

Make Plans to 'Sail Away' for the VAB 78th Annual Summer Convention

The VAB's 78th Annual Summer Convention is just 4 weeks away, June 25-27, 2015 at the Hilton Virginia Beach Oceanfront Hotel.

We have an outstanding line-up of sessions and speakers this year that will be both informative and entertaining. Our convention will kick off on Thursday afternoon with Bob Hoffman, who will present "The Golden Age of BS". This session is for our broadcaster members only.

Friday sessions include an NAB Legislative Update; the VAB 'Best of the Best' Class, who will present their case study ideas for a successful future in broadcasting. Following their presentations, Tom Asacker will present an energetic, fast-paced session titled "The Business of Belief". The small market radio luncheon will follow with a presentation from Elizabeth Spainhour with Brooks Pierce who will discuss "Top 5 Regulatory Issues for Small Market Stations" (pre-registration required). The Annual Awards Reception and Banquet on Friday night is always a great time with networking over cocktails and hors d'oeuvres, followed by an evening of celebration and recognition!

If you still need to reserve a room, please call the **Hilton Virginia Beach Oceanfront** directly at **(757) 213-3455** to check on what's still available.

Should you have any questions or concerns, please call **Christina Sandridge** at **(434) 326-9815** or **Christina.sandridge@easterassociates.com**.

Come aboard, don't be left adrift!



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Upcoming Events:

June 4, 2015

Hampton Roads Regional Meeting
Town Center City Club
Virginia Beach, VA

June 25-27, 2015

78th Annual Summer Convention
Hilton, Virginia Beach

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We're not only a toss-up, we may be key to the 2016 presidential race

Bad news for those who aren't fans of political ads. Not only is Virginia one of only seven toss-up states, but we could be the key to the 2016 presidential election, or U.Va. political scientist Larry Sabato and his team at the Center for Politics believe.

One reason: in 2008 and 2012, the way Virginians' votes split was the closest to the national division: in 2008, the state's 52.63 percent vote for Obama was 0.23 points less than Obama's national percentage; in 2012, Virginia's 51.16 percent for Obama was 0.15 points more than the percentage of votes he won nationally.

"Virginia has been precisely where the country has landed the last two presidential cycles," the Center for Politics says.

The Republican nominee – whoever he or she might be – pretty much needs Virginia to win.

The U.Va team reckons 24 states, with

206 Electoral College votes will go Republican, and that 19 states with 247 votes are Democratic. Even if the GOP candidate wins the two biggest toss-up states, Ohio and Florida, there'd still be 17 Electoral College votes short. The Republicans could win if they pick up Virginia and either toss-up Iowa or (to barely make it, New Hampshire). The D's would need to pick up Virginia, New Hampshire and Nevada out of the toss-ups to win. For the Rs, even with Florida and Ohio locked up, to win without Virginia would mean winning all the toss-up states: Colorado, Nevada, Iowa and New Hampshire.

By Dave Ressler contact the reporter



How to Submit to the VAB Job Bank

Jobs that are printed in the newsletter are pulled directly from the online Job Bank. To include your listing:

- ▶ Go to **www.vabonline.com**. Login with your user name and password.
- ▶ Be sure to include your station ID or company name, information on how the applicant can apply and where to send the applications materials.

| Position | Locations | Type | Department | Organization |
|--|---------------------|-----------|-------------|-------------------------|
| Weekend News Meteorologist | Roanoke, VA | Full Time | On Air | Nexstar Broadcasting |
| Sports Director/Anchor/Reporter | Roanoke, VA | Full Time | On Air | Nexstar Broadcasting |
| Sports Anchor/Reporter | Roanoke, VA | Full Time | On Air | Nexstar Broadcasting |
| Weekend Producer | Roanoke, VA | Part Time | News | Nexstar Broadcasting |
| Photographer/Editor | Roanoke, VA | Part Time | News | Nexstar Broadcasting |
| News Anchors/Reporters | Roanoke, VA | Full Time | On Air | Nexstar Broadcasting |
| Multimedia Journalists | Roanoke, VA | Full Time | News | Nexstar Broadcasting |
| Chief Meteorologist | Roanoke, VA | Full Time | On Air | Nexstar Broadcasting |
| Assignment Manager | Roanoke, VA | Full Time | News | Nexstar Broadcasting |
| Morning News Meteorologist | Roanoke, VA | Full Time | On Air | Nexstar Broadcasting |
| Morning Show Talent | Harrisonburg Va | Full Time | On Air | VerStandig Broadcasting |
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| News Specialist | Richmond, VA | Part Time | News | WWBT, Inc. |
| Sales Manager | Richmond, VA | Full Time | Sales | WWBT, Inc. |
| Account Manager | Charlottesville, VA | Full Time | Sales | Monticello Media |
| Photojournalist | Harrisonburg, VA | Full Time | News | WHSV-TV5/19/2015 |

To learn more about these jobs and to see new postings, please visit

www.vabonline.com/careers

VIRGINIA ASSOCIATION OF BROADCASTERS





LEGALREVIEW

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Supreme Court Redefines Standard for Disparate Treatment under the Pregnancy Discrimination Act

By John G. Kruchko and Jacquelyn L. Thompson*

In March 2015, the Supreme Court of the United States, in a 6-3 decision, redefined the standard for disparate treatment claims under the Pregnancy Discrimination Act (“PDA”), an amendment to the Civil Rights Act of 1964 (“Title VII”). Even if an employer has a seemingly legitimate, non-discriminatory reason for not accommodating a pregnant employee, the employee can overcome that reason and establish pretext by showing that the policy imposes a “significant burden on pregnant workers,” and that the employer’s reason is “not sufficiently strong to justify the burden.”

A. Background

In *Young v. United Parcel Service, Inc.*, 135 S. Ct. 1338 (2015), Peggy Young, a United Parcel Service, Inc. (“UPS”) driver, was pregnant; her doctor restricted her to lifting no more than 20 pounds. As her driver position required that she lift up to 70 pounds, Ms. Young requested light duty work. UPS had an accommodation policy but it only applied to restrictions that were the result of an on-the-job injury, an impairment covered by the Americans with Disabilities Act, or because of the loss of a Department of Transportation certification. As Ms. Young did not fall into one of those three categories, UPS denied her request.

Ms. Young sued, alleging disparate treatment under the PDA, which states that women “affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes . . . as other persons not affected but similar on their ability or inability to work.” The trial court held that Ms. Young could not make out a *prima facie* case because her alleged comparators were not similarly situated. The Fourth Circuit affirmed the summary judgment decision. Ms. Young then appealed to the Supreme Court.

B. The Supreme Court’s Decision

The Supreme Court held that a plaintiff alleging the denial of an accommodation under the PDA establishes a *prima facie* case of disparate treatment by showing that: (1) she is in the protected class; (2) she sought an accommodation; (3) the employer failed to accommodate her; and (4) the employer accommodated others similar in their ability or inability to work. The Court explained that while an employer can justify its refusal to accommodate by presenting a legitimate, non-discriminatory reason, the employer cannot rely on the fact that it would be more expensive or less convenient to accommodate a pregnant worker than a non-pregnant worker. Moreover, a plaintiff can create a question of pretext by providing evidence that the employer’s policies impose a significant burden on a pregnant worker and that the employer’s proffered reason does not justify the burden.

The Supreme Court also gave no deference to Enforcement Guidance released by the U.S. Equal Employment Opportunity Commission (“EEOC”) on this subject. In July 2014, after the Supreme Court had granted certiorari in this case, the EEOC promulgated guidance that stated that the PDA required employers to give “most favored nation” status to pregnant employees,



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meaning that a pregnant employee should get the same treatment as all other accommodated workers, regardless of other factors.

The Supreme Court rejected the EEOC's analysis and did not give any deference to the Enforcement Guidance. Five Justices found that the language in the PDA required treatment similar to "other persons," not "any other persons." Moreover, the Supreme Court did not give any weight to the guidance because it lacked timing, consistency, and thoroughness of consideration to give it the power to persuade.

Therefore, the Supreme Court reversed the Fourth Circuit's decision affirming summary judgment and held that there was a genuine dispute as to whether UPS treated non-pregnant employees more favorably than pregnant workers. As such, it remanded the matter to the Fourth Circuit to determine whether UPS's reason for treating Ms. Young less favorably than others was pretext for discrimination.

C. Issues Raised on Dissent and Remand

In his dissent, Justice Scalia pointed out that the Court's decision potentially exposes employers to liability under the PDA, and its associated compensatory and punitive damages, even when there is no discriminatory intent based on a facially neutral policy that may have a disproportionate impact on pregnant employees.

On remand, the Fourth Circuit initially affirmed summary judgment for UPS. See *Young v. UPS*, No. 11-2078, 2015 WL 1600406, at *11 (4th Cir. Apr. 10, 2015). It concluded that Young could not establish that similarly situated employees received more favorable treatment than she did, and therefore could not establish the fourth element of the prima facie case for pregnancy discrimination. In doing so, the Fourth Circuit followed the "majority of cases" in holding that pregnancy does not constitute a preferred status and found that there was no direct evidence of discrimination. The court noted its concern about the problematic potential of creating rights not grounded in the text and structure of Title VII as a whole. Notably, the Fourth Circuit's opinion never referenced the Supreme Court's holding above. However, the Fourth Circuit has now remanded the matter back to the U.S. District Court for the District of Maryland for a final determination.

D. Takeaway for Employers

This decision creates broader protection for pregnant workers, and thus, pregnancy discrimination cases became easier for employees. Employers should examine their policies to ensure that they do not impose greater burdens on pregnant workers. If a policy accommodates only limited classes of workers, an employer should consider how it could also reasonably accommodate pregnant workers. If an employer accommodates some employees under its current policies, then it must also accommodate pregnant employees.

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John G. Kruchko is a Partner with the Labor & Employment Law Firm of FordHarrison LLP in Tysons Corner, Virginia; Jacquelyn L. Thompson is an associate in the firm's Washington, D.C. office. For more information, please contact Mr. Kruchko or Ms. Thompson at (703) 734-0554 or (202) 719-2064 or by e-mail at jkruchko@fordharrison.com or jthompson@fordharrison.com. This article is published for general information purposes and does not constitute legal advice



Highlighting Our Summer Convention Speakers

Bob Hoffman (Thursday, June 25th, 3 p.m.)

Bob is one of the most sought-after speakers on advertising and marketing. His controversial and provocative opinions provide the perfect keynote for a stimulating conference or meeting. He has spoken all over the U.S. and has been invited to speak at conferences throughout Europe. Bob's "Spotlight Lecture" at Advertising Week Europe has drawn almost 50,000 views on YouTube.

The Golden Age of Bullshit

There has never been a time when the experts have been more wrong about advertising and marketing than now. This talk exposes the faulty, costly predictions of marketing and advertising "experts" and explores the large gap between what we've been told to expect and reality. "In marketing today, delusional thinking isn't just acceptable. It's mandatory."

This session is for our broadcaster members only!



Tom Asacker (Friday, June 26th, 10:50 a.m.)

The VAB is proud to welcome back Tom Asacker to our 78th Annual Summer Convention in Virginia Beach. Tom specializes in helping people see the world and their work differently. He has been teaching and inspiring organizations and entrepreneurs for over 20 years with his unique educational offerings and his one-of-a-kind keynote presentations.

World-class companies including Procter & Gamble, UPS, and G.E. have called on Tom to shake up their people, fill them with ideas and charge them with inspiration.

Often described as a catalyst for change and strategist for success, and acclaimed for his no-nonsense style, Tom is the author of *The Business of Belief*, *Opportunity Screams*, *A Little Less Conversation* and *A Clear Eye for Branding*, groundbreaking books that redefine business and communication for the new age of abundance. His first book, *Sandbox Wisdom*, a heartwarming story about a CEO's search for meaning and success in the world of business and work, was a international business bestseller.

A sought-after speaker, Tom has lectured on innovation, strategic communication, the customer experience, and marketplace trends to corporate, association, and university audiences around the world. As an independent business consultant, he's advised start-up ventures, NPOs, and Fortune 500 companies on innovation, emerging trends and strategic brand development and communication.

Asacker brings a breadth of business development, marketing, management and operational expertise from prior management posts at G.E., as well as from his entrepreneurial experience as owner of an electronics manufacturer and co-founder and President of a high-tech medical device company.