A Simplified View Of The Supreme Court's 2019-2020 Workplace Law Term

Insights
7.31.20

Supreme Court decisions are often the most challenging pieces of legal guidance to understand. They are rarely straightforward and usually contain so much analysis that it becomes hard to get to the bottom of what was actually decided. Moreover, reports from general media outlets often neglect to provide any practical advice about what employers can take from the rulings. That's why the Fisher Phillips review of this year's Supreme Court term will simplify the workplace law decisions and boil them down into easy-to-understand summaries.

If you want to read a more detailed analysis on any decision, simply click on any of the links provided and you'll find our firm's comprehensive Supreme Court Alert issued at the time the case was handed down. But if you just want a quick summary and action plan for each case, you've come to the right place.

The 2019-2020 Supreme Court Term In A Nutshell
In the term that just concluded in early July, the Supreme Court:

1. Ruled on the scope of discrimination claims in three main federal employment law statutes;
2. Navigated the intersection between religion and the workplace for religious employers;
3. Interceded in the immigration debate by rendering judgment on an Obama-era program aiming to retain hundreds of thousands of immigrants in the country; and
4. Waded into an employee benefits conflict by setting the standard for when workers could challenge investment decisions made by plan fiduciaries.

Discrimination Claims Under Federal Statutes
In the highest-profile workplace law case of the term, the Supreme Court expanded the interpretation of **Title VII of the Civil Rights Act of 1964** by ruling that workplace discrimination because of an individual's sexual orientation or gender identity — including being transgender — is unlawful discrimination "because of sex." The basis for the Court's June 15 ruling in *Bostock v. Clayton County* was summarized by Justice Gorsuch in his majority opinion when he concluded that "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against that individual based on sex."

This blockbuster ruling means you must take proactive steps to prevent and prohibit LGBTQ discrimination in the workplace. You should review and update your written policies and handbooks to ensure that sexual orientation and gender identity are included as protected categories or the definition of "sex" is updated to include these categories. You should provide training to employees – particularly managers and human resources personnel involved with hiring, promotion, discipline, and discharge – to ensure they are aware that sexual orientation and gender identity are protected categories and cannot be the basis of any employment decisions.

While the Court expressly decline to address dress codes or bathroom policies, as a best practice, you should review your dress code policies to ensure that transgender and transitioning employees are permitted to follow the dress code of the gender that they identify with. You should also review your policies regarding single-sex restrooms and locker rooms to ensure that transgender and transitioning employees are permitted to use the restroom and locker room of the gender with which they identify. Further, you should review health and other benefits offerings to ensure that transgender employees and those with same-sex spouses and domestic partners have equal access to employee benefits.

The Court also adjusted the basis by which workers could prove claims of workplace discrimination when it comes to **Section 1981** litigation and lawsuits filed by federal employees under the **Age Discrimination in Employment Act (ADEA)**.

First, in a unanimous March 23 decision, the Supreme Court ensured in *Comcast Corp. v. NAAAOM* that a high standard will be used when assessing whether claims under Section 1981 – a federal statute that can be used to advance race discrimination claims – should proceed past the early stages of litigation. The Court upheld a stringent causation test so that workers can only sustain viable claims if they can prove they would not have been mistreated "but for" their race. This is a higher bar than the "motivating factor" standard under Title VII and means that weaker claims should be weeded out through early court challenges before proceeding toward trial.

On the other hand, in the April 6 *Babb v. Wilkie* decision, the Court made it easier for federal employees and applicants to prove age discrimination by ruling that courts should not apply that heightened "but for" causation standard in ADEA cases. The decision means that the federal government could be liable for age discrimination any time it considers an older worker's age in making a personnel decision – even if such consideration was not dispositive of the personnel decision but was only a "motivating factor." However, the decision should not impact private employers, who still enjoy the heightened "but for" standard when defending ADEA cases.

Religious Employers

The Supreme Court continued to navigate the fine line between religion and workplace laws in two critical rulings issued this term. On July 8, it barred courts from adjudicating employment discrimination claims brought by employees who perform certain religious tasks for religious employers. The *Our Lady of Guadalupe School v. Morrisey-Berru* decision held that the "ministerial

exception – which allows religious employers to use an employee's status as a "minister" to invoke the First Amendment's protections against government interference in the selection of employees – should be evaluated using a variety of factors, including whether an employee carries out important religious functions. In doing so, the Court rejected the proposal that courts employ a rigid formula when determining whether the ministerial exception applies.

To best ensure coverage under this decision, religious employers should assess their employees' positions and ensure that job descriptions, handbooks, and contracts are clear regarding the important religious functions that employees perform and the behaviors that they model. The employees' expected teachings and other responsibilities in carrying out the faith should be clearly outlined and consistently evaluated and enforced. In addition, religious schools should also articulate an employee's obligation to understand and incorporate faith education into curriculum and daily routines (e.g., praying with students, attending religious services with students, etc.) as well as the school's mission to educate and form students in the faith.

The Court also upheld two Trump-era rules expanding religious and moral exemptions to the Affordable Care Act's (ACA) contraceptive mandate. The July 8 decision in *Little Sisters of the Poor v. Pennsylvania* ensures broad exemptions from the contraceptive mandate remain in place for both for-profit and nonprofit employers with sincerely held religious beliefs or moral objections to offering contraception coverage in their group health plans.

Immigration Policy

The Court ruled on June 18 that the Trump administration did not provide adequate and appropriate justification to terminate the Deferred Action for Childhood Arrivals (DACA) program. The ruling in *DHS v. Regents of the Univ. of California* preserved the ability of approximately 700,000 individuals – sometimes known as "Dreamers" – to remain in the country and in American workforces. With the reinstatement of the DACA policy, you can expect a potential increase in eligible employees who can make themselves available to work in your organization.

The decision will also bring peace of mind for current DACA recipients – who have been living in a state of uncertainty for several years now – and the employers who have grown to rely upon them. The Trump administration may, however, still take new actions to terminate DACA, but must follow the proper procedures for doing so. It seems unlikely we've heard the last on this debate, so stay tuned for further developments in the near future.

Benefits Litigation

Finally, the Supreme Court declined to limit the timeframe in which disgruntled employees could bring suit challenging the investment decisions made by plan fiduciaries. While the Employee Retirement Income Security Act (ERISA) provides a shrunken three-year statute of limitations when workers have "actual knowledge" of an alleged breach or violation, the Court concluded in the February 26 *Intel Corp. Investment Policy Committee v. Sulyma* decision that this shorter period is not triggered when the employee in question chose not to read or did not recall having read all the relevant information about the investments provided by the plan. In such situations, the Court ruled in yesterday's decision, a longer six-year statute of limitations applies. This development opens

In yesterday's decision, a longer six-year statute of limitations applies. This development opens employers and retirement plan fiduciaries up to an increased risk of legal challenges, while heightening the standard for evaluating breach claims and class action certifications.

Preview Of 2020-2021 Term

The Supreme Court has only three workplace-related cases on its current docket for next term, which will begin in October, but odds are this number will increase as times goes on.

We will be tracking:

- *Van Buren v. United States*, in which the Court will address one of the most dynamic and divisive legal issues involving computers in the American workplace. At issue are conflicting interpretations of a portion of the Computer Fraud and Abuse Act used by employers to sue employees who access electronic files in a manner that exceeds the employee's authorized use of the employer's computers. In a sense, the Act has been used like a computer trespass statute: employers have sued employees who trespass into computer file folders and servers in order to copy or transfer confidential information and trade secrets. But the critical question before the Court is whether an employer can authorize its employees' use office computers but limit through contractual language or policies where its employees can go on the computers. Conflicting decisions regarding this question have resulted in a circuit split, in which courts have taken either an employer- or employee-centric view of the authorization question, which means that Court's decision should harmonize the law of the land on this question and let employers know if this provision of the Act will be available to help protect their workplace computers.
- Astute SCOTUS observers may recall that in a 2019 decision (*Henry Schein Inc. v. Archer and White Sales Inc.*), the Court rejected the "wholly groundless" exception to compelling arbitration where the parties delegated the authority to determine issues of arbitrability to an arbitrator. The Court concluded that if the parties had delegated such authority, a court must compel arbitration even if it believes the dispute is inarbitrable. This case returns to SCOTUS next term with a more nuanced question: whether an agreement that carves out certain claims (such as those for injunctive relief), but has a general delegation of arbitrability to an arbitrator, requires that the arbitrator decide whether the carved out claim is arbitrable. The decision is expected to provide nationwide clarity for employers who use similar arbitration agreements and will provide a meaningful opportunity for employers to review and revise their agreements accordingly.
- The Court will once again rule on the ACA in the next term. Two related cases accepted for review by the Court will examine the effective elimination of the ACA's "individual mandate" beginning in 2019, which was part of the significant changes to the Internal Revenue Code in the 2017 Tax Act. While the cases consolidated in *California v. Texas* involve technical procedural issues related to standing and severability, the primary substantive issue is whether the remainder of the ACA – including the employer "play or pay" mandate – remains valid, enforceable, and constitutional after the effective elimination of the individual mandate.

Conclusion

Conclusion

Over the next year, we will be tracking these cases, along with any additional workplace law issues taken up by the SCOTUS, and providing you with same-day alerts when the decisions are delivered. Make sure you're signed up for Fisher Phillips' legal alerts in order to ensure you don't miss out.

For more information, contact the authors here or here.

Related People

Richard R. Meneghello
Chief Content Officer
503.205.8044
Email

Megan E. Walker
Partner
858.597.9611
Email

Service Focus

Employee Benefits and Tax

Employee Benefits and Tax

Employment Discrimination and Harassment

Immigration

Litigation and Trials