# SCOTUS Review: 8 Key Rulings from Last Term that Impact the Workplace and 3 Issues We're Watching

Insights
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Many employers looked to the Supreme Court last term for clarity in cases with a significant impact on the workplace. The justices continued to shape the employment law landscape by ruling on an array of issues involving COVID-19 vaccine directives, the scope of arbitration agreements, ERISA fiduciary rules, and prayer at public schools. Moreover, the Court's decisions on abortion and federal agency power will surely raise additional workplace-related questions to be hashed out in future terms. Here's a quick summary of eight SCOTUS decisions from the 2021-2022 term that affect employers, as well as a look ahead to what employers can expect during the next term – which starts on October 3. If you want to read a more detailed analysis on any of these cases, simply click on the links provided, and you'll find our comprehensive coverage of each case as well as important takeaways for employers.

1. **Mixed Rulings on Vaccine Mandates**

   All eyes were on the Supreme Court at the start of the 2021-2022 term as employers and workers across the country waited to see whether they would be required to comply with a vaccine-or-testing mandate from the Occupational Safety and Health Administration (OSHA). Employers breathed a collected sigh of relief on January 13, when SCOTUS blocked OSHA from enforcing its emergency temporary standard (ETS). Ultimately, the agency responded by shelving the emergency rule altogether. The ETS would have required businesses with at least 100 employees to ensure workers received a COVID-19 vaccination or submitted to regular testing.

   Although the ETS was nixed, it is still permissible to impose your own vaccine mandate in most locations. The Supreme Court simply ruled that OSHA can't require you to implement a vaccine policy – but the Court did not say you couldn't implement a policy on your own if you believe it is right for your workplace. Notably, however, SCOTUS upheld a federal vaccination mandate for certain healthcare employers that participate in Medicaid and Medicare.

   Employers that want to mandate – or continue mandating – vaccination and boosters should coordinate with workplace law counsel to determine state law requirements. You'll need to sort out questions related to requirements for paying your employees for the time they spend getting vaccinated and any time they miss with side effects. The bigger question, of course, is how would such a policy impact your workforce – will morale issues and workforce shortages override your concerns about worker safety? Make sure you are in touch with your current business

concerns about worker safety? Make sure you are in touch with your current business environment and stay up to date on the latest pandemic-related developments. Click here for a four-step workplace plan that responds to the most recent COVID-19 uptick caused by the BA.5 variant.

2. **ERISA Ruling Highlights the Necessity to Monitor Plan Investment Options**

   On January 24, the Supreme Court reaffirmed and highlighted the ongoing duty of ERISA plan fiduciaries to monitor investment options – and remove imprudent investment options – in satisfying their fiduciary duties. The Court found in *Hughes v. Northwestern University* that plan fiduciaries cannot rely on the participants' ultimate choice over their investments to excuse allegedly imprudent investment options offered and retained by the plan. The unanimous ruling should serve as a wakeup call to those administrating employee retirement plans. Although the ruling does not significantly alter any existing interpretations of fiduciary liability standards, the decision still highlights best practices for plan sponsors in administering their retirement plans and defending current or potential investment option litigation. Click here for a five-step compliance roadmap.

3. **Scope of Arbitration Agreements Continues to Be Defined**

   Arbitration – and especially arbitration of employment disputes – has been a frequent issue on court dockets across the country and has received outsized SCOTUS attention in recent years. Employers generally view arbitration as faster and less expensive than defending a lawsuit in court, and the Federal Arbitration Act (FAA) broadly encourages private dispute resolution through arbitration. The FAA, however, does not apply to certain workers who are engaged in interstate commerce – for example, workers who are directly involved in transporting goods across state or international borders.

   On June 6, in *Southwest Airlines Co. v. Saxon*, SCOTUS held that an airline can't require a ramp supervisor who alleged that she frequently loaded cargo onto airplanes to arbitrate her claim for overtime pay under the FAA. The supervisor filed a proposed class-action lawsuit in court – even though she signed an agreement to individually arbitrate wage-related claims – and the airline sought to enforce the arbitration agreement.

   Was the ramp supervisor engaged in interstate commerce? The justices said courts should look to the day-to-day work that the employee actually performs rather than what the airline does generally. The justices went on to find that the supervisor "belongs to a class of workers who physically load and unload cargo on and off airplanes on a frequent basis" and that "airplane cargo loaders plainly do perform activities within the flow of interstate commerce when they handle goods traveling in interstate and foreign commerce, either to load them for air travel or to unload them when they arrive." Therefore, the court ultimately ruled that the supervisor was exempt from the FAA's scope. Although SCOTUS narrowly ruled in favor of the employee in this case, the decision was limited to the specific facts about the ramp supervisor's job duties. Click here to learn more about the key takeaways from this ruling.

4. **California Employers Earn PAGA Victory**

   SCOTUS has issued numerous rulings that favor arbitration. For instance, California employers got a hard-fought win on June 15 when the Court ruled that employers can compel arbitration of individual claims brought under the state's Private Attorneys General Act (PAGA).

   Under PAGA, employees can sue their employers on behalf of themselves for alleged California Labor Code violations they suffered and on behalf of other employees for distinct violations. PAGA deputizes employees to recover civil penalties on the state's behalf, with 75% of the total penalties recovered remitted to the state and 25% to employees.

   In *Viking River Cruises, Inc. v. Moriana*, SCOTUS said employers can enforce arbitration agreements in California to the extent they require an employee to arbitrate individual claims under PAGA. The Court also held that once the employee's individual claims under PAGA are compelled to arbitration, the employee would not have standing to bring a representative claim under PAGA on behalf of other aggrieved employees. However, the Court left open the possibility that the California Legislature could revise PAGA to allow an employee to bring representative claims in Court, even if the employee does not share any claims with the other employees they seek to represent.

   The decision marks the end of an eight-year battle to treat agreements to arbitrate representative actions in the same manner as waivers of class and collective actions. You should be prepared to make immediate adjustments to your alternative dispute resolution agreements, assess any existing representative litigation to capitalize on this hard-fought relief from PAGA's abuses, and prepare for potential legislative changes to PAGA. Click here for our firm's comprehensive Supreme Court alert on this decision and what the future might hold for PAGA claims.

5. **AB 5 Decision Will Throw California's Trucking Industry into Disarray**

   In another action affecting businesses in the Golden State, SCOTUS denied review of a petition asking whether California's controversial worker classification law should be blocked by a federal law that regulates the trucking industry. The California Trucking Association challenged Assembly Bill (AB 5) as it applies to motor carriers in the state, and the SCOTUS decision not to review the matter will have significant reverberations throughout the state's trucking industry. In the very near future, you will be forced to comply with AB 5 and its impact not only on independent owner-operators who own their own trucks but also on your own staffing practices. Click here to read more about this polarizing decision and what you should do about it.

6. **Fired Football Coach's Prayer was Protected Private Speech**

   On June 27, SCOTUS ruled in favor of a public high school football coach who lost his job after praying in front of students at the 50-yard line following the school's football games. The Court held in *Kennedy v. Bremerton School District* that the coach did not engage in government

speech when he prayed after games with students present. The Court also reversed the lower court's ruling that the school district had a constitutional duty to prohibit the prayer. The coach "offered his prayers quietly while his students were otherwise occupied" and "when school employees were free to speak with a friend, call for a reservation at a restaurant, check email, or attend to other personal matters," the Court said in a 6-3 ruling.

The Court's ruling in favor of the coach serves as an important reminder for public school employers to be aware of potential violations of school employees' protected First Amendment rights. Although the Court's decision makes clear that school officials are allowed to take some action to profess their faith in the presence of students, the specific facts in this case involved a brief personal prayer that the coach said to himself on the field after the games concluded. Therefore, even though the Court removed some of the barriers previously in place to demonstrable religious expression in a public-sector workplace, the lengths to which employees are allowed to go in professing their faith in the workplace remain unclear. Click here to read more about this ruling.

7. **Abortion Ruling Prompts Review of Workplace Policies**

Some SCOTUS rulings last term were not directly related to workplace matters but still have implications for employers, including the Supreme Court's controversial June 24 decision in *Dobbs v. Jackson Women's Health Organization* overturning *Roe v. Wade*. While the ruling did not make abortion illegal nationwide, it lifted the federal right to abortion access and gave states the ability to pass stricter abortion laws. Given the ruling, people in states with strict abortion limitations may end up traveling to other states to receive abortion-related care, and employers likely have questions about associated employment protections and healthcare benefits. Can employers offer travel benefits? Can employees take job-protected leave to obtain abortion-related services? What other rights might employees have under federal employment laws? Click here for a few points you should keep in mind in light of the decision.

8. **EPA Decision May Spell Trouble for Other Federal Agencies**

Given the consequential nature of many of the issues decided by the Supreme Court this year, employers can be forgiven for overlooking the Supreme Court's June 30 opinion in *West Virginia v. Environmental Protection Agency*, a 6-3 decision that significantly limited the broad power the Environmental Protection Agency (EPA) attempted to exercise. The theory used by the Court to knock back the EPA – a relatively obscure concept called the "major questions doctrine" – may impact workplace law in ways many could not have anticipated as recently as half a year ago. Under this doctrine, an agency must point to clear congressional authorization before engaging in action that courts conclude has broad-reaching economic and political significance. While SCOTUS has already notified OSHA that this theory could curtail its actions, many Court observers are now expecting to see an impact on wage and hour, labor, pay equity, and employment law in general in the coming years. Click here to learn more about this potentially significant development.

**What's Next?**

The Supreme Court will begin a new term in the fall, and we're already watching several cases that will likely impact the workplace. More employment and labor cases will surely be added to the docket, but for now, you should keep an eye on these three issues:

1. **Whether a daily pay rate satisfies the FLSA's "salary basis" requirement for exempt employees.** Should a highly compensated supervisor who was paid by the day get overtime pay under the Fair Labor Standards Act (FLSA)? In *Helix Energy Solutions Group, Inc. v. Hewitt*, the Supreme Court was asked to decide whether an oil rig supervisor who earns $200,000 a year is entitled to such premiums because he was paid a daily rate rather than a weekly salary. Employers in the energy, oil, and gas industries – which commonly use a daily rate pay model – will be closely watching, but any business that pays highly compensated employees on a daily or shift basis could be affected by the ultimate ruling. SCOTUS granted the petition, and oral argument is scheduled for October 12.
2. **Whether race can be used as an admissions factor by higher education institutions.** In two cases, *Students for Fair Admissions v. University of North Carolina* and *Students for Fair Admissions Inc. v. President & Fellows of Harvard College*, the Court has been asked to overrule precedent allowing higher education institutions to use race as a factor in admissions. The cases will not be consolidated so Justice Ketanji Brown Jackson may participate in the North Carolina case while recusing herself from the Harvard case, according to Amy Howe of SCOTUSblog. Justice Jackson, who will be serving her first term on the Court, completed a six-year term on Harvard's board of overseers. Although the cases involve school admissions criteria, a SCOTUS ruling could impact voluntary affirmative action plans in the workplace. The court granted the petition in each case but hasn't set a date for oral argument.
3. **Whether ERISA preempts state and local "play-or-pay" laws.** Although SCOTUS has yet to decide whether to review *ERISA Industry Committee v. Seattle*, employers are watching this case to see if state and local play-or-pay laws that require employers to make minimum monthly healthcare payments for employees are preempted by the Employee Retirement Income Security Act (ERISA).

Over the next year, we will be tracking these cases – along with any additional workplace law issues taken up by the Supreme Court – and providing you with alerts when the decisions are delivered. Make sure you're signed up for Fisher Phillips' legal alerts so you don't miss out.

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