



More U.S. Supreme Court Decisions Expected To Affect Employers

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The U.S. Supreme Court is kicking off a new term this month, and a number of cases will impact the world of labor and employment law. It's tough to say how employers will be affected, but they are on a sort of winning streak.

2012-2013 was a very good term for employers. In fact, of the six major decisions that will impact employers and can be categorized in the "win" or "lose" column, employers won all six — two victories each in three different categories of cases. These decisions will end up helping employers in several ways: making it easier for their lawyers to win cases that were filed against them, discouraging plaintiffs' attorneys from bringing some of these cases in the first place, cooling off big-dollar class actions, and clearing the path for more cases to be decided in business-friendly arbitrations.

So, what's on deck for 2013-2014? The upcoming Supreme Court term promises no fewer than seven cases that will have at least some impact on all employers.

In a hot-button case with political implications, the court will grapple with the question of whether President Obama's recess appointments of three members of the National Labor Relations Board were constitutionally permissible (*NLRB v. Noel Canning*).

Also, businesses that have a unionized workforce and require employees to wear any type of protective gear may be affected by the court's decision in *Sandifer v. U.S. Steel Corp.*

A third union-related case, *Unite Here Local 355 v. Mulhall*, will determine whether an employer and union violate the Labor Management Relations Act by entering into an agreement under which the employer promises to remain neutral with regard to union organizing in exchange for the union's promise to forgo its rights to picket, boycott or otherwise put pressure on the employer's business.

The Supreme Court will once again rule on arbitration processes. In *BG Group PLC v. Republic of Argentina* it will decide whether the court or the arbitrator should determine whether a precondition to arbitration has been satisfied.

It will also wade into discrimination matters this term, in *Madigan v. Levin*, and decide whether government employees can bypass the procedures set forth in the Age Discrimination in

Employment Act and go straight to court to pursue claims for age discrimination under other avenues.

The court also will tackle retaliation claims again: In *Lawson v. FMR LLC* it will consider whether employees of privately-held contractors or subcontractors of public companies are protected from retaliation by the Sarbanes-Oxley Act.

Finally, in a key case that may impact all ERISA plan sponsors and participants, the court will consider when a statute of limitations should begin to run for judicial review of an adverse benefits determination (*Heimeshoff v. Hartford Life & Accident Insurance Co.*).

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