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**What to Expect When She's Expecting:
The EEOC's New Enforcement Guidance on
Pregnancy Discrimination and Related Issues**

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Introduction

On July 14, 2014, the EEOC issued its revised EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues¹, the purpose of which is to provide guidance regarding the Pregnancy Discrimination Act (“PDA”) and the Americans with Disabilities Act (“ADA”) as they apply to pregnant workers. The EEOC last issued guidance regarding the PDA in 1991. This paper will summarize the new enforcement guidance and discuss the interplay of the PDA, the Family Medical Leave Act (“FMLA”) and the ADA as they may relate to pregnant employees who request accommodations. It will conclude with a brief discussion of *Young v. UPS*, the PDA case currently pending before the U.S. Supreme Court.²

Enforcement Guidance: Pregnancy Discrimination and Related Issues

In 1978, Congress enacted the Pregnancy Discrimination Act. The PDA amended Title VII of the Civil Rights Act of 1964 (“Title VII”) to make clear that discrimination based on pregnancy, childbirth or related medical conditions is a form of sex discrimination that is prohibited by Title VII.³ It reads:

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, and nothing in section 2000e-2(h) of this title [section 703(h)] shall be interpreted to permit otherwise.

The EEOC Enforcement Guidance specifically focuses on the PDA provisions that state:

- 1) An employer may not discriminate against an employee on the basis of pregnancy, childbirth, or related medical conditions; and

¹ The EEOC’s Enforcement Guidance: *Pregnancy Discrimination and Related Issues* (July 14, 2014), available at http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm

² *Young v. United Parcel Service*, U.S. Supreme Court Cause No. 12-1226 (Arg: Dec. 3, 2014)

³ 42 U.S.C. sec. 2000e(k)

- 2) 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 or inability to work.⁴

Why did the EEOC update its enforcement guidance?

The Guidance indicates that the EEOC has seen a rising number of complaints of pregnancy discrimination. In the last seventeen years, the number of charges alleging pregnancy discrimination increased from 3,900 to 5,342.⁵ Further, the guidance references a 2008 study by the National Partnership for Women and Families that found that “pregnancy discrimination complaints have risen at a faster rate than the steady influx of women into the workplace.”⁶ The study also found that pregnancy discrimination claims by women of color increased “by 76% from FY 1996 to FY 2005, while pregnancy discrimination claims overall increased 25% during the same period.”⁷

Common pregnancy discrimination charges include:

- Discharge from job based on pregnancy
- Disparate terms and conditions of employment based on pregnancy
- Suspensions pending receipt of medical releases
- Medical examinations that are not job related or consistent with business necessity
- Forced leave⁸

Along with protections under the PDA, the Enforcement Guidance suggests that a pregnant employee might avail herself of the rights and benefits afforded to employees under the ADA.⁹ It notes that the 2008 amendments to the Americans with Disabilities Act amended the ADA in such a way as to broaden the definition of the term “disability,” resulting in protections for pregnant women with pregnancy-related impairments who “demonstrate that they have disabilities for which they may be entitled to a reasonable

⁴ In all discussions regarding the enforcement guidance, employer is defined as an entity covered by Title VII and employee includes applicants for employment or membership in labor organizations and, if appropriate, former employees or members.

⁵ The Enforcement Guidance, page 3

⁶ The Enforcement Guidance quoting *Nat'l Partnership for Women & Families, The Pregnancy Discrimination Act: Where We Stand 30 Years Later* (2008), available at http://qualitycarenow.nationalpartnership.org/site/DocServer/Pregnancy_Discrimination_Act_-_Where_We_Stand_30_Years_L.pdf?docID=4281 (last visited May 5, 2014).

⁷ *Id* at 4.

⁸ The Enforcement Guidance

⁹ Title I of the ADA protects individuals from employment discrimination on the basis of disability, limits when and how an employer may make medical inquiries or require medical examinations of employees and applicants for employment, and requires that an employer provide reasonable accommodation for an employee or applicant with a disability. 42 U.S.C. Sec. 12112

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