Insights, News & Events

NOT MUCH TO LOOK FORWARD TO? A PREVIEW OF THE SUPREME COURT'S 2016-2017 TERM

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As is its usual custom, the U.S. Supreme Court (SCOTUS) will kick off its 2016 term on the first Monday of October. While recent years have seen highly anticipated and equally controversial workplace law matters decided by the Court, the coming session has not yet shaped up to be a blockbuster term. With the Court stuck at eight members, the justices seem hesitant to take on matters of significant importance at the current time.

Nevertheless, circumstances can change quickly and decisively, as the SCOTUS could agree to accept any number of pending cases impacting labor and employment law at any moment. For now, though, here is a summary of the four cases we are tracking that are expected to impact the workplace, and one additional issue that could soon make its way onto the Court's docket.

National Labor Relations Board v. SW General, Inc.
This case originated with a labor dispute between an ambulance company and its employees. The federal appeals court did not reach the merits of that dispute, however. Instead, the court concluded that Lafe Solomon, the former Acting General Counsel of the National Labor Relations Board (NLRB), served in violation of a 1998 federal statute. That law says that

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Class and Collective Actions

Labor Relations

Litigation and Trials

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Industry Focus

Education

any person nominated by the president to fill certain vacant offices is prohibited from performing the office's functions and duties in an acting capacity unless that person served as first assistant to the vacant office for at least 90 days in the year preceding the vacancy.

The lower court ruled that the NLRB's unfair labor practice complaint against the employer was unauthorized because Solomon never served as a "first assistant" to the General Counsel prior to his nomination to serve as the NLRB's Acting General Counsel. The SCOTUS will determine whether the precondition on serving in an acting capacity applies only to first assistants who take office, or whether it also limits acting service by officials who only assume acting responsibilities.

By doing so, the SCOTUS will further decide the scope of presidential authority, continue to shape the contours of traditional labor law, and provide future administrations a blueprint for how far their powers can extend.

Microsoft v. Baker
Although not an employment matter, the decision in this case will impact employers defending class action litigation. The 9th Circuit Court of Appeals revived a consumer products class action lawsuit after the trial court rejected class certification status. The SCOTUS will clarify what should happen after named plaintiffs in class actions voluntarily dismiss their claims with prejudice while others in the class still want to proceed with the litigation. Because other federal appeals courts have ruled differently in similar situations, this case should resolve the circuit split.

Czyzewski v. Jevic Holding Corporation
This case began when a trucking company filed for bankruptcy after it was taken over by investors in a failed leveraged buyout. A group of truck drivers who were abruptly terminated upon the economic collapse of the business filed a class action lawsuit alleging violations of the WARN Act.

Section 507 of the Bankruptcy Code grants payment priority to certain unsecured claims, including claims for wages and employee benefits earned before the bankruptcy filing. Such priority claims must be paid in full before other unsecured claims are paid. After several years of negotiations, the bankruptcy court approved a settlement between the business and many of its creditors that divvied up millions of dollars of assets, but it ignored the drivers and left them empty-handed.

The SCOTUS will thus be called upon to determine whether a bankruptcy court is permitted to approve such a distribution of settlement proceeds in a manner that purportedly violates the statutory priority scheme of bankruptcy proceedings. The decision should provide concrete rules surrounding increasingly popular "structural dismissals," impacting employers and those workers caught up in the wake of economically challenged organizations.

Fry v. Napoleon Community Schools
The final case we are tracking relates to disability accommodation law in the school context. The case involves a girl with cerebral palsy who was prescribed a service dog to assist her with everyday tasks. Her school provided her with a human classroom aide to comply with the Individuals with Disabilities Education Act (IDEA), but refused to permit her to bring the service dog to school.

After the girl's family filed a lawsuit alleging Americans with Disabilities Act (ADA) and Rehabilitation Act violations, a lower court dismissed the claims. The court held that the family should have first attempted to resolve the dispute with school officials as per the IDEA's claims exhaustion principles before filing the federal anti-discrimination lawsuit.

The SCOTUS will determine whether the Handicapped Children's Protection Act of 1986 commands exhaustion in any suit brought under the ADA and the Rehabilitation Act. The SCOTUS will decide the proper standard that courts should follow while deciding

disability cases involving schools that receive federal funds.

Class Waivers On Deck?
At the time of publication, there are at least three pending requests asking the Supreme Court to determine whether mandatory class action waivers are legally permissible. Employers are increasingly reliant upon mandatory class waivers, which force workers to bring employment claims in single-plaintiff arbitration hearings and prohibit class or collective action litigation.

The NLRB concluded these agreements violate the National Labor Relations Act (NLRA) by suppressing concerted activity among workers, and recent decisions by the 7th Circuit and 9th Circuit Courts of Appeal support the Board's philosophy. Meanwhile, the 5th Circuit, 2nd Circuit, and 8th Circuit Courts of Appeal each rejected the argument that the NLRA prohibits class and collective action waivers, creating a patchwork of differing standards across the country.

Many SCOTUS observers believe it is all but certain that the Court will accept this issue in the coming term, but predicting Court activity is often a foolish errand. Employers will soon learn whether this issue reaches the 2016-2017 docket.

Fisher Phillips Will Provide Instant Analysis
As we have done for the last decade, Fisher Phillips will continue to issue same-day analysis and summaries of these cases, providing background and context for each decision, explaining the Court's reasoning in layman's terms, and discussing the impact on employers.

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