HR COMPLIANCE BULLETIN

U.S. Supreme Court Cases for Employers to Watch in 2024

In 2024, the U.S. Supreme Court will decide several cases—it has already decided one case—that may have a significant impact on employers. It is important that employers are aware of the issues presented in these cases and the potential implications the Supreme Court's decisions could have on the workplace. Specifically, the Supreme Court has addressed or will address:

- **Title VII discrimination**: The Court will decide whether a forced job transfer may constitute illegal discrimination under Title VII of the Civil Rights Act of 1964 (Title VII).
- **Court deference to federal agencies**: The Court will decide whether to overturn or modify *Chevron* deference, a doctrine that requires courts to defer to federal agency rules when interpreting ambiguous laws.
- **Whistleblower retaliation**: The Court has issued an opinion establishing that employees do not need to prove retaliatory intent under the whistleblower protections of the Sarbanes-Oxley Act (SOX).

Action Steps

Employers should monitor for updates on the Supreme Court decisions regarding Title VII discrimination and *Chevron* deference and familiarize themselves with the potential outcomes and implications with respect to each case. Publicly traded employers should also familiarize themselves with the Supreme Court's standard of proof for whistleblower retaliation claims and take proactive steps to mitigate the risk of retaliation.

2024 Supreme Court Cases

Muldrow v. City of St. Louis

The Supreme Court will decide whether a job transfer, standing alone, may constitute illegal discrimination under Title VII.

Loper Bright Enterprises v. Raimondo and *Relentless Inc. v. Department of Commerce*

The Supreme Court will decide whether to overturn or modify *Chevron* deference, a doctrine that requires courts to defer to federal agencies when interpreting legal ambiguities.

Murray v. UBS Securities LLC

The Supreme Court held that retaliatory intent is not required to prove whistleblower retaliation under SOX.

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Pending SCOTUS Decisions

Title VII Discriminatory Transfers—*Muldrow v. City of St. Louis*

Legal Question

On Dec. 6, 2023, the Supreme Court heard oral arguments in *Muldrow v. City of St. Louis*, a case in which the Supreme Court will decide whether Title VII prohibits discrimination in job transfer decisions even when the employee is not materially harmed by the transfer.

Case Summary

Title VII makes it unlawful for an employer "to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual" with respect to "compensation, terms, conditions or privileges of employment" on the basis of race, color, religion, sex, or national origin (referred to as protected characteristics). Currently, the circuit courts disagree on whether a forced job transfer may be unlawful discrimination even if the transfer does not significantly disadvantage the employee (e.g., does not result in lower compensation or a loss of professional opportunities).

In *Muldrow*, the plaintiff is a female St. Louis Police Department officer. After working for years in the same position, she was forced to transfer to a different division but retained the same compensation and title. Following her transfer, her employer placed a male officer in her prior position. Although her transfer did not result in any change to her pay or rank, the plaintiff alleges that she was subject to a discriminatory job transfer because of her gender. The lower courts held in favor of the defendant, stating that the plaintiff's transfer did not violate Title VII because the plaintiff did not suffer any material employment disadvantage.

Potential Employer Impact

A ruling in the plaintiff's favor would resolve the circuit split and expand the scope of actionable claims under Title VII by prohibiting any job transfer decision based on an employee's protected characteristic. Employers may consider taking greater care when mandating employee transfers, including lateral job transfers, to ensure that such decisions are not discriminatory. For example, employers could consider revising existing transfer policies to ensure any decisions are based on objective, nondiscriminatory criteria and that such criteria are appropriately documented.

Notably, while the plaintiff argues that any personnel decision based on an employee's protected characteristic is discriminatory, the Supreme Court has limited the scope of the case to job transfers. Therefore, the Supreme Court's decision is unlikely to affect other employment actions.

Chevron Deference—*Loper Bright Enterprises v. Raimondo* and *Relentless Inc. v. Department of Commerce*

Legal Question

On Jan. 17, 2024, the Supreme Court heard oral arguments in two cases, *Loper Bright Enterprises v. Raimondo* and *Relentless Inc. v. Department of Commerce*. The Supreme Court will decide whether to overturn or narrow the scope of its 1984 decision in *Chevron, U.S.A. Inc. v. Nat. Res. Def. Council Inc.,* which held that courts should defer to federal agencies to interpret ambiguities and gaps in the laws that the agencies implement (known as *Chevron* deference).

Case Summary

Congress has the authority to pass laws that govern employers, and federal agencies have the authority to enforce those laws. To fill in any gaps or to remedy any ambiguities, federal agencies may issue more detailed guidance on how the laws

should be interpreted and applied. For example, agencies may publish informal guidance, issue opinions or publish formal regulations. Under the doctrine of *Chevron* deference, courts are directed to defer to such agency guidance where (1) the statute is ambiguous and (2) the agency's interpretation is reasonable.

In *Loper* and *Relentless*, the plaintiffs argue that *Chevron* should be overruled. The plaintiffs contend that courts should have the authority to interpret ambiguous laws and should have no obligation to adhere to federal agency guidance. If the Supreme Court does not choose to overturn *Chevron*, the plaintiffs alternatively argue that the holding in *Chevron* should be modified to clarify that there is no ambiguity and, therefore, no *Chevron* deference, where a statute is silent as to authorizing a controversial power that is expressly but narrowly granted elsewhere in the statutory scheme.

Potential Employer Impact

A ruling in either party's favor is unlikely to have an immediate impact on individual employers. However, *Chevron* deference has a meaningful influence on the interpretation and enforcement of labor and employment laws. Federal employment agencies, including the Equal Employment Opportunity Commission (EEOC), the Occupational Health and Safety Administration (OSHA), the U.S. Department of Labor (DOL) and the National Labor Relations Board (NLRB) have relied on *Chevron* deference in issuing and defending agency interpretations. If the Supreme Court overrules *Chevron*, federal agencies will not be able to rely on *Chevron* deference in existing litigation, including lawsuits that have been filed to challenge the DOL's independent contractor rule and the NLRB's joint-employer rule, and may be subject to additional legal challenges to existing rules. Federal agencies may also issue fewer regulations and take more moderate positions in the regulations they issue.

Final SCOTUS Decision

Whistleblower Retaliation—*Murray v. UBS Securities LLC*

Holding

On Feb. 8, 2024, the Supreme Court unanimously held in *Murray v. UBS Securities LLC* that whistleblower employees do not need to prove that their employer acted with retaliatory intent to be protected under the federal whistleblower protections of the SOX.

Case Summary

SOX prohibits publicly traded companies from discharging, demoting, suspending, threatening, harassing or otherwise discriminating against employees in retaliation for reporting fraud or violations of federal securities laws and regulations (i.e., engaging in protected activity).

In *Murray*, the plaintiff alleged that his former employer violated SOX by terminating his employment after he raised concerns about potentially unethical and illegal activity. The 2nd Circuit ruled in favor of the employer, holding that an employee must prove that the employer acted with retaliatory intent to prove a whistleblower claim. The 2nd Circuit decision deviated from holdings in other circuits, which have held that evidence of retaliatory intent is not required.

On appeal, the Supreme Court reversed the 2nd Circuit decision and resolved the circuit split by establishing that a plaintiff only needs to prove that the whistleblowing activity was a "contributing factor" in the unfavorable personnel decision but does not need to prove that the employer acted with retaliatory intent. If the employee may make that showing, the employer must demonstrate that it would have taken the same action if the employee had not engaged in whistleblowing activity.

Employer Impact

The holding in *Murray* may make it easier for employees to meet their burden of proof in SOX whistleblower retaliation cases and place a greater onus on employers to prove that they would have taken the same action regardless of the whistleblowing activity. To mitigate the risk of whistleblower retaliation, covered employers may consider reviewing their existing policies and procedures to ensure that employee concerns are properly addressed and investigated, implementing and enforcing a robust anti-retaliation policy and training protocol, ensuring that any adverse actions are made for legitimate nonretaliatory reasons and properly documenting such reasons.