April, 2015

I. EMPLOYMENT LAW

Supreme Court Holds that Employers Cannot Deny Pregnant Workers the Same Accommodations it Provides to Other Workers who are Injured on the Job.

In *Young v. UPS, Inc.*, 135 S. Ct. 1338 (March 25, 2015), plaintiff, Peggy Young, was a part-time driver for UPS. When she became pregnant she was told by her doctor not to lift heavy packages. UPS refused to reassign her or let co-workers help her. Young alleged that UPS's failure to accommodate her pregnancy was illegal. UPS has a policy of accommodating other people who temporarily couldn't do heavy lifting, and plaintiff alleged that refusing to do so for her was discrimination. According to UPS, those other assignments were only in very specific cases such as an on-the-job injury. Usually, they don't accommodate employees who can't do their jobs for physical reasons.

Young sued UPS claiming that UPS had violated the Pregnancy Discrimination Act (PDA), the federal protection law for pregnant workers. The second clause of the Act provides that pregnant women have the right to be treated the same as others who are "similar in their ability or inability to work," but "not so affected" by pregnancy. Both the trial and appellate courts held that UPS had not violated the PDA because the UPS light-duty policies did not exclude only pregnancy; there were at least some temporarily disabled employees who, in theory, might need accommodation but would not receive it. As long as the policy was "pregnancy-blind," it was not in conflict with the PDA.

Young filed a petition for certiorari. The Supreme Court granted the petition. The Court sided with Young, by a 6-3 margin. However, the Court rejected both Young's and UPS's readings of the Pregnancy Discrimination Act, but said that if an employer accommodates some temporary disabilities, it has to accommodate pregnancy. The Court held that the employer cannot treat pregnancy worse than it treats other temporary disabilities. According to the Court, a pregnant woman would need to show that an employer refused to provide an accommodation offered to similar workers.

The Court held that an interpretation of the Act that requires employers to offer the same accommodations to pregnant workers as all others with comparable physical limitations regardless of other factors would be too broad. The court provided that there is no evidence that Congress intended the Act to grant pregnancy such an unconditional "most-favored-nation status."

The Court held that a plaintiff may show that she faced disparate treatment from her employer according to the framework established in *McDonnell Douglas Corp.* which requires evidence that the employer's actions were more likely than not based on discriminatory motivation, and that any reasons the employer offered were pretextual. To determine whether the conduct was discriminatory, the Court noted that the treatment of pregnant employees should be compared to the treatment of non-pregnant employees in similar jobs with similar abilities and inabilities to work.

The Court found that Young could prevail on remand by showing that UPS does not have a sufficiently strong reason for refusing to accommodate pregnant employees with lifting

restrictions while accommodating non-pregnant employees with lifting restrictions—"to the point that a jury could find that its reasons for failing to accommodate pregnant employees give rise to an inference of intentional discrimination."

Plaintiff's Failure to Verify the Claim with the Equal Opportunity Employment Commission Results in Dismissal

In *Musser v. Conagra Foods, Inc.*, 2015 U.S. Dist. LEXIS 49190 (April 15, 2015), on February 28, 2014, Plaintiff, Robert L. Musser, filed a complaint against his former employer, Defendant, Conagra Foods, Inc. alleging disability discrimination. On July 15, 2013, Plaintiff Musser submitted an intake questionnaire to the Equal Employment Opportunity Commission (hereinafter "EEOC"), alleging that Conagra discriminated against him. That intake questionnaire was not signed under oath, affirmation or verification. The EEOC sent Plaintiff a letter dated August 29, 2013, which requested further information from Plaintiff in order for the EEOC to investigate the charge and notify Conagra of the charges against it. Plaintiff disputes receiving this letter. Plaintiff never contacted the EEOC again. Plaintiff received a Right to Sue Letter from the EEOC on December 4, 2013. After engaging in discovery, Defendant filed a Motion for Summary Judgment.

The Equal Opportunity Employment Commission is responsible for investigating a charge of discrimination filed by an aggrieved employee who has alleged discrimination under the Americans with Disabilities Act. This statutory provision also requires that a charge "be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires."

Defendant argues that the action was procedurally defaulted by Plaintiff because he did not verify his claim with the EEOC. Plaintiff filed his initial charge with the EEOC by filling out an Intake Questionnaire then seemingly abandoned his claim. After completing the Intake Questionnaire, Plaintiff neither responded to the EEOC's requests for response, nor reached out to the EEOC.

At oral argument, Plaintiff argued that the onus should be on the EEOC to ensure that claims are verified. Plaintiff argued that he never received correspondence from the EEOC and, additionally, that the correspondence does not specifically reference the verification requirement. Plaintiff concludes that he should not be held responsible for not having verified his claim.

The Court suggests that there is no law that supports plaintiff's argument that the onus is on the EEOC to pursue a claim. Further, the court found that the factual background of Plaintiff's case is almost identical to the principal case relied on by Defendant, *Danley v. Book-of-The-Month-Club, Inc.*, 921 F. Supp. 1352 (M.D. Pa. 1996) (Caldwell, J.) (Affirmed without opinion at 107 F.3d 861 (3d Cir. 1997). In *Danley*, the plaintiff sent correspondence to the EEOC indicating that she sought to file a formal complaint against her employer. *Danley* submitted no further documentation to the EEOC, and no action was taken by the EEOC until it issued its standard Right to Sue Letter. Judge William W. Caldwell held, as a matter of first impression in this Circuit, that "a private litigant cannot maintain a Title VII claim where his or her EEOC charge was not verified prior to the EEOC's issuance of a right to sue letter." Id.

Judge Caldwell based his conclusion on two factors. First, it comports with the plain language of the statute. Second, the purpose of verification is to protect the employer from responding to frivolous charges, a protection that is lost upon issuance of the right to sue letter.

Based on the analysis, the court held that Plaintiff failed to comply with verification requirement. In sum, the Plaintiff failed to exhaust his administrative remedies. The court provided, as a final matter, that it is important to note that summary judgment is appropriate, rather than providing leave for Plaintiff to amend his complaint, because " [w]hen the EEOC has issued its right to sue letter and closed its file, it is not possible for a

plaintiff to verify a previously unsworn charge."

II. INSURANCE COVERAGE

Standard Flood Insurance Policy ("SFIP") Does Not Cover Expenses for Removing Storm Generated Debris Not Owned by Insured

In *Torre v. Liberty Mutual*, 2015 U.S. App. LEXIS 4902 (3d Cir. March 26, 2015), the Torres own land and a house in Mantoloking, New Jersey. They also hold a National Flood Insurance Program Dwelling Form Standard Flood Insurance Policy ("SFIP") issued by Liberty Mutual under the National Flood Insurance Act of 1968.

The Torres' property sustained substantial damage during Hurricane Sandy, and they submitted claims under the SFIP for that damage to Liberty. This dispute concerns coverage for the cost of removing storm-generated debris not owned by the Torres from portions of their land. Liberty administered a total payment to the Torres of $235,751.68, which included the cost of removing debris from their house. The Torres sought an additional payment of $15,520 for the cost of removing sand and other debris deposited on their land in front of and behind their house. Liberty denied that claim on the ground that the SFIP does not cover it.

The Torres then filed suit against Liberty in New Jersey state court seeking payment of the $15,520, and Liberty removed the suit to federal court. The parties filed motions for summary judgment after agreeing that there were no material facts in dispute because the sole issue before the District Court was one of contractual interpretation. The District Court denied the Torres' motion and granted Liberty's motion. The Torres appeal.

The sole issue on appeal is whether the SFIP covers expenses for removing debris not owned by the Torres from their land outside their house. The debris-removal provision states that "[w]e will pay the expense to remove non-owned debris that is on or in insured property and debris of insured property anywhere." This appeal turns on the meaning of the term "insured property." The Torres argue that "insured property" means not only the specific structures and items of property that are insured by the SFIP (such as their house) but their entire parcel of land. Liberty argues that "insured property" means only the property insured under the SFIP and that the SFIP does not cover land.

The Third Circuit found that the term "insured property" clearly and unambiguously meant property that was insured under the SFIP, that land is not insured under the SFIP, and that the SFIP thus does not cover costs the Torres incurred in removing debris not owned by them from their land outside their home.

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