



April 7, 2015

Megan J. Brennan  
Postmaster General and Chief Executive Officer  
U.S. Postal Service  
475 L'Enfant Plaza SW  
Washington, DC 20260-3100

Dear Ms. Brennan,

On behalf of The Leadership Conference on Civil and Human Rights and the National Partnership for Women & Families, we write to urge you to update the pregnancy accommodation policy of the U.S. Postal Service (Postal Service or USPS) to comply with current law and to reflect recent events, including the U.S. Supreme Court decision in *Young v. UPS*, the recently issued Equal Employment Opportunity Commission (EEOC) guidance on pregnancy discrimination, the Americans with Disabilities Act Amendments Act of 2008, and the stated position of the United States on pregnancy accommodations by the U.S. Solicitor General in the *Young* case. The Leadership Conference is a coalition of more than 200 national organizations committed to the protection and advancement of civil and human rights, and the National Partnership is a nonprofit, nonpartisan advocacy group dedicated to promoting fairness in the workplace, access to quality health care, and policies that help women and men meet the dual demands of work and family. The outdated, unfair, and potentially illegal policy of the USPS must be updated to comport with current law, regulatory guidance, and U.S. policy. We urge you to update this policy immediately and would like the opportunity to meet with you to discuss this important issue.

Despite existing protections, pregnancy discrimination remains a serious problem for women and families in this country. The fact that the Postal Service continues to maintain a legally indefensible position that allows for discriminatory treatment against its own employees, even as the federal government now advocates for a fair pregnancy accommodation policy through the agencies charged with enforcing fair employment practices, gives a black eye to the administration.

Last month, in *Young v. UPS*, the Supreme Court ruled that employers that accommodate most non-pregnant workers with injuries or disabilities while refusing to accommodate most pregnant workers are likely violating the law by placing a “significant burden” on pregnant workers.<sup>1</sup> The Court noted that the Pregnancy Discrimination Act (PDA) “requires courts to consider the extent to which an employer’s policy treats pregnant workers less favorably than it treats nonpregnant workers similar in their ability or inability to work.”<sup>2</sup> In light of this decision, the Postal Service must change its policy on pregnancy accommodation. Failing to provide accommodations to pregnant workers that are afforded to other workers, such as those with on-the-job injuries, is not only unfair and bad for business, it is likely illegal.

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<sup>1</sup> *Young v. UPS*, 575 US \_\_ 2015, No. 12-1226 (March 25, 2015).

<sup>2</sup> *Id.* at 1.

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In addition to the Supreme Court holding, the federal government, in both its briefing and oral argument for the *Young* case, specifically disavowed the Postal Service policy. While acknowledging that the United States had previously defended the Postal Service policy, the Solicitor General plainly indicated a fundamental change in the position of the United States in its brief before the Court, and explicitly indicated that the Postal Service is revisiting its policy as a result:

*The Department of Justice, on behalf of the United States Postal Service, has previously taken the position that pregnant employees with work limitations are not similarly situated to employees with similar limitations caused by on-the-job injuries. See, e.g., Ensley-Gaines v. Runyon, 100 F.3d 1220, 1222 (6th Cir. 1996). That is no longer the position of the United States. The United States Postal Service continues to offer different treatment to employees with on-the-job injuries than to employees with pregnancy-related limitations and employees with disabilities more generally. In light of the EEOC's new guidance, the enactment of the ADA Amendments Act of 2008, Pub. L. No. 100-325, 122 Stat.3553, and the pendency of this case, the Postal Service is considering its options with respect to those policies.<sup>3</sup>*

At oral argument, in discussing the fact that the government used to have a different policy position, Solicitor General Verrilli noted:

*Since then, however, the EEOC has issued guidance, and that's a very significant fact. Congress has charged the EEOC with authority to interpret this statute and with an authority to enforce it.... The EEOC sets the enforcement policy for the Federal sector with respect to this issue. That's a significant fact. We took it into consideration in deciding what the position of the United States should be... We didn't take that position before the 2014 guideline had been adopted... we took the position in light of the guidance it adopted in 2014, which we do consider to be significant and we do have to weigh our interest as enforcer of the law as well as employer.<sup>4</sup>*

The EEOC's July 2014 comprehensive guidance on pregnancy discrimination, the first since 1983,<sup>5</sup> takes into account the protections of the PDA, which requires pregnant workers to have the same access as other workers to reasonable workplace accommodations and other benefits. It also addresses the impact of the 2008 amendments to the Americans with Disabilities Act of 1990, and the past several decades of case law. This guidance is consistent with the EEOC's longstanding reading of the law and was issued after more than two years of review and analysis.<sup>6</sup>

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<sup>3</sup> Brief for The United States as Amicus Curiae Supporting Petitioner, *Young v. UPS*, 575 US \_\_ 2015 (2014) No. 12-1226 n.2 (emphasis added).

<sup>4</sup> Transcript of Oral Argument, *Young v. UPS*, at 19.

<sup>5</sup> EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues, July 14, 2014, [http://www.eeoc.gov/laws/guidance/pregnancy\\_guidance.cfm](http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm)

<sup>6</sup> We note that the EEOC has placed a notice on its website regarding the Enforcement Guidance which states: "Certain portions of the *Enforcement Guidance on Pregnancy Discrimination and Related Issues* are affected by the Supreme Court's decision issued on March 25, 2015 in *Young v. UPS*. The Commission is studying the decision and will make appropriate updates." [http://www.eeoc.gov/laws/guidance/pregnancy\\_guidance.cfm](http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm). Further, in a statement issued after the *Young* decision was announced, Chair Yang and General Counsel Lopez noted: "The

Taken together, these factors warrant an immediate change in the Postal Service policy. We are encouraged that the Postal Service is re-evaluating its policies, but the USPS must do more. This is not a close call or an act of charity—it is what the law requires. As an employer of more than 600,000 federal workers, a change in the pregnancy discrimination policy will have a significant real world impact on thousands of individuals, and will bring the Postal Service in compliance with current law and policy.


In addition, several states and cities have adopted laws directing employers to accommodate pregnant workers, and laws are pending in other states.<sup>7</sup> During the pendency of Ms. Young's lawsuit, Respondent UPS voluntarily updated its pregnancy accommodation policy, explicitly allowing for light duty work as an accommodation to pregnant employees to the same extent it is available to employees with similar restrictions resulting from on-the-job injuries.<sup>8</sup> UPS cited the growing number of state pregnancy-specific laws in places where it conducts business, the EEOC guidance, and its own "commitment to fair and equal employment opportunities" as reasons for the change.<sup>9</sup> While UPS voluntarily changed their pregnancy accommodations policy, "the U.S. Postal Service ... has made no change in policy and maintains the practice that UPS has now abandoned."<sup>10</sup> The tide of providing accommodations for pregnant workers is growing, and the Postal Service must not get left behind.

Thank you in advance for considering our views. As a next step, we request the opportunity to meet with you to discuss this important issue. Please contact either of us or Lisa Bornstein, Legal Director and Senior Legal Advisor at The Leadership Conference, Bornstein@civilrights.org or 202-466-3311, at your earliest convenience.

Sincerely,



Wade Henderson  
President & CEO



Judy Lichtman  
Chair, Leadership Conference Board of  
Directors  
Senior Advisor, National Partnership for  
Women & Families

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Commission's pregnancy discrimination guidance comports with some but not all aspects of the Court's decision. The Commission will make necessary changes to the guidance in accordance with the decision...The guidance issued in 2014 covers a range of issues unaffected by the decision including the Pregnancy Discrimination Act's application to current, past, and potential pregnancy; the application of the Pregnancy Discrimination Act to lactation and breastfeeding; the prohibition of forced leave policies; and the application of the ADA to pregnancy-related impairments." Statement of Chair Jenny R. Yang and General Counsel P. David Lopez on the Supreme Court's Ruling in *Young v. UPS* [http://www.eeoc.gov/eeoc/litigation/statement\\_young\\_v\\_ups.cfm](http://www.eeoc.gov/eeoc/litigation/statement_young_v_ups.cfm)

<sup>7</sup> See *Reasonable Accommodations for Pregnant Workers: State and Local Laws*, Dec. 2014.

<http://www.nationalpartnership.org/research-library/workplace-fairness/pregnancy-discrimination/reasonable-accommodations-for-pregnant-workers-state-laws.pdf>

<sup>8</sup> See Brief for Respondent, *Young v. UPS*, 575 US \_\_ 2015 (2014) No. 12-1226, Appendix.

<sup>9</sup> *Id.*

<sup>10</sup> Sherman, Mark *Justices Revive Ex-UPS Worker's Pregnancy Bias Lawsuit*, AP, March 25, 2015

<http://abcnews.go.com/Politics/wireStory/justices-side-ups-worker-claims-pregnancy-bias-29893988>