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SHOULD PREGNANT WORKERS ALWAYS RECEIVE REQUESTED ACCOMMODATIONS FROM THEIR EMPLOYER?

Imagine, a highly coveted position becomes available in a company. It is a job desired by many. Multiple requests within the company have been made for reassignment to the position. The employer has narrowed the applicants down to two candidates; a pregnant woman and an employee who has been with the company since its inception. Does the employer give the assignment to the pregnant worker and risk violating the company’s collective bargaining agreement? Or does the employer fill the vacancy with the more senior worker, who may be more deserving of the position? The pregnant worker insists that it is necessary to reassign her to this particular job to accommodate her under the Americans with Disabilities Act (ADA)\(^1\) or the Pregnancy Discrimination Act (PDA).\(^2\) However, the more senior employee is certain that he is more deserving of the opening and he must be granted the reassignment, due to his seniority status. Some may argue that corporations have a social duty to meet the needs of their pregnant employees.\(^3\) But does catering to this principle of corporate responsibility always lead to the best result?\(^4\)

The scenario above can quickly become a no-win situation for the employer.\(^5\) One of the many issues to be considered is the employer’s collective bargaining agreements with the company’s union.\(^6\) Reassigning the pregnant worker to the position could create conflicts with the agreement if the more senior worker is better qualified for the job.\(^7\) On the other hand, if the opening is given to the more senior employee, the decision could violate provisions of the PDA,\(^8\) or the ADA.\(^9\) Tangled in a web of policy and law,

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1. Americans with Disabilities Act of 1990, 42 U.S.C.A. § 12112 (b)(5)(A) (requiring employers to provide their workers with reasonable accommodations for their disabilities when they are in the workplace) (stating an employee does not qualify under the ADA if unable to perform essential job functions when given reasonable accommodations).
4. Id.
7. Id.
today’s employers may frequently encounter dilemmas like this while trying to balance fairness to all employees.\textsuperscript{10}

Several factors should be considered when determining how far an employer should go to accommodate the requests of a pregnant worker.\textsuperscript{11} These factors include the requirements of the position at issue, whether requests have been made by other employees for the same assignment, other accommodations available to the employee, and the effect of granting a particular accommodation to the overall operation of the business.\textsuperscript{12} Once these factors are weighed, the employer may face a difficult task in determining which accommodations to grant.\textsuperscript{13}

I. TENSION BETWEEN THE LAW AND EMPLOYER AUTONOMY

An employee with a disability is not entitled to the best accommodation, or necessarily to the requested accommodation, but only to a reasonable accommodation.\textsuperscript{14} When determining whether an accommodation is reasonable, employers can consider whether granting a specific accommodation is disruptive to business operations.\textsuperscript{15} For example, disturbing an established seniority system could be unreasonably disruptive, as it would cause tension among employees.\textsuperscript{16} More senior employees may want or reasonably expect to be able to request reassignment to that particular opening, based on their senior level of experience and the greater number of years spent with the company.\textsuperscript{17} Another concern is that the requested position might not be vacant.\textsuperscript{18}

The ADA does not require an employer to create a vacancy or to save a job to use as a possible accommodation for a disabled person.\textsuperscript{19} On the other hand, the Pregnancy Discrimination Act prohibits an employer from “discriminating

\textsuperscript{9} See 42 U.S.C.A. § 12112 (b)(5)(A), supra note 1.
\textsuperscript{10} See U.S. Equal Emp’t Opportunity Comm’n, supra note 2.
\textsuperscript{12} Id.
\textsuperscript{13} Id.
\textsuperscript{14} Id.
\textsuperscript{15} Id.
\textsuperscript{17} Id.
\textsuperscript{18} Id.
\textsuperscript{19} Id.
against an employee on the basis of pregnancy, childbirth or related medical conditions. Some may interpret this act to mean that employers are required to provide the requested accommodation to the pregnant employee. However, others are in sharp disagreement as to what lengths corporations are required by law to go to accommodate pregnant workers.

II. MANDATORY ACCOMMODATION OR PREFERENTIAL TREATMENT

The uncertainty regarding the treatment of pregnant employees under the ADA and the PDA was recently addressed by the Supreme Court. In Young v. United Parcel Service, Inc., the employer argued the company’s collective bargaining agreement “neither authorizes nor requires the employer to disrupt the seniority system by giving temporary, alternative positions to employees unable to perform their normal work assignments, due to off the job injuries or conditions, unless the resulting limitation amounts to a cognizable disability under the Americans With Disabilities Act.” The plaintiff argued that reassigning a pregnant worker to a specific type of task is a mandatory accommodation that employers must make available to workers. Plaintiff stressed “the ability or inability to do work is the sole factor when deciding whether to provide a worker with accommodations.” However, the company contended “there is no affirmative accommodation obligation on employers because such a requirement would give pregnant workers preferential treatment.” The Supreme Court held the PDA does not give pregnant workers a “most favored nation status” among coworkers and that an employer can justify a refusal to accommodate a pregnant worker for “legitimate, nondiscriminatory reasons.”

The EEOC has identified pregnancy as a disability, but the individual needs to also be qualified to do the job requested in order to qualify for protection under the laws. The PDA should not be seen as an invitation for a pregnant employee to leap frog ahead of other more qualified or more senior employees.

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21 See Brief for Petitioner, supra note 3.
23 See Young v. United Parcel Serv., Inc., supra note 5.
24 See id.; see also Brief for Respondent, supra note 22 at 2–3.
25 See id.; see also Brief for Petitioner, supra note 3.
26 See Young v. United Parcel Serv., Inc., supra note 5.
27 See id.; See also Brief for Respondent, supra note 22 at 2–3.
28 See Young v. United Parcel Serv., Inc., supra note 5.
29 See U.S. Equal Emp’t Opportunity Comm’n, supra note 2.
to secure a specific position.\textsuperscript{30} It is important to remember the employer does not have to provide the \textit{requested} accommodation, only a \textit{reasonable} accommodation.\textsuperscript{31} In consideration of fairness to all employees, an unqualified employee should not be able to be reassigned to a particular position in an unfair way, to the detriment of more deserving employees.\textsuperscript{32}

### III. Why This Matters

Accommodating pregnant workers can have a significant impact on today’s workforce.\textsuperscript{33} Women play a crucial role in the workforce.\textsuperscript{34} Most women who enter the workforce today will likely become pregnant at some point during their careers.\textsuperscript{35} There are many ways an employer can accommodate a pregnant worker without disrupting the seniority system, showing favoritism to select employees, or treating other employees unfairly.\textsuperscript{36} We want all employees to support, not resent, the protections that many of us may need one day. Many of the accommodations that pregnant women seek are relatively easy and inexpensive to implement.\textsuperscript{37} Accommodating pregnant workers benefits both the employer and the employee.\textsuperscript{38} The employee is spared having to make the difficult decision of choosing between her job and the health of her baby\textsuperscript{39} and the employer benefits because employee turnover and the associated costs are decreased.\textsuperscript{40}

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\textsuperscript{30} \textit{Id.}
\textsuperscript{31} \textit{Id.}
\textsuperscript{32} \textit{Id.}
\textsuperscript{34} \textit{Id.}
\textsuperscript{35} \textit{Id. at 4}
\textsuperscript{37} \textit{Id.}
\textsuperscript{38} \textit{Id.}
\textsuperscript{39} See Brief of Health Care Providers et al. as Amici Curiae Supporting Petitioner, \textit{supra} note 33 at i, 3.
\textsuperscript{40} See Brief of U.S. Women’s Chamber of Commerce, \textit{supra} note 36.

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