Legal Update Article

U.S. Supreme Court Roundup – 2017-2018

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The U.S. Supreme Court term that ended June 2018 included decisions on many topics important to workplace law, including class action waivers in employment arbitration agreements, public-sector "agency shop" arrangements, and the Fair Labor Standard Act's "automobile dealer" overtime exemption. The Court also examined who is a "whistleblower" protected by the Dodd-Frank Act, President Donald Trump's travel ban executive order, and the federal bar on states legalizing sports betting.

The conclusion of the term also brought news that Justice Anthony Kennedy is retiring from the Court, effective July 31, 2018. Justice Kennedy was confirmed to the Supreme Court in February 1988 by a vote of 97-0. His departure will leave a vacancy on the nine-member Court.

Class Actions

Class action waivers in employment arbitration agreements do not violate the National Labor Relations Act (NLRA), the Supreme Court ruled in a much-anticipated decision in three critical cases. *Epic Systems Corp. v. Lewis,* No. 16-285; *Ernst & Young LLP et al. v. Morris et al.,* No. 16-300; *National Labor Relations Board v. Murphy Oil USA, Inc., et al.,* No. 16-307 (May 21, 2018). The Court explained that Section 7 of the NLRA is focused on employees' rights to unionize and engage in collective bargaining and that Section 7 does not extend to protecting an employee's right to participate in a class or collective action. Section 7 provides that employees have the right to form, join, or assist unions, and to engage in other concerted activities for their mutual aid and protection. The Court held, 5-4, that class action waivers in employment arbitration agreements are enforceable under the Federal Arbitration Act.

In another case, the Court ruled, 9-0, that once class action certification has been denied, a putative class member may not start a new class action beyond the applicable statute of limitations. *China Agritech, Inc. v. Resh,* No. 17-432 (June 11, 2018). Justice Ruth Bader Ginsburg wrote the opinion in this case. The Court ruled that the 1974 *American Pipe* equitable tolling rule does not apply to individual claimants banding together and filing a subsequent ("stacked") class action. Under *American Pipe,* "the commencement of a class action suspends the applicable statute of limitations as to all asserted members of the class who would have been parties had the suit been permitted to continue as a class action."

Union Fees

Public sector employees who are non-members of a union cannot be legally required to pay agency or "fair share" fees as a condition of employment, the Court held in a 5-4 ruling. *Janus v. AFSCME Council 31,* No. 16-1466 (June 27, 2018). *Janus* reverses the Court's 1977 decision in *Abood v. Detroit Board of Educ.,* 431 U.S. 209, in which the Court found such mandatory fees to be constitutional.

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Fair Labor Standards Act (FLSA) Overtime Exemption

Service advisors are exempt from overtime under the FLSA's "automobile dealer" exemption applicable to salesmen, partsmen, and mechanics, the Court held in a 5-4 decision. *Encino Motorcars, LLC v. Navarro,* 136 S. Ct. 2117 (2018). The case has implications far beyond the industry-specific exemption. The Court squarely rejected the principle that exemptions be "narrowly construed" against the employer.

Dodd-Frank Act

The anti-retaliation provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 protects only employees who complain directly to the Securities and Exchange Commission (SEC), the Court held in a unanimous decision. *Digital Realty Trust, Inc. v. Somers,* 138 S. Ct. 767 (2018). The Court based its decision on a plain reading of the Dodd-Frank Act's definition of "whistleblower" and its anti-retaliation provision, as well as the intent of Congress in enacting the statute.

Immigration

The Court in a 5-4 decision held that President Donald Trump's Proclamation No. 9645, known as "Travel Ban 3.0," can stand. *Trump, et al. v. Hawaii, et al.,* No. 17-965 (June 26, 2018). Certain individuals from Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen will continue to be subject to the ban.

In another case, the Court found, also 5-4, unconstitutionally vague the Immigration and Nationality Act's provision that any alien convicted of an "aggravated felony" after entering the United States is subject to deportation, defining an aggravated felony as "a crime of violence." *Sessions v. Dimaya,* 138 S. Ct. 1204 (2018).

Retiree Health Benefits and Contract Law

Collective bargaining agreements, including those that establish ERISA plans, should be interpreted according to ordinary principles of contract law, the Court reaffirmed in a per curiam (unsigned) opinion. *CNH Industrial N.V. v. Reese,* 138 S. Ct. 761 (2018). The Court found the lower court improperly inferred vesting of retiree health benefits, employing the rejected "*Yard-Man* inference," in the collective bargaining context.

State Anti-Discrimination Law

The Court ruled in favor of a baker in Colorado who refused to make a wedding cake for a same-sex couple. *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission,* No. 16-111 (June 4, 2018). The Court's ruling focused on the hostility and the biased process executed by the state Commission against the baker. It did not answer the question many had in mind when the Court agreed to review the case: Whether individuals who hold sincere religious beliefs can refuse service to individuals within a protected class, including same-sex couples. The Court acknowledged this, saying, "The outcome of cases like this in other circumstances must await further elaboration in the courts, all in the context of recognizing that these disputes must be resolved with tolerance, without undue disrespect to sincere religious beliefs, and without subjecting gay persons to indignities when they seek goods and services in an open market."

State Sports Gambling

The Court struck down the federal Professional and Amateur Sports Protection Act of 1992 (PASPA), which barred states from permitting gambling on sporting events. *Murphy v. National Collegiate Athletic Ass'n,* No. 16-476 (May 14, 2018). The Court explained,

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"Congress can regulate sports gambling directly, but if it elects not to do so, each State is free to act on its own." The problem with PASPA, the Court stated, is that "state legislatures are put under the direct control of Congress." The Court found that "[a] more direct affront to state sovereignty is not easy to imagine." Within weeks of the Court's ruling, Delaware and New Jersey launched sports betting.

Please contact Jackson Lewis if you have any questions about these and other legal developments.

Related:

- Supreme Court: Class Action Waivers in Employment Arbitration Agreements Do Not Violate Federal Labor Law
- Class Action Stacking Is Not Permitted, U.S. Supreme Court Rules
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- High Court Orders Sixth Circuit to Clean Up Its Retiree Health Benefits Case Law 'Mess'
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