



Supreme Court Calendar

FEES AND BURGESS, P.C.,
Emphasizes:

The U.S. Supreme Court returned to its oral argument docket earlier this month, and there are several labor and employment matters scheduled for hearing. These cases could significantly influence human resources issues and expand employee protections under various anti-discrimination laws.

Thompson v. North American Stainless LP, addresses the issue of associational retaliation. In this case, a couple engaged to be married worked at the same company. Three weeks after the female employee filed a charge of gender discrimination with the Equal Employment Opportunity Commission, the male employee was terminated. The male employee sued the company, arguing it retaliated against him in response to his fiancé's charge of discrimination. Through this case, the Court could determine that third parties may be affected by retaliation and have a right of action for so-called associational retaliation. Generally, retaliation requires that the claimant "oppose" an unlawful employment practice (or assist or participate in an investigation). Claimants in this matter argue that the term "oppose" is ambiguous and could be interpreted broadly. The Sixth Circuit Court of Appeals held that such third parties who did not engage in protected activity do not have a cause of action for retaliation, but the Supreme Court could overturn this ruling and widen the scope of retaliation claims under Title VII.

In Staub v. Proctor Hospital, the Court will review the "cat's paw" theory of liability. In this case, the employee filed a lawsuit under the Uniformed Services Employment and Reemployment Rights Act alleging that his company made the decision to terminate him based on his military service. The employee won at trial, but the appeals court overturned the verdict. The employer argued that a centralized human resources official with no personal connection to the employee and no anti-military animus made the decision. As such, the company could not be liable as the decision-maker did not act in a discriminatory manner. However, the employee responded by alleging that other members of management and a co-worker heavily influenced the decision based on their own discriminatory motives and intent. Through this case, the Court may expand employer liability under USERRA even where the decision-maker has no discriminatory intent.

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If the Court extends this protection, because of the similarities of USERRA to the anti-discrimination provisions of Title VII, the holding could eventually extend to all cases of discrimination. After this case, employees may be able to identify any number of persons who “influenced” the decision-making process, thereby significantly expanding the scope of potential liability and likely requiring a restructuring of human resources decisions.

Staub v. Proctor Hospital, docket number 09-400, will be heard on November 2, 2010. *Thompson v. North American Stainless LP*, docket number 09-291, is scheduled for oral argument on December 7, 2010.

FEES & BURGESS, P.C. - Calendar of Events

FEES & BURGESS, P.C., is proud to present and participate in the presentation of the following upcoming seminars:

October 27, 2010, Teleconference, 3:00 pm EST; 2:00 pm CST; and 12:00 pm PST

Labor and Employment Law Hot Spots and Updates

Grab a lunch and join us for the next DRI Corporate Counsel Conference Call, hosted by Jeffrey L. Roth, Shareholder of Fees & Burgess, P.C. **This teleconference is for members of DRI's Corporate Counsel Committee only.** For more information on how to join DRI, please contact Shelley Nordling, Chair of DRI Corporate Counsel Conference Call Subcommittee or go to www.dri.org.

April 14, 2011, Las Vegas, NV (In conjunction with IPC APEX EXPO)

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This unique workshop presented by Jeffrey L. Roth and Allen L. Anderson, of Fees & Burgess, P.C., addresses the specific issues EMS companies face while contracting. Participants will be led through the contracting lifecycle between an electronic manufacturing services (EMS) provider and its customer, starting with the initial engagement and signing of a nondisclosure agreement, through the bid process and formal contract negotiation, to resolution of disputes under the applicable contract(s).

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