

# THE DAILY RECORDER

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## United States Supreme Court Employment Law Decisions 2007-2008

By Jennifer Brown Shaw

The United States Supreme Court decided several significant employment law cases during the 2007 Term. The Court's opinions ranged from the validity of administrative charges filed with the Equal Employment Opportunity Commission, to the scope of the Age Discrimination in Employment Act, as well as to anti-retaliation provisions. There currently are four cases on the docket for next Term, each of which is summarized below. (The Court may add more cases to the docket as the new Term approaches in October 2007).

### Cases Decided (in Chronological Order)

#### LaRue v. DeWolff, Boberg & Associates, Inc. (Feb. 20, 2008)

The Court decided that an individual pension plan participant could sue the plan administrator under ERISA for breach of fiduciary duty resulting in a loss to the employee's retirement funds. The Fourth Circuit had held that only the plan, and not individual employees, could sue plan administrators for breach of the fiduciary duty owed to ERISA pension plans and their participants.

#### Preston v. Ferrer (Feb. 20, 2008)

The Court decided the Federal Arbitration Act preempts California's Talent Agencies Act (TAA) to the extent the TAA granted exclusive jurisdiction to the Labor Commissioner to decide the validity of a contract between an actor and his talent agent. The case arose from a dispute between television personality "Judge Alex" and his attorney. The contract between the parties required arbitration, but the attorney argued that the Labor Commissioner's jurisdiction trumped the arbitration clause.

#### Sprint/United Management Company v. Mendelsohn (Feb. 26, 2008)

The Court decided "me-too" evidence of discrimination is admissible at trial, but that the district court has discretion regarding whether to admit such evidence. Ellen Mendelsohn sued her former employer Sprint/United Management Company (Sprint), alleging Sprint unlawfully discriminated against her on the basis of her age in violation of the Age Discrimination in Employment Act (ADEA). Mendelsohn alleged she was selected for termination because of her age during a company-wide reduction in force. A jury decided the case in favor of Sprint.

Mendelsohn argued on appeal that she should have been able to introduce evidence of discrimination against other employees, sometimes known as "me-too" evidence. The Supreme Court held that whether to admit such evidence is within the trial court's discretion.

#### Federal Express Corporation v. Holowecki (Feb. 27, 2008)

Patricia Kennedy was a FedEx employee. She challenged certain FedEx policies under the ADEA before the Equal Employment Opportunity Commission. She completed an "EEOC Intake Questionnaire," as well as an affidavit detailing her allegations. However, she did not file a formal "charge" on the EEOC's form. The Court, agreeing with the court below and the EEOC's position, held that an employee need not use the EEOC's official form to effectively exhaust the mandatory requirement of filing a charge. It is sufficient that the employee has made a "request for the agency to take remedial action."

#### Hall Street Associates, L.L.C. v. Mattel, Inc. (Mar. 25, 2008)

The Supreme Court invalidated a provision in an arbitration agreement conferring upon courts the right to vacate or modify an arbitration decision when the "arbitrator's conclusions of law are erroneous." Affirming a Ninth Circuit decision, the Supreme Court decided that the Federal Arbitration Act provides the exclusive, limited grounds upon which an arbitration decision can be modified.

#### Gómez-Pérez v. Potter (May 27, 2008)

The Court considered Gomez-Perez's lawsuit under the ADEA. She worked for the Postal Service and claimed management took negative personnel actions against her in retaliation for a prior age discrimination complaint. The Court decided that the ADEA's provisions applicable to federal employees include protection from retaliation.

#### CBOCS West, Inc. v. Humphries (May 27, 2008)

In this case, the Court extended the Reconstruction-Era civil rights laws to cover retaliation claims. 42 U.S.C. § 1981 is a Civil War-era law prohibiting race discrimination in the formation of contracts, including employment relationships. The statute does not mention retaliation claims. Unlike Title VII claims, 42 U.S.C. § 1981 does not require filing a charge with the EEOC. Humphries was a CBOCS employee who claimed the company fired him because of his race and his discrimination complaint against a co-worker. The Court ruled that his § 1981 retaliation claim could proceed even though the statute does not explicitly prohibit retaliation.

Chamber of Commerce v. Brown. (June 19, 2008)

California enacted a law several years ago (AB 1889) prohibiting employers that receive funds from the state from using those funds to promote or deter union organizing. The law affected a large number of employers in California. The Ninth Circuit, sitting en banc, decided that federal labor law, particularly the National Labor Relations Act (NLRA), did not preempt the California statute. The Supreme Court disagreed. The Court held that the NLRA protected employers' right to communicate regarding unionization, and AB 1889 interfered with that right, triggering preemption.

Meacham v. Knolls Atomic Power Laboratory (June 19, 2008)

In this decision, the Court explained that the employer has the burden of proving the affirmative defense of "reasonable factors other than age," asserted in "disparate impact" cases brought under the ADEA. The case arose from layoffs Knolls conducted in connection with a reduction in force. It selected 31 employees for layoff, of whom 30 were age 40 or older. Meacham, one of the employees laid off, claimed that the company's selection criteria had an adverse impact on older workers. The Court decided the employer must prove its decision was not age-based, but rather was predicated on "reasonable factors other than age."

Metropolitan Life Ins. Co. v. Glenn (June 19, 2008)

In another ERISA case, the Court found that the administrator of a long-term disability insurance plan had a conflict of interest when the administrator also paid the disability benefits from its own pocket. Metropolitan Life Insurance Company was the administrator and insurer of Sears, Roebuck & Co.'s long-term disability insurance plan. MetLife both determined who was eligible for benefits, and paid the claims out of its funds.

Glenn, a Sears employee, was denied benefits. She sought review of the

decision under ERISA. The Court's conclusion that there was a conflict of interest affects the determination of which standard of review the district court applies to the review of a plan administrator's act. The Court stopped short of imposing a "de novo" review standard for such cases. Instead, the Court held only that the conflict must be considered as one of the factors affecting the standard of review determination.

Kentucky Retirement Systems v. EEOC (June 19, 2008)

Here, the Court decided that a state disability retirement plan did not violate the ADEA. Kentucky's pension plan provided benefits to employees who became disabled before retirement. The plan added a certain number of years to a participant's service length if the participant became disabled before retirement age. However, once the employee reached 55, the plan no longer added these "imputed" years of service credit.

The EEOC brought suit against Kentucky, arguing that the plan violated ADEA because it failed to impute additional years solely because a participant became disabled only after reaching age 55. The Supreme Court decided that the plan did not violate the ADEA. The Court reasoned that the plan imputed time only so that disabled employees would be treated as if they had worked long enough for a "regular" pension. The purpose of the provision was not to penalize employees of a certain age, but to assist employees who were disabled from working.

Pending Cases

The Court has accepted review of several cases, which will be decided when the 2008 begins in October.

Crawford v. Metropolitan Gov't of Nashville and Davidson Cty.

The Court will determine whether Title VII protects from retaliation those employees who participate in an organization's internal investigations of unlawful discrimination or harassment. Vickie Crawford worked for Metro

Nashville for 30 years in its administrative offices. After several employees complained internally about a manager's conduct, Metro began an investigation, which included interviewing Crawford and other employees. Crawford was later discharged and sued for retaliation.

The Sixth Circuit decided that Crawford's conduct was not protected from retaliation under Title VII, which covers "opposition" to illegal practices and "participation" in proceedings. The court ruled that Crawford's participation in an interview was not "opposition" because she merely responded to an invitation to be interviewed; she had not complained herself. In the court's view, Crawford's interview also was not "participation" because there was no administrative charge pending when the city initiated its investigation.

Kennedy v. Plan Administrator for DuPont Savings and Investment Plan

The Court will decide whether a divorcing spouse may waive her right to benefits under an ERISA retirement plan. The Fifth Circuit decided that Liv Kennedy did not effectively waive her rights because there was no "Qualified Domestic Relations Order" or "QDRO" entered as part of her divorce proceedings.

William Kennedy, a DuPont employee, married and divorced Liv Kennedy. As part of their settlement, Liv Kennedy waived her right to benefits under the Savings Investment Plan. However, DuPont did not recognize the waiver as valid and paid her in accordance with an earlier beneficiary designation form. The court below found that the waiver was invalid under ERISA.

14 Penn Plaza LLC v. Pyett

The Court will decide whether a collective bargaining agreement may contain an arbitration clause waiving an individual employee's right to sue in court under anti-discrimination laws. The Second Circuit ruled that the collective bargaining agreement's waiver was ineffective.

## AT&T Corp. v. Hulteen

The federal Pregnancy Discrimination Act (PDA) was passed in 1978. Before that, were free to deny service credits to employees taking pregnancy leave at rates different from other short-term disabilities. These credits could be important for benefits and other matters depending on length of service. The Court will resolve whether employers

are required to restore service credits calculated before the passage of the PDA. The Ninth Circuit held that employers violated the PDA by not restoring the credits.

### Conclusion

The decisions of the United States Supreme Court often have far-reaching consequences for employers in

California and nationwide. This column will provide analyses of the most significant employment-related cases as they are decided. Employers interested in learning more about workplace law matters may obtain additional information from <http://shawvalenza.com>.

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