MEMO

TO: Mr. Kennedy

FROM: Lora Bishop

DATE: Monday, March 6, 2023

RE: Sonnier Case – Pregnancy Discrimination

QUESTION PRESENTED

Is a pregnant employee, whom has asked and been denied, entitled to lighter lifting requirements from her employer if the employer has previously granted accommodations for injured workers similar in their inability to work, under the Pregnancy Discrimination Act and applicable federal and Alabama law?

SHORT ANSWER

Ms. Sonnier can prove a prima facie case for disparate treatment under the second clause of the Pregnancy Discrimination Act. "[W]omen affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work . . . ." 42 U.S.C.S. § 2000e(k). She satisfies all four prongs of the *McDonnel Douglas* framework, where the fourth prong is at issue here. Ms. Sonnier was denied accommodations for her pregnancy by Fast Packages, Inc. where other employees were given accommodations who were similar in their inability to work.

DISCUSSION

Fast Packages, Inc.'s denial of accommodations constituted disparate treatment under *McDonnell Douglas* framework analysis and the Pregnancy Discrimination Act.

"It shall be an unlawful employment practice for an employer . . . to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's . . . sex . . . ." 42 U.S.C.S. § 2000e-2(a)(1). "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. 42 U.S.C.S. § 2000e(k). "'Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes . . . as *other persons* not so affected but *similar in their ability or inability to work.'* 42 U.S.C. § 2000e(k) (emphasis added)." Young v. United Parcel Service, Inc., 575 U.S. 206, 219 (2015). "[A] plaintiff alleging that the denial of an accommodation constituted disparate treatment under the Pregnancy Discrimination Act's second clause may make out a prima facie case by showing, as in *McDonnell Douglas*, that she belongs to the protected class, that she sought accommodation, that the employer did not accommodate her, and that the employer did accommodate others 'similar in their ability or inability to work.'" McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973) as interpreted by Young, 575 U.S. at 213. "*Young's* analysis of the *prima facie* case's fourth-prong means that, in contrast to Title VII's more general comparator analysis, 'the comparator analysis

under the PDA focuses on a single criterion – one's ability to do the job.'" Durham v. Rural/Metro Corp., 955 F.3d 1279, 1286 (11th Cir. 2020).

"[A]n individual plaintiff may establish a prima facie case by 'showing actions taken by the employer from which one can infer, if such actions remain unexplained, that it is more likely than not that such actions were based on a discriminatory criterion illegal under' Title VII." Young, 575 U.S. at 228. Here, a pregnant employee accused the defendant of discrimination when it refused to accommodate her request for lighter lifting requirements. Id. at 215. She alleged it had offered those same accommodations to employees with injuries or disabilities that were similar in their inability to work. Id. at 216. The court held that there was a "genuine dispute as to whether UPS provided more favorable treatment to at least some employees whose situation cannot reasonably be distinguished from [the plaintiff]." Id. at 231. It reasoned that, with this interpretation of the second clause of the PDA, "'the only light duty requested [due to physical] restrictions that became an issue' at UPS 'were with women who were pregnant.'" Id. Therefore, the plaintiff had satisfied the fourth-prong of the *McDonnell Douglas* framework, that the defendant had accommodated others similar in their inability to work as the plaintiff was. Id.

A company discriminates against a pregnant employee if there is a "genuine dispute . . . as to whether [the company] gave more favorable treatment to at least some employees 'whose situation cannot reasonably be distinguished from [the pregnant employee].'" Durham, 955 F.3d at 1286. In Durham, a pregnant EMT

worker requested a temporary re-assignment during her pregnancy, where she was prohibited from lifting the requisite amount typical of her current post. Id. at 1282. Rural/Metro denied the request, differentiating between the employee's "elective condition" and other employee's on-the-job-injuries that the company's "Light-duty Policy" accommodated. Id. The court held the pregnant plaintiff and her coworkers who were "injured on the job were 'similar in their ability or inability to work.'" Id. at 1286. Thus, Rural/Metro would have to provide non-pretextual, non-discriminate reasons for denying the plaintiff accommodations. Id. at 1287. It reasoned that Young v. United Parcel Service had established that the issue under the fourth prong of the *McDonnell Douglas* Framework was all employee's ability to do the job, regardless of the origin of injury or disability. Id. at 1286.

Ms. Sonnier can prove disparate treatment under the second clause of the Pregnancy Discrimination Act and the fourth prong of the *McDonnell Douglas* framework. Like the plaintiffs in Young and Durham, Ms. Sonnier requested lighter lifting accommodations at her job and was denied. Additionally, like the employers in both cases above, Fast Packages, Inc. denied Ms. Sonnier's request while accommodating others who were injured on the job, but similar in their inability to work. Like the court held in Durham, the court here would likely conclude that there is no significant distinction between off-the-job injuries or on-the-job ones, so long as the resulting work restrictions were similar in both classes of injury or disability. Just as the court established in Young, Ms. Sonnier and her coworkers are similarly situated in their inability to work at full capacity, and Fast Packages,

Inc. denied Ms. Sonnier's request where it accommodated others. The issue here is Ms. Sonnier's and her colleagues ability to do the job, regardless of the origin of the injury or disability. Therefore, because Ms. Sonnier is similarly situated as her coworkers, and because Fast Packages, Inc. denied Ms. Sonnier where it granted her coworkers request, she can prove disparate treatment under the second clause of the PDA and the satisfies the fourth prong of *McDonnell Douglas*. Ms. Sonnier is entitled to lighter lifting accommodations from Fast Packages, Inc. for the duration of her pregnancy.

CONCLUSION

Ms. Sonnier qualifies for workplace accommodations at Fast Packages, Inc. under the Pregnancy Discrimination Act and may prove disparate treatment under its second clause and the *McDonnell Douglas* framework. She can prove that she was denied accommodations by Fast Packages, Inc. and that Fast Packages gave employees who were not so affected but similarly situated in their inability to work accommodations at their request. Therefore, Ms. Sonnier should likely win her case against Fast Packages, Inc. and subsequently be entitled to receive the workplace accommodations during her pregnancy that she requested.