The United States Supreme Court is set to decide several important cases affecting employers during its October 2015 Term. Below is a summary of the major labor and employment law cases on the docket.

Arbitration

In DIRECTV v. Imburgia, DIRECTV and a consumer signed an arbitration agreement covered by the Federal Arbitration Act (FAA). The FAA strongly favors enforcing arbitration agreements, but is subject to state-law defenses applicable to contracts. The California Court of Appeal held that the parties’ contract permitted the court to disregard the FAA’s preemption standard based on an ambiguity in the agreement. California contract law includes the principle that ambiguities should be construed against a contract’s drafter (here, DIRECTV). So, the Court of Appeal held that when there is an ambiguous provision allowing state law to control over the FAA, the court must apply the state’s law without respect to whether it would be preempted.

The Supreme Court in this case may decide when a state court’s application of state law is so obviously hostile to the FAA such that a federal court may hold that the state law is preempted. The Court’s decision case could require courts to enforce more arbitration agreements under the FAA.

Government Services v. Zaborowski is another arbitration case coming from California’s arbitration-unfriendly courts. Some California courts have held that when arbitration agreements contain multiple unconscionable provisions, the trial court may void the whole agreement as “permeated” with unconscionability, even though the contract allows illegal provisions to be “severed.” This rule creates tension with the FAA, which mandates courts should uphold and enforce arbitration agreements if possible. The Supreme Court’s decision could result in imposition of some limits on California’s unconscionability jurisprudence, which courts have used to invalidate arbitration agreements under state law.

Class Actions

In Campbell-Ewald Company v. Gomez, the Court is considering the effect of a Federal Rule of Civil Procedure Rule 68 offer of judgment when the offer includes “complete relief.” In this case, the question is whether the offer of complete relief to the individual plaintiff means that plaintiff is no longer eligible to serve as class representative. This case may give employers the ability to settle a case with an individual plaintiff early and gain some leverage against the plaintiff’s counsel in the class action.

Tyson Foods v. Bouaphakeo involves an appeal of one of the rare class action lawsuits that went to trial. The plaintiffs won a $5.8 million verdict. Tyson is arguing that it is improper to certify a class where liability and damages will be determined by statistical method or where hundreds of potential class members suffered no harm. If the Court agrees with Tyson, the decision may make it more difficult for plaintiffs to certify class actions under federal law.

Public Sector

“Agency fees” are intended to represent the fair share of the costs associated with collective bargaining, minus the cost of the union’s political speech and activities. Since the 1970’s public sector employees who are included in a union’s bargaining unit, but who do not wish to finance unions’ political and other non-representation-related activities pay agency fees for the union’s representation services, such as contract bargaining. The theory is forcing public employees to pay for the unions’ political activity violates the First Amendment.

The Court has agreed to revisit whether even requiring public employees to pay agency fees are constitutional. A group of California teachers have challenged their legality in Friedrichs v. California Teachers Association. If the teachers win, it may mean fewer dues and fees for the public unions, weakening them and their political efforts.

Heffernan v. City of Paterson is about a police officer that was demoted.
because of his employer’s (mistaken) belief that the Officer supported a certain political candidate. The Officer filed suit, claiming his employer violated his First Amendment rights, but lost. The Court is going to resolve whether the First Amendment prohibits public employers from disciplining employees for perceived exercise of First Amendment rights, as opposed to the actual exercise of those rights.

Discrimination

Fisher v. University of Texas at Austin is not an employment law case but the decision may reach employers subject to federal affirmative action rules, such as federal contractors. The Court will examine the University’s use of racial preferences in admission decisions in light of recent decisions interpreting the Equal Protection Clause of the 14th Amendment. The Court’s reasoning may be instructive to federal contractors and other seeking to increase diversity in their workforce.

In Green v. Brennan, the Court is expected to decide when the statute of limitations begins running in “constructive discharge” actions (cases in which the plaintiff claims she is forced to resign). In some courts, the clock begins ticking when the employee quits. Other courts say the time begins to run on the date when the employer committed the last illegal act that “forced” the employee to resign. The Court’s decision in this case may bring uniformity.

Affordable Care Act and Benefits Cases

The Court will decide in Montanile v. Bd. of Trustees if an ERISA fiduciary suing to recover overpayments must identify the money sought in the participant’s possession, or if it is sufficient to state only the amount overpaid. This issue frequently arises, for example, when an employer’s medical insurance plan seeks reimbursement of medical benefits paid after a lawsuit settlement is paid to the plan member. If the Court decides the plan cannot seek reimbursement once the employee spends the settlement or commingles the funds within his general assets, it will be very difficult for ERISA plans to recoup these benefits.

The Court will also rule on seven consolidated cases challenging the Affordable Care Act’s religious exemption to the law’s “contraceptive mandate.” Religious entities and businesses argue the current rules meant to accommodate their beliefs infringe on their rights, even after the Hobby Lobby decision last term.

Reprinted by permission of The Daily Recorder.