SCOTUS 2023 Lookback and 2024 Preview: 7 Critical Decisions All Employers Should Review and 3 New Cases to Track

Insights
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The Supreme Court's blockbuster decisions last term dominated the headlines – and many rulings will have a lasting impact on employer practices. The Justices continued to shape the workplace law landscape by ruling on an array of issues involving religious accommodations, arbitration, union strike misconduct, overtime pay, and more. Additionally, the Court's affirmative action decision will surely raise workplace-related questions regarding DEI best practices and compliance with anti-discrimination laws. Here's a quick summary of seven SCOTUS decisions from the 2022-2023 term that impact the workplace, as well as a look ahead to what employers can expect during the next term – which starts on October 2. 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.

7 Key Rulings that Impact the Workplace

1. Affirmative Action Ruling May Have Ripple Effects on Employers

The Supreme Court severely restricted higher educational institutions from using race or ethnicity as part of their admissions process, curbing the practice of using affirmative action principles during admissions for schools across the country. While employers may not be directly impacted by the decision, the new standard will likely have big ripple effects on the world of workplace law before long — and the time is now to prepare for the oncoming chain of events. Click here to learn more about how the decision may impact employers and the six key steps you can take now to bolster your DEI efforts while maintaining compliance with anti-discrimination laws. Want to know more about how the ruling affects higher educational institutions and K-12 schools? Read our Insight here.

2. SCOTUS Makes it Harder to Deny Religious Accommodations

Employers now have a higher hurdle to clear when determining whether an employee's religious accommodation request would cause an undue burden on their business. A mail carrier argued that it was too easy for his employer to reject his request for Sundays off under a decades-old legal test that gave employers considerable leeway – and SCOTUS clarified a higher standard under federal law than the lower courts applied. In a unanimous decision on June 29, the Court said federal anti-

discrimination law requires an employer to show that "the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business." Click here for your six-step action plan to ensure compliance.

3. Ruling Protects Top 3 Benefits of Arbitration

Employers seeking to move workplace claims from the courthouse to arbitration received some good news from the U.S. Supreme Court on June 23. If a trial court denies a party's request to compel arbitration, the court must pause pre-trial and trial proceedings while the decision is appealed, according to the 5-4 ruling. Why is the decision significant to employers? According to SCOTUS, many of the benefits of arbitration — such as efficiency and lower cost — could be lost if trial court proceedings continue, even if an appeals court ultimately finds that the case belongs in arbitration. Moreover, despite having an arbitration agreement in place, the employer could face significant pressure to settle claims to avoid such proceedings during the appeal. Thus, SCOTUS found that trial court proceedings are automatically paused during the appeal. Click here for the key takeaways from the ruling.

4. SCOTUS Makes It Easier for Employers to Recover Damages Caused by Union Strike Misconduct

The Supreme Court delivered welcome news on June 1 to employers seeking to sue and recover economic damages from labor unions, ruling that federal labor law does not prevent them from filing state law claims for intentional damage when workers fail to take reasonable precautions and destroy company property during a strike. Although the National Labor Relations Act (NLRA) generally blocks state law claims when the two "arguably conflict," SCOTUS noted in an 8-1 decision that federal law does not shield strikers in every situation. Click here to learn more about the ruling and its potential impact on the workplace.

5. Highly Paid Employee Entitled to Overtime Pay

High-earning workers making more than $200,000 a year might be eligible for overtime pay thanks to a Supreme Court ruling on February 22. The decision is a wake-up call for all employers to review their OT exemptions to ensure they are compliant with applicable federal and state requirements. To be exempt from overtime pay under the Fair Labor Standards Act's "white-collar" exemptions, employees must earn at least $684 a week on a salary basis, among other requirements. In this case, an oil rig worker was paid a guaranteed daily rate of at least $963, which is significantly higher than the weekly salary threshold. In a 6-3 ruling, however, the Supreme Court said the worker was eligible for overtime pay because he was not paid on a salary basis. Click here to read more about this shocking decision and the four steps you should consider taking in light of the ruling.

6. Justices Deliver a Win for Businesses Challenging Federal Agency Actions

The Supreme Court gave employers more tools to challenge federal agencies during administrative proceedings. Employers likely know how daunting it can seem to challenge federal officials –

whether you're facing an action from the Department of Labor, NLRB, OSHA, EEOC, or some other regulatory body. In a unanimous decision on April 14, SCOTUS opened up some avenues for employers to contest administrative proceedings in court without having to wait for the administrative process to play out. The ruling didn't go as far as some of the more conservative Justices would have liked — but the ruling provides some good news that you can add to your litigation arsenal. Click here to learn more about the decision's impact on employers.

7. Supreme Court Punts Case on Attorney-Client Privilege

The Supreme Court was seemingly set to decide whether and when a party can assert attorney-client privilege protection over communications containing both legal and non-legal advice, but SCOTUS recently decided to bypass the debate completely and dismissed the case from its docket. On January 23, the Court dismissed the writ of certiorari it had granted in *In re Grand Jury* as "improvidently granted," and as a result will not issue an opinion in the case. That means the status quo remains, with different courts in different jurisdictions applying different tests in deciding whether a "dual purpose" communication is covered by the attorney-client privilege. What does this mean for attorney-client communications? How should counsel, particularly in-house counsel, navigate this difficult area to maximize privilege protections? Click here for the top 10 ways you can proceed in this area.

3 Cases to Track Next Term

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. Can An ADA Accommodation "Tester" Sue a Business She Never Planned to Visit?

The Supreme Court agreed to weigh in on whether a private citizen can serve as a legal "tester" that goes from business to business looking for – and suing for – alleged violations of the Americans with Disabilities Act (ADA), even if they have no intent of patronizing the business. A hotel in Maine is challenging a federal appeals court ruling in favor of a so-called "accessibility tester" who has filed hundreds of such lawsuits against hotels even though she never planned to stay at their properties. Why is the case significant for hospitality, retail, and just about any other business with a physical location – and possibly just a website? The ADA doesn't require claimants to notify you of alleged violations that would give you a chance to fix the problem before a lawsuit is filed. That means many businesses are caught off guard when served with a lawsuit. Worse, they may spend thousands of dollars in attorneys' fees to resolve a case – even when the cost of actual compliance is very low. What do you need to know about the potential impact of a SCOTUS ruling in *Acheson Hotels v. Laufer*? Read more about the case here.

2. An Employee Claims She was Forced to Accept a Lateral Transfer Based on Gender Bias. Was the Employer's Action Unlawful?

the Employer's Action Unlawful?

Title VII of the Civil Rights Act prohibits employers from discriminating against employees based on race, color, national origin, religion, and sex. But what if an employee was allegedly forced to accept a lateral transfer – with the same pay and benefits – for a discriminatory reason? Is it still unlawful, even if the employee fails to show the transfer caused them a significant disadvantage? In *Muldrow v. St. Louis*, a female police sergeant brought a sex discrimination suit claiming she was transferred to a lateral position in a different district because new leadership wanted to hire a man for her current role. The district court and the 8th U.S. Circuit Court of Appeals sided with the police department, finding that Title VII bars only adverse employment actions that result in a materially significant disadvantage for the employee. Several other appellate courts have found that a forced lateral transfer is an adverse action even if the employee fails to show that the move caused any additional injury. SCOTUS decided to weigh in on this issue, and the Court's decision in the case could provide clarity for employers on what is considered an adverse employment action under Title VII.

3. Will SCOTUS Limit Federal Agencies' Regulatory Power?

As you know, laws aren't always crystal clear and don't typically cover every situation that could arise. So, when Congress writes a statute, the federal agency that administers and enforces it generally has the power to interpret ambiguities and fill in the gaps – as long as the interpretation is reasonable. For example, the Department of Labor interprets the Fair Labor Standards Act, and the NLRB interprets the National Labor Relations Act. This longstanding rule is known as "Chevron deference," which refers to the 1984 SCOTUS decision in *Chevron v. Natural Resources Defense Council*. That pivotal case holds that a court may not supply its own interpretation of a statute when the designated agency has provided a reasonable interpretation. The justification is that a judge may not have sufficient knowledge about the statute and the regulatory body is in a better position to fill in the gaps.

Opponents of the *Chevron* deference doctrine say it gives government agencies too much power to bypass the checks and balances of the legislative and judiciary branches. They have called for SCOTUS to overturn its prior ruling or at least limit *Chevron* deference. The Court will consider these issues in *Loper Bright Enterprises v. Raimondo*, and the ruling could have a huge impact on the workplace. Will a SCOTUS decision in this case give employers more leeway to challenge DOL overtime and tip rules, EEOC interpretations of anti-discrimination laws, and more? Stay tuned for additional analysis on this topic.

Conclusion

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 subscribed to Fisher Phillips' Insight Systems so you don't miss out.

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