

## HRAGC LEGAL UPDATE

OCTOBER 17, 2024

### FEDERAL

#### United States Supreme Court

The new term of the Supreme Court is underway and several cases are on the docket that will be of interest to employers.

**FLSA Exemptions.** In this case the Court will decide which burden of proof applies to determine if an employee is properly classified as exempt: the preponderance of the evidence standard or the clear and convincing standard (which is harder to meet). The employer has appealed from the entry of judgment for employees who sued claiming they worked 60 hours per week and were not paid overtime. The employer classified them as exempt outside salespersons, but the Court found they were not properly classified. The case is *E.M.D. Sales v. Carrera*, an appeal from the Fourth Circuit Court of Appeals, and will be argued November 5.

**Title VII.** In this case a heterosexual woman filed suit against the State of Ohio claiming she was denied a promotion and then demoted based on her sexual orientation and in order for a gay man and a gay woman to be hired for the positions. The Court granted summary judgment for the state, finding that plaintiff lacked evidence of “background circumstances” necessary to show a prima facie case of discrimination on her sexual orientation claim, and that she failed to show evidence of pretext on her sex-discrimination claim. The Sixth Circuit Court of Appeals affirmed and she appealed to the Supreme Court. The Court is asked to decide whether there is a different burden of proof for a plaintiff in a majority group who brings sexual orientation and sex discrimination claims. The case is *Ames v. Ohio Department of Youth Services*.

**ADA.** In this case a firefighter retired due to a disability after a lengthy career and was collecting retirement benefits, including a health insurance benefit. She was unaware the City had changed its plan years earlier and capped the health benefit. She filed suit alleging ADA and other violations, but her claim was dismissed because she did not hold and was not actively seeking employment with the City. The Eleventh Circuit Court of Appeals affirmed. The case is *Stanley v. City of Sanford, Florida*.

**Attorney’s Fees.** In this case the Court is asked to decide how to determine who is a “prevailing party” under a statute allowing the prevailing party to recover attorney’s fees. A party succeeded in obtaining a preliminary injunction based on a reasonable likelihood of success and claims that is enough to be deemed the prevailing party. The case did not conclude on the merits because the state repealed the law at issue. While not an employment case this may well impact how attorney’s fees issues are determined in cases under federal statutes that award fees to the prevailing party. The case is *Lackey v. Stinnie* and was argued last week.

**Civil Rights.** In this case, individuals seeking unemployment benefits sued the State of Alabama under federal civil rights law (Section 1983) for how the state handled their claims. The Alabama Supreme Court dismissed, finding they had to exhaust their administrative rights before filing suit, which they had not done. One question on appeal is whether federal precedent to the contrary is limited to federal courts. The case is *Williams v. Washington* and was argued last week.

**RICO.** A truck driver who failed a random drug test due to the presence of THC, sued the company that sold a pain reliever it advertised as only containing CBD. He filed claims under RICO and for fraud. The Second Circuit Court of Appeals permitted the case to go forward and the manufacturer appealed. While not involving the employer, how the Court decides this case may be of interest to employers. The case is *Medical Marijuana, Inc. v. Horn* and was argued this week.

## NEW HAMPSHIRE LEGISLATION

### Proposed Legislation

There was an early filing period for Legislative Service Requests (LSRs), which are requests for legislation to be drafted. After the election there will be a short window for House members to file LSRs and the Senate filing period opens in December. No text is available at this time, only the descriptions are published. Most, but not all, LSRs will make it into bills.

At this point, there are several LSRs that could impact employers, including the following:

- Requiring businesses to use E-Verify
- Condemning the judicial doctrine of disparate impact
- Dissolving the Governor's council on diversity and inclusion, the DHHS office of health equity and the DES functions for civil rights and environmental justice

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