Overview

- Title VII of the Civil Rights Act of 1964
- Pregnancy Discrimination Act
- Americans with Disabilities Act
- Family Medical Leave Act
- Fair Labor Standards Act (as amended by the Patient Protection and Affordable Care Act)
Title VII of the Civil Rights Act

Prohibits employers from discriminating or taking adverse employment action against an employee because of the employee’s race, color, religion, sex, or national origin

42 U.S.C. §2000-e2(c)

Pregnancy Discrimination Act

“The terms ‘because of sex’ or ‘on the basis of sex’ include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work …”

42 U.S.C. §2000e(k)
Title VII and the Pregnancy Discrimination Act

- Two requirements:
  - An employer may not discriminate against an employee on the basis of pregnancy, childbirth, or related medical conditions; and
  - Women affected by pregnancy, childbirth, or related medical conditions must be treated the same as other persons not so affected but similar in their ability to or inability to work

- Equal treatment extends, but is not limited, to employment decisions on:
  - Hiring, job assignments, promotion, seniority, fringe benefits (e.g., disability insurance, sick leave), discharge, layoff, re-employment rights

Title VII/PDA (cont’d)

- Not limited to employees currently pregnant
- Title VII prohibits employer discrimination based on:
  - Post-pregnancy
  - Potential or intended pregnancy
  - Medical conditions related to pregnancy or childbirth
Title VII/PDA (cont’d)

- Discriminatory employment action is *motivated* by pregnancy, childbirth, or medical conditions related to pregnancy or childbirth
- **Threshold question:** Did the employer have knowledge of the current/potential/prior pregnancy?

Americans with Disabilities Act

- Covers employers with 15 or more employees
- State and local government employers are covered by ADA, regardless of number of employees
ADA (cont’d)

• Prohibits employers from discriminating against any qualified individual with a disability who can perform the essential functions of his or her position, with or without a reasonable accommodation

• Requires employers to accommodate an employee’s known disability where such accommodation is reasonable and will allow employee to perform his or her essential job functions

ADA (cont’d)

• What is a “disability” as defined by the ADA?
  – Physical or mental impairments that substantially limit one or more major life activities

• Pregnancy alone is not considered a disability for purposes of the ADA

• Complications arising from pregnancy may be impairments that meet the ADA’s definition of disability
ADA (cont’d)

• Examples of pregnancy related impairments that may meet the ADA definition of disability:
  - Gestational diabetes
  - Preeclampsia
  - Cervical insufficiency
  - Post-partum depression

Reasonable Accommodation under the ADA

What accommodation is appropriate?

• Effectiveness
  • Will the accommodation provide an opportunity for the individual to perform essential job functions?
• Factors to consider in determining appropriate accommodation:
  • Nature of disability
  • Limitations caused by disability
  • Information from health care providers

While an employer has a duty to provide a reasonable accommodation, it is not required to grant the specific accommodation requested by an employee so long as what is provided is effective
Reasonable Accommodation (cont’d)

• Employers are not required to make an accommodation if it would cause an undue hardship

• Factors to consider in analyzing undue hardship:
  - Nature of accommodation;
  - Cost of the accommodation;
  - Overall financial resources, size, and type of operations of the facility making the reasonable accommodation and the employer (if the facility is part of a larger entity);
  - Effect on expenses and resources of the facility;
  - Impact of the accommodation on the operation of the facility

• An accommodation that eliminates an essential job function or reduces the standards and/or expectations of the job is not reasonable

Family and Medical Leave Act

• Employees who:
  - Have been employed by a covered employer for at least 12 months, and
  - Have worked at least 1,250 hours during the 12 months prior to the start of leave

• “Covered employer”:
  - Private employers with 50 or more employee;
  - State and local government employers are covered by the FMLA, regardless of the number of employees
FMLA (cont’d)

• Birth, adoption, foster care placement or care for newborn or newly placed child are all qualifying FMLA leaves
• Leave may be taken during or after the pregnancy but must conclude within one year of the date the child was either born or placed with employee
• Leave is equally available to male and female employees

FMLA (cont’d)

• “Serious Health Condition” is also a qualifying FMLA leave
• Serious Health Condition is defined as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by health care provider
• Continuing treatment test:
  – More than three consecutive days of incapacity plus treatment by health care professional;
  – Any period of incapacity related to pregnancy or prenatal care; or
  – Chronic condition
FMLA (cont’d)

• What is an employee entitled to under the FMLA?
  – 12 workweeks of unpaid leave
  – Continued group health plan coverage
  – Job restoration

• After leave, employee entitled to return to same or equivalent position with equivalent pay, benefits and other terms and conditions of employment

Fair Labor Standards Act

• Break Time for Nursing Mothers
  – Amended Section 7 of the Fair Labor Standards Act

• Employers required to offer “reasonable” break time for nursing employees to express milk
  – Employers with 50 or more employees required to provide break
  – Employers with fewer than 50 employees may be exempt if compliance with provision would impose an undue hardship

• Break time must be provided for up to one year after the child’s birth
FLSA (cont’d)

- Employers required to provide a functional location for the employee to express milk
  - *A bathroom is not a permissible location*
- Employee must be shielded from view
- Employee must be free from any intrusion from co-workers and the public
- Breaks to express milk may be unpaid
  - However, if employee expresses milk during paid break, must compensate employee

**Young v. United Parcel Service, Inc.**

- Young, a driver, claimed UPS intentionally discriminated against her by refusing to accommodate her pregnancy-related lifting restriction by transferring her to a light duty position in violation of PDA
- UPS countered that its refusal to accommodate was based on a legitimate, non-discriminatory business reason
  - Refusal based on provisions of a collective bargaining agreement that provided light duty only to drivers who were injured on the job, who had lost their Department of Transportation certifications and who suffered from a disability covered by the ADA
- District court dismissed Young’s claim on summary judgment
  Fourth Circuit Court of Appeals affirmed the decision
**Young v. United Parcel Service, Inc. (cont’d)**

- Majority decision by the Supreme Court rejected both Young and UPS positions
- Established a new balancing test applicable to claims of intentional discrimination based on a refusal to accommodate pregnancy

**Young v. United Parcel Service, Inc. (cont’d)**

- New Standard:
  - A plaintiff can show intentional discrimination by showing that a policy relied on as the non-discriminatory reason for the failure to accommodate a pregnancy-related disability imposes a “significant burden” on pregnant workers and that the reasons for the policy are not “sufficiently strong to justify the burden.”
- Applicable solely to PDA claims where the plaintiff has asserted that she has been denied an accommodation for a pregnancy-related work restriction given to others who are not pregnant but similar in their ability or inability to work
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