
- Medical conditions related to pregnancy may be a disability
 - Example – pregnancy related gestational diabetes
 - *Jeudy v. Dept. of Justice* (11th Circuit 2012) a pregnancy related impairment may be considered a disability, if it substantially limits a major life activity.
 - *Spees v James Marine* (6th Cir. 2010) – pregnancy related conditions can be impairments. In this case, the court stated that susceptibility to miscarriage would be an impairment.
- Regarded as
 - *Latowski v Northwood Nursing Center*, (6th Circuit 2013), the court agreed that if the employer had regarded the plaintiff as susceptible to miscarriage, that would that would regard her as having an impairment.



ADAAA Pregnancy Related Medical Conditions

- Determine disability - if they have an impairment that limits major life activity
- Interactive process
- Reasonable accommodation
- Under Hardship



Texas Local Government Code

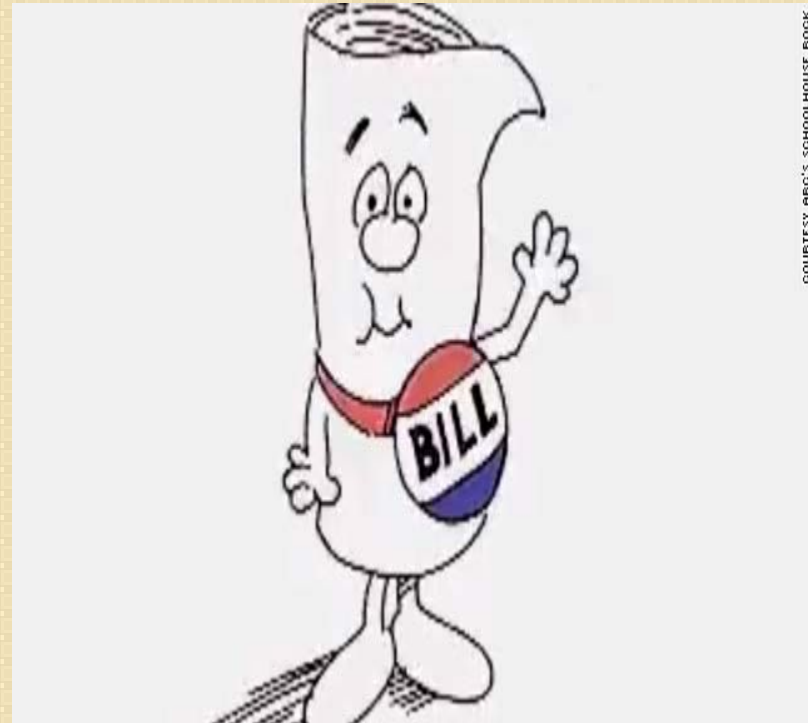
- *If the physician of a municipal or county employee certifies that the employee is unable to perform the duties of the employee's permanent work assignment as a result of the employee's pregnancy and*
- *if a temporary work assignment that the employee may perform is available in the same office,*
- *the office supervisor who is responsible for personnel decisions shall assign the employee to the temporary work assignment*



Pregnant Workers Fairness Act

Pending in Congress – Proposed Legislation

- Unlawful for an employer to refuse to make reasonable accommodations to known limitations related to the pregnancy, childbirth, or related medical conditions.
- Possible reasonable accommodations for pregnant women would include frequent bathroom breaks, breaks for increased water intake, modified work schedules, and light duty or assistance with manual labor.



COURTESY REC'S SCHOOLHOUSE BOOK



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