

## Excluding Pregnant Workers from Light Duty Did Not Violate the Pregnancy Discrimination Act, 7th Circuit Holds

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On August 16, 2022, the U.S. Court of Appeals for the Seventh Circuit affirmed summary judgment to Wal-Mart Stores East, L.P. (Walmart), who was accused by the Equal Employment Opportunity Commission (EEOC) of engaging in sex discrimination under the Pregnancy Discrimination Act and the Civil Rights Act of 1964 by offering temporary light duty to employees who were injured on the job, but denying a similar accommodation to pregnant employees.

The Court of Appeals followed the three-step analysis in *Young v. United Parcel Service Inc.*, 575 U.S. 206 (2015), which adapted the *McDonnell Douglas* burden-shifting framework to pregnancy accommodation claims under the Pregnancy Discrimination Act. Under this framework, at step one the employee must show 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. At step two, the employer must offer a legitimate, non-discriminatory justification for denying the accommodation. At step three, the employee must provide 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. An employee can reach a jury on this issue by providing evidence that the employer accommodates a large percentage of nonpregnant workers while failing to accommodate a large percentage of pregnant workers.

Walmart conceded that the EEOC satisfied step one of the burden-shifting framework by showing that Walmart excluded pregnant employees from its policy offering light duty to workers injured on the job. Accordingly, the Court of Appeals focused its analysis on steps two and three.

At step two, the Court of Appeals found that Walmart had met its burden by offering a legitimate, nondiscriminatory reason for the policy, *i.e.*, to implement a worker's compensation program that benefitted its employees while limiting the company's legal exposure and costs of hiring people to replace injured workers. The EEOC argued that the Pregnancy Discrimination Act, as interpreted by *Young*, imposed a heightened burden on Walmart to articulate the reasons why it excluded pregnant employees from the benefit. However, the Court of Appeals rejected this argument, finding

no such support in *Young*.

Finally, at step three, the Court of Appeals found that the EEOC failed to satisfy the significant burden test. Unlike in *Young*, where the employer accommodated several groups of workers with restrictions similar to the pregnant worker, in this case, the EEOC offered no evidence of comparators who were similar to pregnant workers in their ability or inability to work and who benefitted from light duty, other than workers injured on the job. Accordingly, summary judgment was proper.

This case confirms that the Act does not automatically require employers to provide all pregnant workers the same accommodations it offers to any other group of workers. However, neither the Supreme Court in *Young* nor the Court of Appeals in this case adopted a specific numerical threshold or ratio for non-pregnant workers accommodated and pregnant workers not accommodated to support an inference of pregnancy discrimination. This will make it harder for employers to make informed decisions when reviewing their accommodation policies for any disparate treatment of pregnant employees. Employers should also be aware of state and local laws which may contain additional requirements regarding accommodation of pregnant employees.

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