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SUPREME COURT DECIDES PIVOTAL ADA AND TITLE VII CASES

Last week, the U.S. Supreme Court decided two more of the many employment law cases on its docket this term. In *Chevron U.S.A., Inc. v. Echazabal*, the Court holds that the ADA permits a refusal to hire where the job would endanger a disabled person's own health. In *National Railroad Passenger Corporation (Amtrak) v. Morgan*, the Court holds that a Title VII hostile work environment lawsuit may include allegations of unlawful conduct occurring outside the time period for filing a charge with the EEOC.

Chevron

In an opinion reflecting plain common sense, the Court says that an employer may refuse to hire a person whose disability on the job would pose a direct threat to his own health or safety. Writing for a unanimous court, Justice Souter upholds the validity of an EEOC regulation that allows an employer to screen out a potential worker with a disability not only for risks that he would pose to others in the workplace but also for risks on the job to his own health and safety.

Echazabal had applied for and been denied employment by Chevron after medical exams showed that he had Hepatitis C and that his liver might be damaged by exposure to chemicals present at the refinery. Echazabal sued claiming that Chevron had violated the Americans with Disabilities Act; Chevron defended under an EEOC regulation permitting the defense that a worker's disability on the job would pose a direct threat to his health.

A federal district court granted summary judgment for Chevron and Echazabal appealed. The Ninth Circuit Court of Appeals reversed, relying on a provision in the ADA that an employer may require, as a qualification standard, that an employee not pose a direct threat to the health or safety of "other individuals in the workplace." In the Appellate Court's opinion, the ADA's direct-threat defense meant what it said and did not apply to individuals for whom employment posed a direct threat only to their own health or safety.

Reversing the Ninth Circuit, the Supreme Court concludes that the ADA's direct-threat language is merely an example of permissible qualification standards that are job-related and consistent with business necessity, and that the EEOC's regulation is a reasonable interpretation of that language. The Court points out that an employer's decision to hire a person willing to risk the dangers that a job posed to him would put Congressional policy in the ADA — to give disabled workers rights within the workplace — in conflict with the competing policy of OSHA — to insure the safety of each and every worker.

Amtrak

Before suing under Title VII of the Civil Rights Act of 1964, a plaintiff must timely file a charge with the EEOC. In a State like Illinois that has an agency with the authority to grant relief for the alleged unlawful practice (Illinois Department of Human Rights), the charge must be filed within 300 days of such practice. In all other States, the charge must be filed within 180 days. A claim is time-barred if it is not filed within these time limits. In *Amtrak*, the Supreme Court holds that a person who sues under Title VII alleging a hostile work environment may include supporting allegations of acts that occurred outside the applicable filing period, provided that all acts constituting the claim are part of the same unlawful practice and that at least one act falls within the filing period.

Plaintiff Morgan sued Amtrak alleging specific discriminatory and retaliatory conduct and that he had experienced a racially hostile work environment throughout his employment. Morgan's allegations included discriminatory acts that had occurred more than 300 days before he filed his EEOC charge. A federal district court held that Amtrak was not liable for conduct outside that filing period. Morgan appealed and the Ninth Circuit, after separately considering the three types of claims alleged by Morgan — discrimination, retaliation, and hostile work environment — reversed the district court and found that acts outside the statutory time period were sufficiently related to acts within the time period to invoke the continuing violation doctrine for all three claims.

A majority of the Supreme Court agrees as to Morgan's hostile work environment claim but not as to his discrete discrimination and retaliation claims. Writing for the Court's majority, Justice Thomas holds that separate and distinct acts of discrimination (*e.g.*, refusal to hire, failure to promote, denial of transfer) must be filed within the applicable time period even when they are related to other acts alleged in a timely-filed charge. Thus, Morgan's claims of discriminatory and retaliatory acts are actionable only to the extent that they took place within the filing period.

However, Morgan's hostile work environment claims (of racial jokes, racially derogatory acts, racial epithets, etc.) are viewed as different in kind. In the Supreme Court's majority opinion, such claims are based on the cumulative effect of repeated conduct and encompass a single unlawful employment practice. An employee need only file a charge within the applicable time limit of any act that is part of the hostile work environment. Therefore, the Court affirms the Ninth Circuit's conclusion that the entire scope of Morgan's hostile work environment claim can be considered, including alleged conduct outside the statutory time period.

Justice Thomas notes that the filing period remains subject to equitable consideration in the event that unreasonable delay in filing a charge significantly handicaps the employer in making its defense.

If you have any questions about these decisions, please call Jim Petrie (312/609-7660) or any other Vedder Price attorney with whom you have worked.

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