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High Court Update: Recent US Supreme Court Rulings Employers Should Know About

Labor & Employment Workforce Watch

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Thus far, 2024 has been a whirlwind of new employment rules, statutes, guidance, and decisions for employers to grapple with and account for in their businesses. Among these decisions are a handful of rulings from the Supreme Court of the United States that will have important impacts on the workplace.

***Muldrow v. City of St. Louis* – Lower Standard for Title VII Discrimination Claims**

To prevail on a claim of unlawful employment discrimination, a plaintiff must establish that the employer took an "adverse employment action" because of the employee's protected class. In *Muldrow v. City of St. Louis, Missouri*, the Supreme Court clarified the "adverse action" standard in order for a plaintiff to prevail under Title VII, resolving a circuit court split on the standard of harm.

Muldrow, a sergeant with the St. Louis Police Department, filed suit alleging that she was involuntarily transferred from her position in the Intelligence Division to a patrol position because of her sex. Although her rank and pay remained the same in the new position, her responsibilities, perks, and schedule did not. The Eighth Circuit ruled against Muldrow – finding that she failed to show the transfer caused her "*materially significant disadvantage*" because it "did not result in a diminution to her title, salary, or benefits" and had caused only "*minor changes*" in her working conditions.

The Supreme Court reversed the Eighth Circuit, unanimously rejecting the heightened legal standard of "significant harm." The Court noted that the express language of Title VII requires the plaintiff only show "some harm" arising from the employment action, which does not need to be "significant" or otherwise "exceed a heightened bar."

***Bissonnette v. LePage Bakeries Park St., LLC* – Arbitration Protection**

The Federal Arbitration Act ("FAA") exempts from its coverage "contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce." The Supreme Court previously ruled that the determination whether an employee was among a "class of workers engaged in foreign or interstate commerce" turned on what the employee did for the employer, not what the employer did generally.

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Nevertheless, lower courts continued to examine whether the employer itself was in the "transportation industry" when deciding whether to apply the exemption for workers engaged in interstate commerce.

In *Bissonnette v. LePage Bakeries Park St., LLC*, the Supreme Court reiterated its prior holding, ruling that a transportation worker need not work in the transportation industry to be exempt from the FAA. The Court held that whether an exemption applies to a class of employees should focus on "what [the employees] do, not for whom they do it."

Notably, the *Bissonnette* decision left several unanswered questions. For example, the Supreme Court did not answer what it means to be "engaged in foreign or interstate commerce." The Fifth and Ninth Circuits disagree as to whether the exemption applies to workers moving packages between two locations within the same state that once traveled across state lines. Nor did the Supreme Court address whether the Petitioners in *Bissonnette* qualified as transportation workers based on the work they performed. The Supreme Court remanded the case for further consideration consistent with its decision.

***Murray v. UBS Securities, LLC* – Whistleblower Retaliation Without Retaliatory Intent**

Section 1514A of the Sarbanes-Oxley Act prohibits publicly traded companies from discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against an employee in their terms and conditions of employment because the employee has engaged in protected whistleblower activity. One undecided question has been whether this provision required a whistleblower to prove that the employer committed the adverse employment action with a "retaliatory intent."

The Supreme Court resolved this question in *Murray v. UBS Securities, LLC*, unanimously ruling that whistleblowers must prove that their protected activity was a contributing factor in the employment decision, but need not prove that their employer acted with "retaliatory intent."

Takeaways for Employers

Though the impact of these decisions will vary from workplace to workplace, some key takeaways are apparent:

- Claims of discrimination can proceed without a showing of "significant harm." This is noteworthy in at least two ways. First, employers must review the criteria they are considering when making various benefits available to employees, even if such benefits could be viewed as immaterial or of minimal consequence to the employees. Second, *Muldrow* emphasizes the importance of making sure decisions affecting employees' terms and conditions of employment, however slight, are grounded in legitimate business concerns, as opposed to protected characteristics. With the Court's decision in *Muldrow*, it is reasonable to expect an increase in claims of discrimination as to matters that historically might have been deemed too slight to warrant judicial review. For more on *Muldrow*, see here.
- If your business relies on arbitration agreements, review and update them often. As *Bissonnette* makes clear, employees motivated to avoid arbitration provisions will conceive of novel and unique ways to do so. In addition, efforts on the state and federal level to narrow the reach of the FAA and its state corollaries are ongoing. For example, on May 9, 2024, the Senate Judiciary Committee advanced legislation to invalidate pre-dispute arbitration clauses as applied to age discrimination cases. Though generally the FAA continues to evince a strong policy in favor of arbitration, it is important that employers who utilize arbitration as a dispute resolution mechanism take care to ensure they get what they bargain for.
- Reasonable reporting, investigation, and disciplinary procedures are important risk mitigation strategies. Though

the *Murray* case was decided in the public company context, its message is equally applicable to all employers – big and small, public or private. Robust reporting procedures, which are well communicated to employees, can reduce the possibility that complaints go unaddressed. Effective investigations in response to employee complaints and appropriate disciplinary action are strong counter-measures to not only address discrimination complaints, but also manage complaints of retaliation before they materialize.

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