WINSTON & STRAWN LLP

CLIENT ALERT

U.S. Supreme Court: Labor & Employment Outlook for 2014-2015 Term

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The United States Supreme Court has granted certiorari in five cases involving labor and employment issues, including cases arising under the Fair Labor Standards Act, the Labor Management Relations Act (LMRA), Title VII of the Civil Rights Act's (Title VII), and the Pregnancy Discrimination Act (PDA). A brief summary of the labor and employment issues presented to the Supreme Court this term follows below.

Integrity Staffing Solutions v. Busk, Argued on October 8, 2014

The FLSA provides that an employer does not need to compensate employees for "activities which are preliminary or postliminary" to their principal activities. 29 U.S.C. § 254(a)(2). Further, the Supreme Court has previously explained that compensation is required only for tasks that are an "integral and indispensable part of the principal activities for which covered workmen are employed." In *Integrity Staffing Solutions v. Busk*, the Supreme Court will resolve a circuit split and decide whether time spent going through security is compensable under the FLSA as amended by the Portal-to-Portal Act of 1947. Plaintiffs represent a class of current and former employees working in two third-party-owned warehouses staffed by Integrity Staffing Solutions. According to plaintiffs, Integrity employees are required to spend up to 25 minutes in security clearance when leaving the warehouse. They claim this time is necessary to the employer's goal of minimizing shrinkage, therefore, Integrity unlawfully failed to compensate plaintiffs for this integral and indispensable "postliminary" activity.

The district court dismissed the claims finding that plaintiffs were not entitled to compensation under the FLSA because time spent walking through a security screening was not "integral and indispensable" to the principal activities of "fulfilling online purchase orders." The Ninth Circuit disagreed and reversed, agreeing with plaintiffs that time spent in security may have been "integral and indispensable" to the employer, and thus, the district court should have applied that standard instead of adopting a blanket rule that security clearances are non-compensable. In contrast, the Second and Eleventh Circuits have both ruled that time spent in security screenings is not "integral and indispensable" to employees' principal job activities.

M&G Polymers USA, LLC v. Tackett, Scheduled for argument on November 11, 2014

In *M&G Polymers USA, LLC v. Tackett*, the Supreme Court will resolve a circuit split involving the proper construction of collective bargaining agreements under the LMRA. Specifically, the Court will consider whether when construing labor agreements, courts should presume that silence concerning the duration of retiree healthcare benefits means the parties intended those benefits to vest (and therefore continue indefinitely), as the Sixth Circuit has held; or should require a clear statement that healthcare benefits are intended to survive the termination of the collective bargaining agreement, as the Third Circuit has ruled; or should require at least some language in the agreement that can reasonably support an interpretation that healthcare benefits should continue indefinitely, as the Second and Seventh Circuits have held.

The named plaintiffs and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union represent a class of retirees that worked at M&G Polymers' Apple Grove, West Virginia Point Pleasant Polyester Plant and their dependents. In 2006, the company announced the retirees would begin making contributions to their healthcare coverage. Plaintiffs filed suit in Ohio seeking an injunction against the required contributions, arguing that their rights to cost-free benefits vested when they retired. The benefits at issue were outlined in a master collective bargaining agreement (CBA) negotiated by the union and M&G. The CBA was then adopted, with or without modifications, at various union represented plants. M&G argued that certain side letters and cap letters modified the agreement for the Apple Grove plant. After a bench trial, the district court conclude the cap letters and side letters did not apply to the CBA and that language in the master agreement evidenced an intent to vest lifetime retiree healthcare benefits despite the fact that the agreement was silent on the duration of the benefit. The Sixth Circuit affirmed. The Supreme Court will now consider and resolve the circuit split. Winston & Strawn filed an amicus brief in this case on behalf of the Chamber of Commerce of the United States.

Mach Mining, LLC v. EEOC, Argument date not yet scheduled

The Supreme Court will decide whether Title VII of the Civil Rights Act's (Title VII) instruction to the Equal Employment Opportunity Commission (EEOC) to attempt to conciliate with an alleged offender before pursuing litigation creates an affirmative defense. Title VII states, in relevant part, that "the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion." 42 U.S.C. §2000e-5(b).

Mach Mining owns and operates a coal mine in Johnston City, Ill. In early 2008, an applicant filed a charge of discrimination, claiming that Mach Mining had refused to hire her numerous times because of her gender. EEOC investigated the charge and determined there was reasonable cause to believe that Mach Mining had discriminated against a class of female applicants applying to the Johnston City mine. EEOC then began the informal conciliation process, but in September 2011, determined that further efforts would be futile. Accordingly, the agency filed a complaint in the Southern District of Illinois, alleging that since 2006, Mach Mining had discriminated against female applicants. Mach Mining answered, denying discrimination and asserting as an affirmative defense that EEOC did not attempt to conciliate in good faith as required by Title VII. EEOC moved for for summary judgment on this affirmative defense, arguing that its conciliation process is not subject to judicial review. The district court denied the partial motion for summary judgment, but granted an interlocutory appeal on this issue. The Seventh Circuit reversed the denial of summary judgment, holding in pertinent part that litigating the EEOC's good faith efforts at conciliation would provide a means for employers to avoid liability for discrimination. The Supreme Court granted Mach Mining's petition for certiorari on this issue.

Young v. United Parcel Service, Inc., Scheduled for argument on December 3, 2014

The PDA amended Title VII to include discrimination on the basis of pregnancy, childbirth, or any related medical conditions as a form of unlawful sex discrimination. The PDA requires employers to treat pregnant employees the same "as other persons not so affected but similar in their ability or inability to work." 42 U.S.C. §2000e(k). In *Young v. United Parcel Service, Inc.*, the Supreme Court will clarify whether the PDA requires an employer to accommodate a pregnant employee to the same extent as would be required with an employee with similar limitations caused by a disability.

In 2006, plaintiff, Peggy Young, a driver for United Parcel Service, Inc. (UPS), became pregnant and notified UPS that, per her doctor's instructions, she was not to lift more than 20 pounds during her pregnancy. One of the essential elements of her position, however, was lifting up to 70 pounds. Young requested an "light duty" accommodation or alternatively, for assistance with her route, but UPS informed Young that she would not be accommodated because she was not injured on the job or suffering from a disability as defined under the Americans with Disabilities Act (ADA). Thus, Young was required to take an extended medical leave for the duration of her pregnancy, and as a result, she lost her medical coverage. Young filed suit in the District of Maryland, claiming that UPS was required to accommodate her as they would have accommodated a similarly limited disabled employee. UPS moved for summary judgment, arguing that Young did not establish a *prima facie* case of sex discrimination under the PDA, nor could she show that its refusal to grant her an accommodation was based on her pregnancy. The district court granted UPS's motion for summary judgment, and the Fourth Circuit affirmed on the grounds that that pregnancy is not a disability under the ADA and that Young had presented neither direct or circumstantial evidence of pregnancy discrimination.

EEOC v. Abercrombie & Fitch Stores, Inc., Argument date not yet scheduled

Title VII prohibits employment discrimination on the basis religion. It also requires employers to "reasonably accommodate" religious practices to the extent that they do not cause "undue hardship on the conduct of the employer's business." 42 U.S.C. §2000e(j). In *EEOC v. Abercrombie & Fitch Stores, Inc.*, the Supreme Court will determine when an employer is "on notice" of an employees' religious beliefs, triggering a duty of accommodation.

Samantha Elauf applied to an Abercrombie Kids store in Tulsa, Okla. Elauf wore a hijab (head scarf) to the interview after allegedly discussing the store's dress code with a friend who worked at the store. Although Elauf scored well on the interview, she claims she was ultimately not hired because her head scarf conflicted with the company's dress code. Elauf filed a charge of religious discrimination, and EEOC brought suit on Elauf's behalf in the Northern District of Oklahoma. Specifically, EEOC alleged that Abercrombie violated Title VII's religious accommodation requirement by failing to hire Elauf because she wore a hijab. Both EEOC and Abercrombie filed motions for partial summary judgment on liability issues. The district court granted EEOC's motion, and denied Abercrombie's, finding that Elauf had a bona fide, sincerely held religious belief that conflicted with Abercrombie's dress code, and that Elauf wore her hijab because it was required by her religion. The district court further held that Abercrombie was on notice that she wore a hijab because of her religious belief. The Tenth Circuit reversed, ruling that Elauf never informed Abercrombie that she wore her hijab for religious reasons or that she would need an accommodation. According to the Tenth Circuit, because religious beliefs are personal, it was incumbent upon Elauf to inform Abercrombie that she wore the hijab for religious reasons and of her need for an accommodation to trigger the duty to accommodate. The Supreme Court granted EEOC's petition for certiorari.

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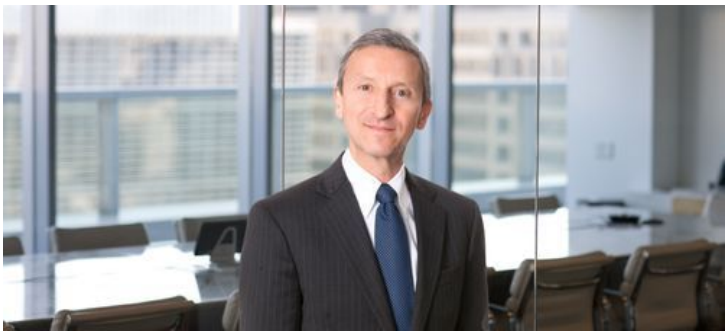

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