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Top 15 High Court Employment Rulings Of The Past 15 Years

By **Ben James**

Law360, New York (July 1, 2015, 7:50 PM ET) -- The U.S. Supreme Court has handed down a bevy of opinions in labor and employment cases since 2000, tackling everything from the nuances of discrimination law to class action requirements to the validity of presidential recess appointments and underscoring the significance of workplace law to the American economy.

The healthy crop of decisions "evidences a great interest and focus by the Supreme Court on labor and employment decisions," said Littler Mendelson PC shareholder Ilyse Schuman. "Everyone has employees, so the court itself sees these as having broad application, and in many ways, the statutes themselves are not clear," she said.

Here are 15 labor and employment opinions from the past 15 years that attorneys said reshaped the labor and employment law landscape:

15. University of Texas Southwest Medical Center v. Nassar (2013)

The Supreme Court handed employers a 5-4 win in the Nassar case, determining that a worker bringing a Title VII retaliation claim must show that retaliation was the "but for" cause of an adverse employment action — meaning that the alleged retaliation wouldn't have occurred absent an improper motive on the employer's part.

Lawyers said the Nassar ruling and its endorsement of the tough "but for" standard raised the bar for Title VII retaliation plaintiffs.

Schuman noted that the decision in Nassar contrasted with other high court rulings in retaliation cases that had gone in favor of plaintiffs, and also noted that retaliation claims have surged in recent years.

"Anytime you're talking about the highest court limiting or making retaliation claims more difficult, that's significant because of the proliferation of retaliation-based charges that we're seeing," she said.

14. Vance v. Ball State (2013)

Another 5-4 opinion — issued the same day as Nassar — contained what BakerHostetler partner Dennis Duffy called an "important clarification" in the law. In Vance v. Ball State, the justices defined "supervisor" narrowly when it comes to harassment suits. The distinction is significant because a supervisor's actions can saddle an employer with vicarious liability.

Lawsuits in which an alleged harasser is said to be a supervisor are common, noted Mayer Brown LLP partner Miriam Nemetz.

“It provides what should be a clear standard for deciding who is a supervisor, and that standard will be cited in every case in which supervisory status is in dispute,” Nemetz said.

13. Garcetti v. Ceballos (2006)

This 5-4 holding struck down a win for a Los Angeles County deputy district attorney who claimed he had been retaliated against for writing a memorandum that laid out concerns about an allegedly inaccurate affidavit used to obtain a search warrant in a criminal case and that recommended dismissing that case.

A trial court granted summary judgment to the defendants, but the Ninth Circuit reversed and said the allegations of wrongdoing in the memo were shielded by the First Amendment. The Supreme Court, however, reversed the Ninth Circuit, declaring that public employees who make statements in carrying out their official duties aren't shielded from employer discipline by the First Amendment.

“Garcetti significantly curtailed First Amendment protection for public employees and has produced a baffling array of lower court decisions trying to apply the court’s rule that speech forming part of an employee’s duties will be unprotected. The effect on government whistleblowers has been especially significant,” said University of Virginia School of Law professor Rip Verkerke.

12. Crawford v. Metropolitan Government of Nashville (2009)

Vicky Crawford, who participated in an internal probe initiated by someone else about sexual harassment allegations against a school district employee relations director, reported that he had sexually harassed her. Nothing happened to the alleged harasser, but Crawford was fired, and she filed suit claiming she had been retaliated against.

Crawford lost at the trial court and the Sixth Circuit, but the high court ruled unanimously that Title VII's anti-retaliation protections cover an employee who speaks out against bias in the course of answering questions in an internal investigation.

A Supreme Court decision against Crawford would have had chilling effects on employees' willingness to participate in inquiries into bias claims, said Scott Oswald, managing principal at The Employment Law Group PC.

“This is relevant in the everyday workplace, where employers are conducting investigations all the time,” Oswald said. “Employees can be forthcoming without the fear that they're going to be fired without any recourse.”

11. Circuit City Stores Inc. v. Adams (2001)

This case gave the nation's highest court a chance to affirm a Ninth Circuit ruling that said all employment contracts are beyond the reach of the Federal Arbitration Act, which calls for judicial enforcement of a wide range of arbitration pacts. But the Supreme Court reversed, 5-4, holding that only transportation workers were exempt.

The ruling set the stage for the high court to rule 10 years later, in AT&T v. Concepcion, that the FAA preempts state laws that invalidate class action arbitration waivers. Though not an employment case, Concepcion has been embraced by management-side lawyers as a green light for class waivers in employee arbitration agreements.

“If it had gone the other way,” Mayer Brown partner Marcia Goodman said of the Circuit City ruling, “employers wouldn't have been in a position to take advantage of the AT&T case, which led to the ability of employers to insist on arbitration of employment disputes, including wage and hour disputes.”

10. Staub v. Procter Hospital (2011)

This 6-3 decision in a Uniformed Services Employment and Re-employment Rights Act case dealt with the standard for “cat's paw” employment discrimination claims. Army reservist Staub claimed that a human resources executive who fired him was had been influenced by his direct supervisors, who had openly expressed an anti-military sentiment.

Justice Antonin Scalia's majority opinion reversed a Seventh Circuit opinion in the hospital's favor and found that if an action by a biased supervisor is the proximate cause of a worker's termination, then that employer can be held liable.

The Seventh Circuit had held that a cat's paw case couldn't succeed unless the person with the alleged animus exercised “singular influence” over the decision maker so that the termination decision amounted to “blind reliance.”

“Had it gone the other way, we would have seen a whole host of efforts to attempt to insulate discriminators, retaliators and employers from any kind of liability even though they may have played an integral role in setting the ball in motion toward the adverse employment action,” Oswald said of the Staub case.

9. Cigna Corp. v. Amara (2011)

This 8-0 high court decision held that a district court's order for Cigna to reform a new cash benefit plan and pay benefits accordingly wasn't authorized by the section of the Employee Retirement Income Security Act — Section 502(a)(1)(B) — that the trial court invoked.

But six of the justices went a step further and said Section 502(a)(3) of the act does authorize forms of relief similar to what the district court entered. The opinion goes on to direct the lower court to revisit its findings on what constituted an appropriate remedy for the ERISA violations it found.

“It really reset the idea of what remedies are available under ERISA,” Thompson Hine LLP partner Tim McDonald said of the high court's ruling. “If you have claims that seek 'other appropriate equitable relief' under Section 502(a)(3) of ERISA, that's a case everybody cites.”

8. Ledbetter v. Goodyear Tire & Rubber Co. (2007)

This 5-4 decision shooting down a Title VII pay discrimination case brought by a longtime worker at a Goodyear plant in Alabama spurred Congress to take action and pass the Lilly Ledbetter Fair Pay Act of 2009, the first bill President Barack Obama signed into law.

The high court held Ledbetter's pay bias claim was untimely, despite Ledbetter's argument that the statutory limitations period for bringing such a claim restarted each time a worker gets a check based on a discriminatory decision.

Justice Ruth Bader Ginsburg's dissent called on Congress to correct the majority's “parsimonious reading” of Title VII, and legislators took heed, declaring that the 180-day filing deadline applied to Ledbetter's claim starts anew with each discriminatory paycheck.

7. Toyota Motor Manufacturing v. Williams (2002)

This unanimous ruling against a worker who claimed be be disabled due to carpal tunnel syndrome and related ailments helped lead to the passage of the Americans with Disabilities Act Amendments Act of 2008.

Lawmakers specifically referred to the 2002 Toyota decision, saying it and other rulings had “narrowed the broad scope of protection intended to be afforded by the ADA” and resulted in lower courts holding incorrectly that individuals didn't have disabilities.

“Any case that causes the Congress to put that case's name on a statute has to be in the top 15,” Duffy said.

6. Smith v. City of Jackson, Miss. (2005)

In this age bias case, the Supreme Court upheld, 8-0, a victory for Jackson and a loss for older police officers. But a five-justice bloc made clear that disparate impact claims can be brought under the Age Discrimination in Employment Act, even though the plaintiffs had not laid out a valid disparate impact claim in the case at hand.

The high court's green light for unintentional bias claims under the ADEA marked a significant development that puts the case among the top 10 employment rulings from the last 15 years, according to Thompson Hines' McDonald.

“That had been in dispute for roughly 20 years,” McDonald said of whether disparate impact claims were available to ADEA plaintiffs.

5. Burlington Northern v. White (2006)

The unanimous opinion upholding a win for Sheila White — who sued Burlington Northern, claiming that a change in her job responsibilities and a 37-day suspension violated Title VII's anti-retaliation provision — endorsed a broad take on what actions could qualify as unlawful retaliation.

Both a reassignment of duties and an indefinite suspension without pay could be retaliation, the high court said, concluding that Title VII's proscription on retaliation covered anything that “could well dissuade a reasonable worker from making or supporting a charge of discrimination.”

Prior to the Burlington Northern decision, the Sixth Circuit had said that plaintiffs like White had to show a materially adverse change in their terms and conditions of employment, while the other circuits employed an “ultimate decision standard” that circumscribed actionable retaliation to things like hiring, discharging, promoting, compensating and granting leave, the Supreme Court's opinion explained.

“Most employers that have the inclination to retaliate do so in a much more subtle way,” said Oswald, who represents workers.

4. Reeves v. Sanderson Plumbing (2000)

For Oswald, the unanimous Reeves opinion stood out as the most important Supreme Court decision in the employment arena since 2000 because it bolsters plaintiffs' prospects for surviving bids to have their cases thrown out and making it through to trial.

A jury sided with Reeves, who brought an ADEA case, but the Fifth Circuit said he hadn't offered enough evidence to show he was fired because of his age. The Supreme Court reversed the Fifth Circuit and said that a prima facie case of discrimination, along with sufficient evidence to lead a reasonable fact finder to reject an employer's nondiscriminatory explanation for its actions, can sustain liability for intentional bias under the ADEA.

“It's so very important,” Oswald said. “It confirms the fact that we do not need evidence that directly reflects a discriminatory attitude to allow our clients the trial that is guaranteed by the Seventh Amendment.”

Before Reeves, some courts took the position that discrimination plaintiffs had to “look into the heart of the decision maker” and offer some evidence that bias was on their minds, Oswald said, but the high court shot that down.

“We don't need a smoking gun,” Oswald said. “As in every other area of law, we can have a mosaic of circumstantial evidence.”

3. New Process Steel v. NLRB (2010)

This was the first of two recent blockbuster high court decisions involving the National Labor Relations Board that invalidated a slew of labor board decisions because of problems with the NLRB's makeup.

The contentious process of getting presidential appointees added to the NLRB left the five-seat labor board with two members in 2008, and those two members decided nearly 600 cases over 27 months. New Process Steel LP challenged the authority of the two-member board, which sustained two unfair labor practice complaints against the company, and prevailed.

“New Process Steel is a cardinal decision regarding the administration of the National Labor Relations Act because it makes clear for the first time since 1947 that there must be three sitting board members at all times to decide cases,” said Seyfarth Shaw LLP's Marshall Babson, a former NLRB member.

2. NLRB v. Noel Canning (2014)

In June 2014, the Supreme Court unanimously affirmed a January 2013 decision from the D.C. Circuit, which had sided with soft drink bottler and distributor Noel Canning and said that the three so-called recess appointments to the labor board didn't pass constitutional muster because the Senate was not actually in recess when they were appointed.

The NLRB argued to the D.C. Circuit that the Senate was “closed for business” when Obama, facing the

prospect of the labor board being crippled by a lack of quorum, bypassed the Senate in January 2012 and added three members to the board to make sure its work could continue.

The high court concluded that the picks were invalid because the Senate was holding “pro forma” sessions every three days at the time, making a far-reaching pronouncement on the scope of presidential recess appointment power.

“The primary issue is a constitutional one, but it has particular significance for the NLRB precisely because these appointments have become so political over time,” Babson said of the Noel Canning case.

1. Wal-Mart v. Dukes (2011)

The reverberations of the Supreme Court's 5-4 decision, which struck down a class of around 1.5 million women in a gender bias class action against retail giant Wal-Mart and made it tougher to obtain class certification, are still being felt today.

The Dukes ruling made getting classes certified more difficult, but “viable class claims are still alive and well under the new standard,” said Sanford Heisler Kimpel LLPpartner Jeremy Heisler.

“It's been our experience that we can work around Dukes by bringing narrower, more tightly defined classes,” he said.

The combination of Dukes and the high court's more recent Comcast v. Behrend ruling makes it much harder to pursue sweeping class and collective actions, said UVA's Verkerke.

“The Dukes opinion has dramatically affected employment class action practice by tightening the commonality requirement. The opinion’s often quoted language rejecting 'trial by formula' has also been a powerful weapon for defense counsel resisting class certification," Verkerke said.

--Editing by Kat Laskowski and Mark Lebetkin.
