A PREGNANT PAUSE: USING ADR TO RESOLVE PREGNANCY-RELATED WORKPLACE ISSUES

By Lorraine M. Brennan, Esq.

A recent case heard before the U.S. Supreme Court, *Young v. UPS* (issued March 25, 2015), caught the attention of many women and employers as well. In *Young*, the Court interpreted the Pregnancy Discrimination Act (PDA), in particular the second clause of that Act, which reads 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."

Young, a part-time driver for UPS, had suffered several miscarriages prior to the pregnancy at issue in this case. She was told by her doctor that she could lift only 20 pounds during the first 20 weeks of her pregnancy, and then only 10 pounds until the pregnancy was over. UPS advised Young that she was not to return to work at UPS until she could lift the required 70 pounds that her particular job required. Young subsequently exhausted all of her Family and Medical Leave Act time, took an unpaid leave of absence and eventually exhausted all of her medical benefits. After her child was born, she returned to work and filed a lawsuit against UPS.

Young sued UPS under the theory that the PDA was violated when UPS refused to allow Young to be given limited physical activities, as was the Americans with Disabilities Act (ADA). Title VII of the Civil Rights Act was amended in 1978 to include the PDA. She maintained that she was entitled to the same accommodation as other employees who had workplace restrictions due to injury or disability.

Young lost at both the District Court level and the Court of Appeals (4th Cir.), as the lower courts ruled that Young's situation was not comparable to the situations of workers in those protected groups and granted summary judgment to UPS. The Supreme Court granted cert. and vacated and remanded the case, remarking that Young had raised triable issues of fact that made the granting on summary judgment for UPS in this case inappropriate.

While the *Young* decision was limited to the issue of the UPS policy, it is not difficult to see how pregnant employees might use this holding in other workplace situations. What the *Young* decision did is provide a vehicle for pregnant employees to challenge workplace accommodation policies under the PDA, which are afforded to other workers but not to pregnant ones. Employers will need to take a careful look at their policies to make sure they are in compliance and that pregnant employees are not negatively impacted by discriminatory policies.

Interestingly, two weeks after the *Young* decision was issued, a proposed class of California workers filed nearly identical accusations against Raley's, a grocery store chain. Raley's operates 115 grocery stores in California. Plaintiffs-employees allege that Raley's forced them out of their jobs because they were pregnant. While Raley's (like UPS) gave lighter work to employees who were injured on the job, it refused to extend this accommodation to pregnant workers, who were forced by their managers to go on unpaid leave or lose their jobs. While the *Young* ruling may help clarify the issue in the Raley's case, California law appears to offer sufficient protection for the plaintiffs. Hence, even without the recent *Young* decision, plaintiffs appear to have a solid case against the grocery chain.

What is interesting about the *Young* case is that it is not yet over, and may not be over for some time. Thus, while the decision appears to be a step in the right direction for pregnant women in the workplace, Young has yet to have her "day in court," and there is no telling when that day will come. If the employer in this case had in place a workplace mediation program, which included pregnancy-related issues, Young and UPS may have been spared a lot of time and money, not to mention the bad publicity cases like this generate for the employer. The benefit of these types of workplace mediation programs is that they afford the worker another option, which in many cases will lead to a swift and beneficial result that both sides can live with.

Being pregnant should not subject a woman to punitive policies, and the *Young* decision recognizes that fact. Nevertheless, the United States still has a long way to go compared to the rest of the industrialized world when it comes to our attitudes about pregnancy and pregnancy-related issues. Mediation can be one of the tools that helps both employees and employers explore solutions that are beneficial to all parties.

Lorraine M. Brennan *is a full-time arbitrator and mediator at JAMS, specializing in international dispute resolution, employment, complex commercial and intellectual property, among other specialties. Her bio can be found at www.jamsadr.com/brennan. She has been an adjunct at Cornell Law School, Shantou University Law School in Guangdong, China, and is currently an Adjunct Professor at Georgetown Law Centre, where she has taught for many years. The views expressed in this piece are her own and not necessarily those of JAMS.*

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