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Supreme Court’s New Term Includes Major Employment Cases

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In spite of all the controversy swirling around Judge Brett Kavanaugh’s nomination to take Justice Kennedy's seat, it’s business as usual at the United States Supreme Court as the Justices kicked off a new term on October 1.

Does the ADEA’s 20 employee threshold apply to public employers?

The Justices heard argument their first day back in *Mount Lemmon Fire District v. Guido*, U.S., No. 17-587. The Court will determine whether the Age Discrimination in Employment Act’s (“ADEA”) 20 employee threshold applies to public employers in the same way it does private employers. In that case, laid-off firefighters brought an ADEA claim against the District, which argued it was not subject to ADEA coverage because it had fewer than 20 employees. The U.S. Ninth Circuit Court of Appeals held otherwise, finding the ADEA protects all public employees regardless of employer size.

Court to consider scope of FAA and issues of arbitrability

Arbitration agreements make a repeat appearance on the Court’s docket this term. In *Lamps Plus Inc. v. Varela*, U.S., No. 17-988, the Court will review whether an

arbitration agreement stating that "arbitration shall be in lieu of any and all lawsuits or other civil legal proceedings" effectively waived an employee's right to bring a class-action claim. The Ninth Circuit held the arbitration agreement was valid, but further held that language in the agreement should be construed against the drafter based on California law such that the employee could bring class action claims in arbitration. Lamps Plus appealed the Ninth Circuit's decision, arguing that the agreement's failure to mention class arbitration should be interpreted under the Federal Arbitration Act (FAA) and the Court's precedent to require arbitration on an individual basis only.

In *New Prime Inc. v. Oliveira*, U.S., No. 17-340, the Court will assess whether arbitration agreements may be enforced against long-haul truck drivers classified as independent contractors based on an exception to the FAA for "contracts of employment" with workers who engage in interstate commerce, such as long-haul truck drivers. The trucking company asserts that it may enforce the agreements because the drivers are not employees. Further, while some arbitration agreements delegate authority to decide such threshold questions, the Court will consider whether a court may keep and decide issues of arbitrability if they are "clear," in an effort to preserve party resources.

Finally, in *Henry Schein Inc. v. Archer and White Sales Inc.*, U.S. No. 17-1272, the Court will determine whether the FAA permits a court to decline to enforce an agreement delegating questions of arbitrability to an arbitrator if the claim that the case should be arbitrated is "wholly groundless."

If there is one thing employers may already take away from the Court's new term, it is the repeat lesson that arbitration agreements must be drafted carefully and clearly. Indeed, all arbitration agreements should be thoroughly reviewed by legal counsel.In addition, employers may also consider asking a handful of employees to review draft agreements in advance of dissemination to help ensure their employees will understand the language and process set forth in the agreement.Employers with questions regarding the breadth, scope, or enforceability of their arbitration agreements would do well to consult competent counsel.