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PREGNANCY ACCOMMODATION WIN FOR WAL-MART OVER THE EEOC

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The Seventh Circuit Court of Appeals affirmed the grant of summary judgment in favor of Wal-Mart Stores East, LP (“Wal-Mart”) regarding a lawsuit brought by the Equal Employment Opportunity Commission (“EEOC”) under Title VII of the Civil Rights Act of 1964 and the Pregnancy Discrimination Act. [*EEOC v. Wal-Mart Stores East, LP*](#), No. 21-01690 (7th Cir. 2022). The EEOC alleged that Wal-Mart participated in unlawful sex discrimination by denying pregnant employees - and employees injured off the job site – with similar accommodations to those workers who were injured on the job. However, the Seventh Circuit, relying on [*Young v. United Parcel Service Inc.*](#), 575 U.S. 206 (2015), disagreed.

From 2014 – 2017, Wal-Mart had a “Temporary Alternate Duty” policy (“TAD”) that provided eligibility for workers injured on the job to receive light duty accommodation. However, the TAD, nor any other company policy, offered light duty accommodation to its pregnant workers or workers who suffered an injury off the job site. In situations like such, employees were expected to request leave, as opposed to light duty accommodation. Wal-Mart denied light duty accommodation to these workers to limit financial and legal exposure under the state's worker's compensation laws, along with helping to improve employee morale. However, the EEOC argued that these reasons were not specific enough to explain why pregnancy was excluded under its policy. The Seventh Circuit, when applying *Young*, rejected these arguments and heightened burden on behalf of the employer.

When applying the Supreme Court’s decision in *Young*, the Seventh Circuit used the same three-step test adapted from *McDonnell Douglas* to assess this pregnancy accommodation claim. The Seventh Circuit ultimately concluded that Wal-Mart established adequate justifications that were legitimate and nondiscriminatory for refusing pregnancy accommodation under its policy. The first step of the test required the employee to show that they were part of a protected class, and the employer failed to accommodate. If the employee established such, the second step placed the burden on the employer to demonstrate a legitimate, nondiscriminatory reason for refusing a request. After that, the final step in the process fell back on the employee to provide evidence that the employers’ policies imposed a significant burden on pregnant workers and that the employers’ reasons were not legitimate or nondiscriminatory.

Although the EEOC argued for the need for Wal-Mart to specifically detail why pregnant employees were excluded from the policy, the Seventh Circuit held that the reasons Wal-Mart stated (i.e. legal and financial exposure, among others) were adequate justifications for the exclusion. Unlike in *Young*, Wal-Mart excluded other employees who were injured away from the job site, not just those that were pregnant. The EEOC failed to establish anything different. Further, the EEOC did not provide any evidence to show that pregnant employees were being

treated unfavorably compared to other similarly situated workers. Thus, the third step of the *Young* test was not met by the EEOC, dictating why the Seventh Circuit affirmed the grant of summary judgment in favor of Wal-Mart.

The decision reminds employers to take caution when evaluating and responding to pregnant employees' requests for accommodations, and when implementing policies for the same. While the *Wal-Mart* decision is good news for employers, the *Young* standard remains a fact-intensive inquiry best undertaken with counsel.

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