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“Employee Briefs”
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Supremes

The Court in a 7 to 1 decision in Meacham v Knolls Atomic Power Laboratories ruled that when older workers are disproportionately affected by employment decisions, the employer bears the burden of showing that there are reasons other than the employee’s age that produced the outcome. The employer in this case offered buyouts to employees, but when the voluntary buyouts did not result in a sufficient reduction of the workforce, the employer laid off 31 additional employees. The employer used a system of evaluating employees to be laid off on the basis of performance, flexibility and critical skills. Thirty of the 31 employees laid off were over the age of 40. The over age 40 employees alleged a violation of the ADEA because of the “disparate impact” on the protected age employees. The Court held that the employer must produce evidence that the measurement factors were based on factors other than age and “persuade” courts of the merit of the evidence. Justice Thomas was the lone dissenter.

The Court held in Chamber of Commerce v Benyn by a 7 to 2 ruling that a California law forbidding employers receiving state money for any purpose from using any part of that money to influence workers during a union organizing campaign was illegal. The court held that this subject was preempted by the Federal NLRA law. Justices Breyer and Ginsburg dissented.

In a 6 to 3 decision in Metropolitan Life Insurance Company v Glenn, the Court held that lower federal courts should consider whether a plaintiff was wrongfully denied disability benefits because of the possible conflict of interest inherent in the same company, Met Life, being both the administrator and the insurer of the disability plan. The insured company in this case was Sears. The Court affirmed the decision by the Sixth Circuit that the insurer had a conflict of interest and had an “abuse of discretion” in denying the disability claim because it failed to consider some evidence that was favorable to the claimant.

In CBOCS West Inc v Humphries, the Court held that an 1866 civil rights law which did not mention retaliation should be interpreted to include retaliation for claims of racial discrimination. Section 1981 of that law gives to each person “. . . the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens . . .” This decision gives employees the right to sue for retaliation with or without a separate claim of a violation of Title VII of the 1964 Civil Rights Act. Justices Scalia and Thomas dissented. One of the issues in this case was whether the employee, who was employed by Cracker Barrel, was retaliated against not because he filed a complaint about discrimination of himself, but because he complained of racial discrimination of a co-worker.

The Court agreed to hear whether a provision in a collective bargaining agreement waiving the right of an employee represented by the union to sue because of ADEA violations was enforceable. 14 Penn Plaza LLC v Ayett. The Second Circuit had held that “mandatory arbitration clauses in collective bargaining agreements are unenforceable to the extent that they waive the rights of employees to have a court decide whether a federal statute has been violated.

The Court declined to review a Mississippi court ruling that common law tort claims arising out of an alleged sexual assault are unsuitable for arbitration under the Federal Arbitration Act. Captain P’s LLC v Smith.

Settlements and Awards

The EEOC reached a \$1.5 million settlement on charges that black employees were subject to harassment and retaliation after they complained of the harassment. Six black employees will share \$1.3 million and similarly situated employees will share \$200,000. In this case, after the complaint was filed by the employees the employer did not investigate and took no steps to end the harassment. EEOC v Washington Group Intl. Inc.

A jury in Massachusetts found that the city of Cambridge retaliated against a long time employee after she filed a complaint and ultimately fired the complaining employee. The jury awarded \$1 million in compensatory damages and \$3.5 million in punitive damages. With attorney fees, the total award comes to \$6 million. The employee initially filed a lawsuit against the city alleging racial discrimination. She was stripped of all responsibilities and the city manager gave her, for the first time in her 8 year history, unfavorable performance reviews which resulted in her termination.

Hostile Work Environment

The First Circuit in Billings v Town of Grafton held that a sexually hostile work environment can exist even if the alleged harasser makes no sexual comments or suggestions and has no intent to harass. In this case, the town administrator continually stared at the breasts of his secretary and other female employees. When the employee and other employees complained, the town investigated and found no violation of its sexual harassment guidelines. A Federal District Court granted a motion for summary judgment filed by the town, but the Circuit Court reversed the District Court. The Circuit Court held that a sexually hostile work environment did not require “a particular kind of conduct such as touching, sexual advances or sexual comments about her or to her.”

The Eleventh Circuit held in Reeves v C.H. Robinson World Wide that the plaintiff’s daily exposure to offensive language by other workers not directed to her and the playing of a sexually suggestive radio show, the Howard Stern show, constituted a hostile work environment. Over a three year period, the plaintiff complained many times, but the employer did nothing to correct the situation complained of by the plaintiff. The decision by the Circuit Court reversed a District Court which had granted a motion for summary judgment to the employer.

Pregnancy

The Third Circuit, in a case of first impression, ruled in DDE v C.A.R.S.Protection Plus, Inc. that a woman who elected to have an abortion is covered by the protection specified for pregnant women in the Pregnancy Discrimination Act (PDA). The PDA prohibits discrimination “on the basis of childbirth or related medical conditions.” The Third Circuit became the first circuit court to find that “related medical conditions” included women who opt to have an abortion. In this case the employee took time off and told her employer that the reason for her absence was to have an abortion. She was terminated for “job abandonment.” The District Court granted the employer’s motion for summary judgment. The Third Circuit reversed. The court explained that to show a violation of the PDA the employee must initially show that there is a prima facie case by: 1. she was pregnant; 2. she was qualified for the job; 3. she suffered an adverse employment action’ and 4. there is some nexus between her pregnancy and the adverse employment action. Once the prima facie case is proven the burden shifts back to the employer to articulate a legitimate nondiscriminatory reason for the adverse job action. The burden then shifts to the employee to show that the articulated reason was pretextual. This is the same burden shifting process used in Title VII cases.

Retaliation

In Mickey v Zeidlers Tool and Die Company the Sixth Circuit ruled that an employee failed to establish a prima facie case when he alleged that the employer discriminated against him because of his age, but

could proceed to trial on his claim of retaliation because he was terminated almost immediately following the filing of his complaint with the EEOC. The employee was unable to show that he was replaced by a younger worker. Indeed, his duties were split between two older workers. As is increasingly often the case, had the employer not retaliated against the employee there would have been no case.

Accommodation

In EEOC v Fed Ex the Fourth Circuit affirmed a jury award of \$100,000 in punitive damages to a deaf employee working for the employer at an airport. The jury found a failure to accommodate by the employer's denial of the employee's request that written training materials be distributed during training sessions about safety. The fact that the employer had an ADA compliance policy and a grievance procedure did not protect the employer because it did not comply with its own policy.

First European – United States Union

A British union called Unite the Union, representing 2 million workers, recently merged with the United States based United Steelworkers Union. The new union, Workers Uniting, will focus on private equity acquisitions in both countries. Both unions will maintain their individual identities, but will work to meld their activities and organizations. The new union will have a joint steering committee and an executive director to coordinate trans-Atlantic activities, although each union will continue to have its own president at least for a few years.

Unite the Union was formed last year when two of Britain's largest unions, Amicus and the Transport and General Workers Union, merged, creating an organization with two million members and workers in more than a dozen industries.

Leaders of Unite the Union and the United Steelworkers, who signed the merger agreement at the Steelworkers' convention in Las Vegas in July, made it clear they hoped that other unions would merge with them to form a larger, more powerful organization.

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