Five Supreme Court Cases HR Leaders Need to Watch

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Rich Meneghello was quoted on *HR Drive* on September 17, 2015. In the article "Five Supreme Court Cases HR Leaders Need to Watch" high profile employment attorneys discuss U.S. Supreme Court cases in 2015 that employers should keep an eye on.

Friedrichs v. California Teachers Association
Rich singled out Friedrichs v. California Teachers Association as the top employment case before SCOTUS this fall.

In the case, the petitioners want to eliminate "agency shop" fees that public unions take from non-members. If a worker chooses not to join a union, a 1977 SCOTUS opinion still allows states to require those workers to contribute a smaller membership fee out of their paychecks. If the SCOTUS overturns that case and allows employees to opt out of paying anything to labor unions, it could spell big trouble for public unions in the form of declining revenue, resources and membership.

"This is the rare employment law case that transcends the world of HR and has taken on a political life of its own," Rich said. "It's not overly dramatic to say that this case could be a crucial stepping stone for those who want to further reduce the impact of unions on the American workplace."

He added that it is not quite the last stand for Big Labor, but it is "a very important battle" along the way. "This case, or one like it, has been long awaited by HR professionals and businesses, who see this as an opportunity to strike a crucial blow against unions," he said.

Green v. Brennan
Rich explained that this case will resolve a "circuit split," where a few federal appeals courts have ruled one way, and a few other federal appeals courts have ruled the opposite way. The issue in this case concerns when the countdown clock for filing discrimination lawsuits starts ticking. In some cases, employees will claim that they are "constructively discharged" from employment.

"In other words, not that they were actually fired, but that the employer forced them to quit by making their work life so miserable that any reasonable worker would have also quit," he said. "In these cases, there is an open question as to when the clock starts ticking."

Five courts of appeal have held that the filing period begins when the employee actually resigns, which helps employees. Three others have held that the filing period could begin way earlier – when the employer last commits whatever discriminatory act that gives rise to the resignation, which helps employers.

"The SCOTUS will answer the question once and for all and provide firm guidance," Rich said.

Paske v. Fitzgerald

Rich said this case has not yet been accepted for review by the Court, so it might not even be heard this term or at all. The vast majority of cases submitted for acceptance by the SCOTUS are rejected, but this one has reached the final step – a conference review by the Court, to be held on September 28. During that meeting, the Justices will decide whether to take it up for review.

If it is heard, Rich said the case could change the way discrimination cases are reviewed at the trial court stage. Currently, if an employer can demonstrate that it had a legitimate reason for taking some adverse employment action, the burden shifts to the employee to show the judge that the employer's reason was actually false and "pretextual."Generally, courts have held that this is not an onerous burden, he said.

"The 5th Circuit Court of Appeals, however, has stated that, as part of this pretrial test, such employees need to demonstrate that they were treated less favorably than a nearly identical similarly situated individual who is not a member of the protected class in order to proceed with their case to trial," Rich said.

He cited the example of a female sales manager who is fired for not hitting her sales goals. In order to build a case that would make it to a jury trial, she would have to prove that someone nearly identical to her - but not in the same protected class, such as a male sales manager – also failed to meet his sales goals but was not fired for some reason. Some lower courts have characterized this standard as stringent, strict, and demanding.

"An employee whose claim was rejected by the trial court and lost at the appeals court has asked the SCOTUS to review the matter," Rich said. "If the case is accepted for review, it could spell bad news for employers, as the odds would be likely that the Justices want to take a crack at correcting a misapplied standard."

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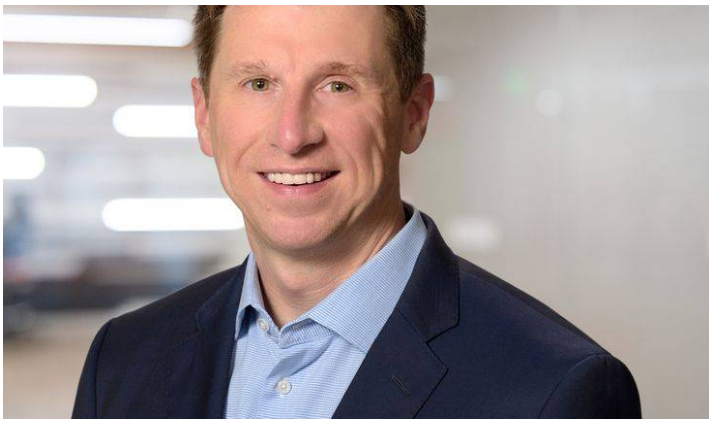

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