SCOTUS Makes It Harder for Plaintiffs to Recover Attorney's Fees: How a Driver's License Case Could Impact Employers

Insights
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A recent Supreme Court ruling could impact your business by limiting when you must pay fees in employment litigation or when you may recover fees after challenging state regulations in court. In the *Lackey v. Stinnie* decision issued February 25, SCOTUS ruled that a group of Virginia residents could not recover the attorney's fees (likely totaling more than a million dollars) they racked up challenging a state law, even though they accomplished their ultimate goal of getting their driver's licenses reinstated. In reaching this conclusion (and just as we predicted), the Court established a bright-line rule for determining whether certain civil rights plaintiffs are eligible for fee awards as "prevailing parties." We'll explain the Court's holding and how it could impact employers in litigation matters – both in positive and negative ways.

Quick Background

Here's what happened before the case reached the Supreme Court.

- **How it started.** Virginia residents sued the state's Department of Motor Vehicles commissioner in 2016, challenging the constitutionality of a state law that automatically suspended their driver's licenses based on unpaid court fines. A federal court awarded the drivers preliminary relief that reinstated their licenses while the lawsuit played out.

- **Plot twist.** While the case was still pending, Virginia repealed the law under challenge, and the case was dismissed as moot. But when the plaintiffs sought attorney's fees under a federal fee-shifting statute (42 U.S.C. §1988), a whole new dispute emerged.

- **The new dispute.** The parties disagree on whether the Virginia drivers are "prevailing parties" under Section 1988(b) and therefore entitled to recover attorney's fees. The district court sided with the government, but the 4th U.S. Circuit Court of Appeals reversed to rule in favor of the drivers. The state then brought the case to the Supreme Court, noting in the court filing that the plaintiffs' "total fee request likely will run into the millions of dollars, considering the years of litigation in the district court."

SCOTUS: No Fee Award for Securing a Temporary Order but Not a Final Judgment

In a 7-2 decision issued on February 25, the Supreme Court held that a plaintiff prevails under Section 1988(b) only when a court "conclusively resolves his claim by granting enduring relief on the merits that alters the legal relationship between the parties." Chief Justice Roberts, writing for the majority, said that:

- **preliminary injunctive relief is not conclusive or enduring relief on the merits,** because it only *temporarily* preserves the parties' litigating positions based in part on a prediction of the *likelihood* of success on the merits; and
- **external events that render a dispute moot do not convert a temporary order into a conclusive adjudication**.

The Court concluded that the Virginia drivers do not qualify as "prevailing parties" under Section 1988(b), because they had gained only preliminary injunctive relief before the action became moot by the state repealing the law they were challenging. Accordingly, the Court reversed the 4th Circuit's decision and remanded the case to the lower courts for further proceedings.

The Dissent. In a dissenting opinion, Justice Jackson, joined by Justice Sotomayor, wrote that "the majority's bright-line rule lacks the nuance that is needed to account for the various circumstances in which a preliminary injunction may be 'preliminary' in name only." The dissent also noted that all eleven federal appeals courts that have previously considered this issue agree that "at least *some* preliminary injunctions trigger fee eligibility under §1988(b)." In Jackson's view, this should include preliminary injunctions that effectively resolve the case, and to hold otherwise is "plainly inconsistent with that statutory provision's clear objective, which is to encourage attorneys to file civil rights actions on behalf of the most vulnerable people in our society."

How Did We Do With Our Predictions?

Our FP attorneys Seth Kaufman and Tyler Rasmussen correctly predicted that the SCOTUS majority would make it harder for workers and other plaintiffs to collect attorney's fees by ruling that a party is not eligible as a "prevailing party" simply by winning a preliminary injunction and nothing more before the case moots.

- Seth nailed his prediction that SCOTUS would vote 7-2 in favor of the government, with only Justices Jackson and Sotomayor dissenting.
- Tyler accurately called that the Court would adopt a bright-line rule that a party prevails only when there is a decision on the merits.

How Does This Ruling Impact Employers?

The outcome in *Lackey v. Stinnie* could have both positive and negative consequences for employers in litigation matters:

- **Positive Consequences**. The decision could help employers if courts apply the interpretation of "prevailing party" under Section 1988 to workplace laws with similar fee-shifting provisions, such as in race discrimination claims under 42 U.S.C. Section 1981 or in wage and hour claims under the Fair Labor Standards Act. This would prevent plaintiffs in those cases from recovering attorney's fees unless they "prevail" through a "conclusive" judicial ruling on the merits. In turn, this could make employees or former employees less motivated or less willing to proceed with that litigation.
- **Negative Consequences**. Likewise, employers would be limited in their ability to recover fees in their lawsuits challenging state regulations (which could soon become more common if regulation at the state level increases as a result of the Court's landmark *Loper Bright* decision last year). Employers could see a downside in the employment litigation context as well. Plaintiffs might now be incentivized to manipulate fee liability, as Justice Jackson warned in her dissent: "Under the majority's rule, a plaintiff who has incurred substantial attorney's fees in order to secure a preliminary injunction that provides all the relief he needs will face a choice: He may either concede that the litigation has run its course and pay his own fees, or he may seek to litigate the case to final judgment in order to secure a fee award."

Conclusion

We will continue to monitor developments from SCOTUS, so make sure you subscribe to Fisher Phillips' Insight System to get the most up-to-date information. If you have questions, contact your Fisher Phillips attorney or the authors of this Insight.

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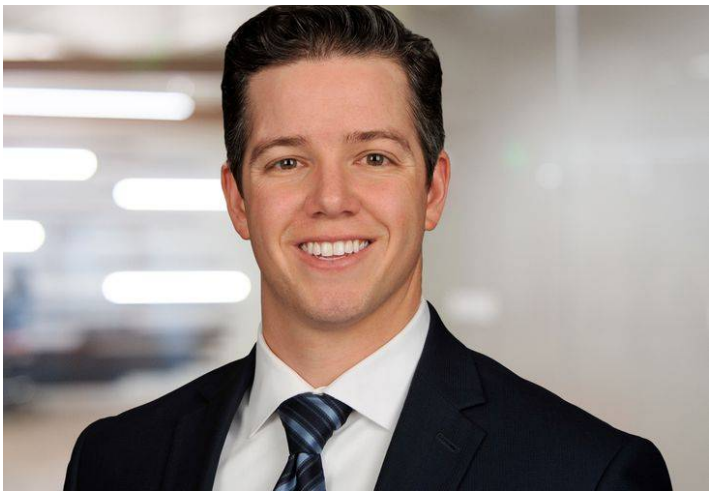

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