

Supreme Court Rules for Plaintiffs in Two Employment-Related Cases

On May 24, 2010, the Supreme Court issued decisions for plaintiffs in two separate cases, one under Title VII and the other under ERISA. These rulings will impact both employers and administrators of benefit plans.

In *Lewis v. City of Chicago*, No. 08-974 (May 24, 2010), the Court unanimously ruled in favor of African-American firefighter applicants who alleged race discrimination under Title VII. The Court held that disparate-impact plaintiffs who failed to file a timely EEOC charge challenging the adoption of a practice may still bring a claim based on a timely charge challenging the employer's later application of that practice.

The case arose out of a 1995 written examination administered to candidates for firefighter positions in Chicago. Candidates who scored between 65 and 88 out of a possible 100 points were designated as "qualified" and informed that while their names would be kept on an eligibility list, it was unlikely they would be hired. Candidates who scored 89 and above were classified as "well qualified" and the City of Chicago selected several classes of firefighters from that group. Beginning in March 1997, a group of African-American applicants who had scored in the "qualified" range but were not hired filed EEOC complaints and subsequently brought suit. They alleged that the City's employment practice of selecting only applicants who scored 89 or above had a discriminatory disparate impact on African-American applicants.

Although the applicants prevailed in the district court, the Seventh Circuit reversed, holding that they had failed to file a timely EEOC charge within 300 days of the discriminatory act, as required by Title VII. The Seventh Circuit found that the classification of test-takers into "well qualified" and "qualified" was the sole discriminatory act, and the later hiring of only "well qualified" test-takers was simply an automatic consequence of that act rather than a fresh act of discrimination.

The Supreme Court reversed the Seventh Circuit, concluding that in a Title VII disparate-impact case, the term "unlawful employment practice" can include not only the adoption of a discriminatory practice, but also the later application of that practice, as long as the claimant properly alleges each of the elements of a disparate-impact claim. Here, the applicants alleged that the City's policy of selecting only applicants who scored 89 or above was an unlawful employment practice, that the practice was used each time the City filled a new class of firefighters based on the examination results, and that a racially disparate impact resulted.

The Court agreed that the applicants stated a cognizable claim, and noted that although Title VII requires a "present violation" within the limitations period, disparate-impact plaintiffs, unlike disparate-treatment plaintiffs, need not demonstrate that the employer acted with discriminatory intent within the period. Although the Court acknowledged the City's concern that a ruling in favor of the applicants would subject employers to disparate-impact suits based on practices they had used regularly for years without challenge, the Court nevertheless found that this was a problem for Congress rather than for the courts. The Court remanded the applicants' claim to the Seventh Circuit for further proceedings.

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In *Hardt v. Reliance Standard Life Ins. Co.*, No. 09-448 (May 24, 2010), the Supreme Court held that in most ERISA cases, attorney's fees may be properly awarded to a party who achieved "some degree of success on the merits," even if that party did not qualify as a "prevailing party" as the term is used in similar statutes.

Bridget Hardt sued Reliance Standard, her employer's disability insurance carrier, alleging that Reliance violated ERISA by wrongfully denying her benefits. After considering the evidence, the district court declined to grant summary judgment for either party, but nevertheless found Hardt had presented "compelling evidence" that she was totally disabled. As a result, the district court remanded the claim to Reliance with instructions to review the evidence and act on Hardt's application within 30 days, or else the court would enter judgment for Hardt. Reliance then granted Hardt benefits, and Hardt moved for attorney's fees under 29 U.S.C. § 1132(g)(1), an ERISA fee-shifting provision which states that "the court in its discretion may allow a reasonable attorney's fee and costs of action to either party." The district court found that Hardt was a "prevailing party" entitled to attorney's fees, but the Fourth Circuit reversed, holding that the district court's remand did not require Reliance to award benefits to Hardt and, therefore, Hardt did not qualify as a "prevailing party" under

previous case law which limited that term to parties who obtained an "enforceable judgment on the merits" or a "court-ordered consent decree."

In a nearly unanimous decision written by Justice Thomas, the Supreme Court reversed and reinstated Hardt's attorney's fee award, holding that a party in an ERISA case need not attain "prevailing party" status in order to be eligible for a fee award under § 1132(g)(1). The Court reasoned that § 1132(g)(1) does not include the term "prevailing party" and specifically permits a fee award to either party. This contrasts sharply with another section of ERISA, § 1132(g)(2), which provides that in suits seeking to recover delinquent employer contributions, fees are limited to plaintiffs who obtain "a judgment in favor of the plan." In the Court's view, this distinction demonstrated that Congress knew how to impose express limits on fee awards.

The Court then considered the proper standard for district courts to apply in exercising their discretion to award fees under § 1132(g)(1), and held that § 1132(g)(1) parties may properly be awarded fees where they achieve "some degree of success on the merits," rather than merely "trivial success on the merits" or a "purely procedural victory." Applying this standard, the Court ruled that Hardt had indeed achieved some success on the merits and, therefore, reinstated her fee award.

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