SCOTUS 2023/24 Lookback and Preview: 8 Key Rulings that Impact the Workplace and 4 New Cases for Employers to Track Next Term

Insights
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The Supreme Court issued several momentous decisions last term that 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 federal agency power, labor relations, arbitration, and employment discrimination. Here's a quick summary of eight SCOTUS decisions from the 2023-2024 term that impact the workplace, as well as a look ahead to what employers can expect during the next term – which starts on October 7. 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.

8 Key Rulings From Last Term

1. Landmark Ruling Strips Power From Federal Agencies

The Supreme Court upended the legal world by significantly reducing the power of federal regulators and placing more authority in the hands of judges – a move that will have a major impact on workplace regulations for years to come. SCOTUS overturned the decades-old *Chevron* doctrine which required courts to defer to a federal agency's position on the law when a statute is open to interpretation. The Court tossed out that standard in favor of judicial interpretation, enabling courts to strike down agency rules much more easily and giving employers a powerful tool to fight back against regulatory overreach. Click here for what you need to know about the June 28 ruling in *Loper Bright Enterprises v. Raimondo* and what it means for employers.

2. Yet Another Decision Will Allow Employers to Challenge Federal Regulations More Easily

The Court also snuck in another ruling that will allow employers to challenge federal rules long after they are finalized. SCOTUS ruled on July 1 that the six-year statute of limitations to contest regulatory actions under the Administrative Procedures Act (APA) doesn't start ticking until someone is actually injured by the regulation, which could stretch the timeframe to file suit by years, giving employers yet another weapon to fight back against federal agency overreach. Click here for what you need to know about the *Corner Post Inc. v. Board of Governors* decision and the five steps should you take as a result.

3. Decision Will Weaken Labor Board's Attempts to Impose Financial Penalties on Employers But Spares NLRB From Catastrophic Loss

Perhaps lost in the shuffle of the string of blockbuster Supreme Court decisions was a June 27 ruling that will undermine the National Labor Relations Board's attempts to impose financial penalties on employers – though it didn't go so far as to block the use of administrative law judges to resolve disputes as some employers had hoped. While we predicted that the *SEC v. Jarkesy* decision would set the stage for future challenges to the NLRB, the Supreme Court spared the Labor Board from a crippling outcome that might have utterly transformed the way that union organizing campaigns, elections, workers' rights, and employer private property disputes are decided. Here's what employers need to know about this under-the-radar decision and how you can adjust your labor relations practices as a result.

4. Forced Lateral Job Transfers Can Support Discrimination Claims in Some Circumstances

An employer's decision to transfer an employee to a lateral job – with no change in pay or benefits – may violate federal civil rights law in some situations if it's based on discriminatory reasons. According to a SCOTUS ruling on April 17, an employee who claims a mandatory job transfer is unlawfully biased – in this case based on sex – must show they suffered some harm regarding an identifiable term or condition of employment. But the harm does not have to be significant. Even though the Court sided with the employee in this case, the ruling is narrow and leaves the door open for further clarification. Learn more about the *Muldrow* case here and what it means for employers.

5. SCOTUS Delivered Starbucks a Win in Labor Dispute

The Supreme Court sided with Starbucks in a case where the Labor Board tried to force the company to temporarily reinstate workers who were fired for hosting media interviews afterhours in a closed store. Starbucks said it fired the employees for violating valid company policies — but the NLRB convinced a lower court to reinstate the employees while a legal battle ensued over whether they were actually fired for engaging in union organizing activities. The coffee chain argued the lower court applied an incorrect standard in evaluating the Board's request, which ultimately made it easier for the workers to be reinstated despite evidence they were fired for valid reasons. Siding with Starbucks, the Supreme Court said courts must use a traditional, more stringent test to review such requests from the NLRB, not the lenient standard pushed by the Board. Here's what you need to know about the June 13 ruling in *Starbucks Corp. v. McKinney*.

6. Trial Court Shouldn't Have Dismissed Suit While Claims Were Arbitrated

When employers implement arbitration programs, they expect employees to file covered claims in arbitration – but employees often file those claims in court anyway. So, when an employee brings a claim to the courthouse that is covered by the arbitration agreement, employers will generally seek to quickly move those claims to the proper forum — arbitration. But the rules can get complicated as claims toggle between arbitration and litigation in court. For instance, can a judge dismiss a

as claims toggle between arbitration and litigation in court. For instance, can a judge dismiss a lawsuit when the court finds that the claims belong in the arbitration setting? Or must the judge merely press pause on the court proceedings while the arbitration is pending? In a May 16 ruling, the Supreme Court decided that a trial court judge was obligated to pause the court proceedings at a party's request while the arbitration played out, but the judge did not have the discretion to dismiss the claim altogether. Here's what you need to know about *Smith v. Spizzirri* and four proactive steps you can take to ensure compliance with the latest arbitration developments.

7. Ruling Makes it Harder for Employers to Defend Against Whistleblower Retaliation Claims

The Supreme Court rejected an employer's argument that a whistleblower needs to show the employer acted with *retaliatory intent* to prove retaliation under the Sarbanes-Oxley Act (SOX), a federal law that protects financial investors. The February 8 decision resolves a disagreement among federal appeals courts and sets a consistent standard of proof in SOX cases. The Justices unanimously held that a whistleblower needs to show that their protected activity (such as reporting or disclosing violations of SEC rules and regulations) was a *contributing factor* in the adverse employment decision. The Court clarified that an employee does not need to prove that the employer had *discriminatory intent* to retaliate. As a result, we expect to see more whistleblower claims make it to a jury trial. Click here for what you need to know about the *Murray* ruling and its impact on employers. You can also click here to learn how the ruling could impact workplace retaliation claims and OSHA whistleblower investigations.

8. Justices Leave Businesses Hanging in ADA Accommodation "Tester" Case

SCOTUS doesn't always resolve the disputes it agrees to hear. After waiting nearly a year for a decision that would have provided businesses with some much-needed clarity (and hopefully some relief), the Supreme Court tossed from its docket a case involving a legal "tester" who "surfed by" business to business and sued over alleged violations of the Americans with Disabilities Act (ADA). A unanimous decision dismissing the case on December 5, 2023, was short and to the point. Justice Barrett wrote that the case was "moot" due to some unusual circumstances with the plaintiff's attorney and therefore dismissed it from the SCOTUS docket. The decision (or lack thereof) in *Acheson Hotels v. Laufer* means that hospitality, retail, and just about any other business with a physical location (and possibly just a website) are still vulnerable to claims from so-called accessibility testers who often file hundreds of ADA lawsuits even though they never plan to patronize the businesses. But we may see this issue before the Supreme Court again in a future term. In the meantime, you can read more about the case here and the four steps your business can take to lessen the risk of facing one of these challenging cases.

4 Cases We're Tracking for Next Term

1. What evidence does an employer need to show to prove it correctly classified employees as exempt from minimum wage and overtime pay?

Employers have the burden to prove they properly classified employees as exempt – and this case focuses on how much proof the employer needs to offer. The Supreme Court announced on June 17 that it will address a disagreement among federal appeals courts in such cases. Employers will want to track this case next term, as the decision will impact your litigation strategy when employees claim they were misclassified and owed wages and overtime premiums. Here are the key points you should note about *E.M.D. Sales Inc. v. Carrera* and five steps you can take now to avoid misclassifying employees under wage and hour laws.

2. Can a retiree sue for discrimination under the ADA over post-employment fringe benefits?

The 11th U.S. Circuit Court of Appeals says no. In *Stanley v. City of Sanford, Fla.*, a former city firefighter with Parkinson's disease took disability retirement after about two decades of service for the city. When her employment began, the city offered free health insurance until age 65 for certain employees who retired because of a qualifying disability. She did not know the city changed the plan a few years later to provide only 24 months of free health insurance. After she retired, she sued the city, claiming the reduction in benefits violated the ADA because it discriminated against her as a retiree with a disability. The 11th Circuit, however, said she could not bring her claim because she was no longer an employee. The ADA protects against discrimination in fringe benefits – which are terms, conditions, or privileges of employment – but the law only gives employees and job applicants the right to sue, not retirees, the appeals court said.

3. Is a cannabis company liable for an employee's failed drug test?

A commercial truck driver who was required to pass periodic drug screens was fired when he tested positive for THC, the psychoactive component in cannabis. The driver, however, claimed that he used an elixir for severe pain that was marketed as containing only CBD, which is a non-psychoactive component in cannabis that is generally legal. In a novel claim, the driver sued the CBD maker, asserting fraud under the Racketeer Influenced and Corrupt Organizations Act (RICO). While RICO is typically invoked to target organized crime, it also allows plaintiffs to bring certain civil cases for fraud and potentially collect triple the damages. The 2nd U.S. Circuit Court of Appeals allowed the driver to bring his claim, but other appeals courts have tossed similar lawsuits seeking monetary damages under RICO for personal injuries. The CBD maker wants the Supreme Court to dismiss the RICO claim, asserting it is merely a "garden-variety products-liability" lawsuit. Businesses in the cannabis industry will want to pay close attention to this case, and employers in general may be curious about how a SCOTUS ruling in *Medical Marijuana, Inc. v. Horn* will impact evolving case law on cannabis.

4. Do workers need to exhaust state administrative remedies before bringing a claim under a federal civil rights law?

In *Williams v. Washington*, Alabama residents who applied for unemployment benefits during the COVID-19 pandemic challenged the way the state handled their claims. The plaintiffs sought to bring claims under a federal civil rights law, 42 U.S.C. Section 1983, which allows people to sue state

claims under a federal civil rights law, 42 U.S.C. Section 1983, which allows people to sue state government officials for violating their civil rights under federal law. They allege that the state's policies, practices, and procedures related to unemployment compensation applications violated the Social Security Act of 1935 and constitutional due process rights. But the Alabama Supreme Court said that state law requires the plaintiffs to first bring their claims to the state's Department of Labor and exhaust all administrative remedies available. According to the Alabama court, SCOTUS precedent saying otherwise applies only to federal courts.

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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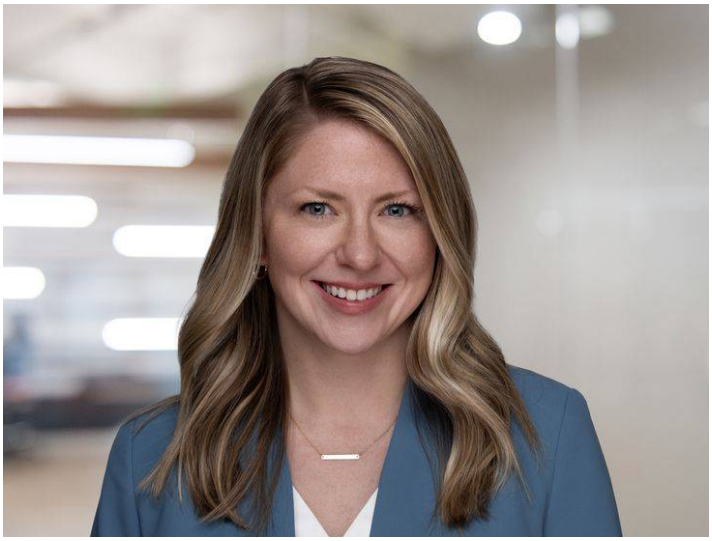

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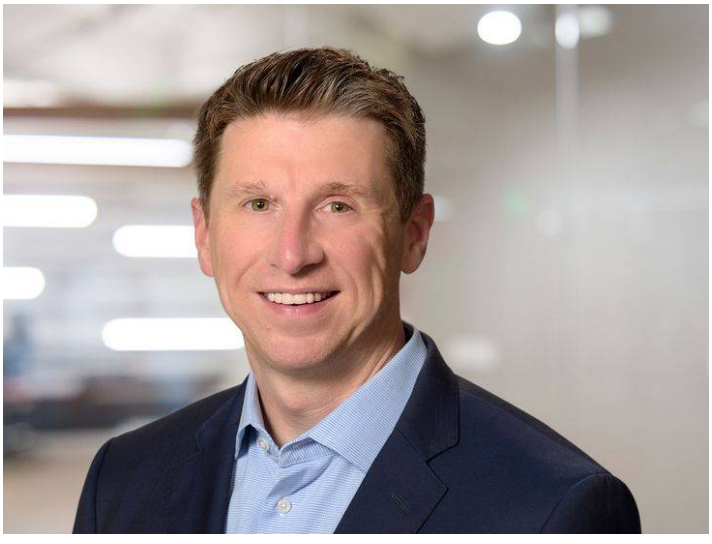

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