PRESENTATION

Dancing with the Supremes: L&E Issues in the Supreme Court this Year

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L&E Cases Heard Last Term

- Vance v. Ball State Univ. – Title VII harassment
- Univ. of Tex. Sw. Med. Ctr. v. Nassar – Title VII retaliation
- Am. Express Co. v. Italian Colors Rest. – class arbitration
- U.S. Airways, Inc. v. McCutchen – ERISA reimbursement
- Genesis Healthcare Corp. v. Symczyk – FLSA class actions
- Nitro-Lift Techs., L.L.C. v. Howard – arbitration and noncompetes

Vance v. Ball State Univ.

- Issue: Who qualifies as a "supervisor" in a case in which an employee asserts a Title VII claim for workplace harassment?

- Holding: An employee is a "supervisor" for purposes of vicarious liability under Title VII if he or she is empowered by the employer to take tangible employment actions against the victim.

- Application: The plaintiff, a catering assistant, alleged harassment by a coworker employed as a catering specialist. The coworker was not a "supervisor" because she could not change the plaintiff's employment status (hire, fire, promote, reassign, *et cetera*).

Univ. of Tex. Sw. Med. Ctr. v. Nassar

- Issue: Whether an employee bringing a Title VII retaliation claim need only show that asserting his or her rights under Title VII was a "motivating factor" for the adverse employment action.

- Holding: A plaintiff making a Title VII retaliation claim must establish that "but for" his or her protected activity, the alleged adverse employment action would not have occurred.

- Reasoning: The ADEA prohibits adverse action "because of" age, and we have held that the ADEA requires but-for causation. The Title VII retaliation provision uses similar language, so it requires but-for causation.

Am. Express Co. v. Italian Colors Rest.

- Issue: Whether a contractual waiver of class arbitration is enforceable under the Federal Arbitration Act.
- General Rule: Courts must enforce arbitration agreements unless the FAA's mandate has been overridden by a contrary congressional command.
- Holding: No contrary congressional command requires us to reject the waiver of class arbitration here.
- NLRB's Position: D.R. Horton, Inc.

U.S. Airways, Inc. v. McCutchen

- Background: A health benefits plan established by an employer paid an employee $67,000 for injuries suffered in a car accident. The plan entitled the employer to reimbursement if the employee recovered from a third party. The employee sued the negligent driver and recovered $66,000.

- Defenses: The employer sought reimbursement, and the employee argued that it had no right to reimbursement unless (i) his recovery exceeded $67,000 or (ii) it paid its fair share of the lawsuit's expenses.

- Issue: Whether equitable defenses can override an ERISA plan's reimbursement provision.

- Holding: We hold that neither of those equitable arguments can override the clear terms of a plan.

Genesis Healthcare Corp. v. Symczyk

- Background: The FLSA provides that an employee may bring an action to recover damages on behalf of himself and other "similarly situated" employees.

- Mootness: The defendant served the plaintiff with an offer of judgment, which the plaintiff ignored. The district court found that the offer of judgment fully satisfied the plaintiff's individual claim, which it therefore dismissed as moot.

- Issue: Whether courts have jurisdiction over an FLSA class action when the lone plaintiff 's individual claim becomes moot.

- Holding: We hold that they do not.

Nitro-Lift Techs., L.L.C. v. Howard

- History: A noncompetition agreement contained an arbitration provision, but the Oklahoma Supreme Court reached the merits and held that the noncompetition agreement was unenforceable as against public policy.

- Rule: Attacks on the validity of the contract, as distinct from attacks on the validity of the arbitration clause itself, are to be resolved by the arbitrator in the first instance, not by a federal or state court.

- Holding: This principle requires that the decision below be vacated.

L&E Cases to be Heard this Term

- Madigan v. Levin – avoiding the ADEA
- Heimeshoff v. Hartford Ins. Co. – statute of limitations and ERISA
- Sandifer v. U.S. Steel Corp. – “changing clothes” and the FLSA
- Unite Here Local 355 v. Mulhall – agreements under the LMRA
- Lawson v. FMR LLC – retaliation under Sarbanes-Oxley

Madigan v. Levin

- Issue: Whether the Seventh Circuit erred in holding that government employees may avoid the ADEA's remedial regime by bringing age discrimination claims under the Equal Protection Clause, which prohibits government from treating people differently because of their status.

- The First, Fourth, Fifth, Ninth, and Tenth Circuits have reached the opposite conclusion.

- Avoiding the ADEA: Presumably, the plaintiff sought to avoid the ADEA because it (i) requires exhaustion of administrative remedies and (ii) limits damages (liquidated damages only if willful violation).

- Disposition: The writ of certiorari is dismissed as improvidently granted.

Heimeshoff v. Hartford Life & Accident Ins. Co.

- Background: An employee brought an action challenging Hartford Life & Accident Ins. Co.'s denial of disability benefits under ERISA outside of the policy-prescribed three-year statute of limitations.

- Arguments: The plaintiff contended that (i) final denial of benefits should trigger the limitations period and (ii) equitable tolling should save her claim because the defendant failed to disclose the limitations period in its letters denying benefits.

- Issue: When should a statute of limitations accrue for judicial review of an adverse benefit determination under the Employee Retirement Income Security Act?

Sandifer v. U.S. Steel Corp.

- Background: Hourly employees of U.S. Steel filed suit under the FLSA, arguing that U.S. Steel violated the Act by failing to compensate them for time spent putting on and taking off work clothes in an on-site locker room.

- Issue: What constitutes "changing clothes" within the meaning of Section 203(o) of the Fair Labor Standards Act?

Unite Here Local 355 v. Mulhall

- Issue: Whether an employer and union violate Section 302 of the LMRA by entering into an agreement under which the employer exercises
  - its freedom of speech by promising to remain neutral to union organizing,
  - its property rights by granting union representatives limited access to the employer's property and employees,
  - and its freedom of contract by obtaining the union's promise to forego its rights to picket, boycott, or otherwise put pressure on the employer's business.

Lawson v. FMR LLC

- Background: The plaintiffs brought suit alleging unlawful retaliation by their corporate employers, which are private companies that act under contract as managers of mutual funds organized under the Investment Company Act of 1940.

- Issue: Whether an employee of a privately held contractor or subcontractor of a public company is protected from retaliation by Section 806 of the Sarbanes-Oxley Act.

Questions?