



Supreme Court Employment Cases

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The State and Local Legal Center (SLLC) files Supreme Court amicus curiae briefs on behalf of the Big Seven national organizations representing state and local governments.

In [EEOC v. Abercrombie & Fitch Stores](#) the Supreme Court held 8-1 that to bring a religious accommodation claim an applicant or employee need only show that his or her need for a religious accommodation was a motivating factor in an employment decision. Abercrombie & Fitch refused to hire Samantha Elauf because she wore a headscarf to her interview. Abercrombie suspected she wore it for religious reasons but she did not ask for an accommodation. The EEOC sued Abercrombie alleging it violated Title VII by failing to accommodate Elauf's religious beliefs. The Court concluded that to bring a religious accommodation claim an applicant/employee need not show that the employer had "actual knowledge" of the need for an accommodation. Instead the employee/applicant only must show that his or her need for an accommodation was a motivating factor in the employer's decision. Simply put, the Court would not add an "actual knowledge" requirement to Title VII's "motivating factor" language.

In a unanimous opinion in [Integrity Staffing Solutions v. Busk](#) the Court held that the Fair Labor Standards Act (FLSA) does not require hourly employees to be paid for the time they spend waiting to undergo and undergoing security screenings. Under the FLSA employers only have to pay "non-exempt" employees for preliminary and postliminary activities that are "integral and indispensable" to a principal activity. An activity is "integral and indispensable" to a principal activity "if it is an intrinsic element of those activities and one with which the employee cannot dispense if he is to perform his principal activities." Security screenings are not intrinsic to retrieving and packing products and Integrity Staffing Solutions could have eliminated the screenings altogether without impairing employees' ability to complete their work. State and local government employees who work in courthouses, correctional institutions, and warehouses routinely go through security screening at the beginning and/or end of the workday.

In [*Young v. United Parcel Service*](#) the Supreme Court held 6-3 that a plaintiff alleging that the denial of an accommodation constitutes disparate treatment under the Pregnancy Discrimination Act's second clause (employers must treat women "affected by pregnancy . . . the same for all employment-related purposes . . . as other persons not so affected but similar in their ability or inability to work") must first, per [*McDonnell Douglas*](#), show that she belongs to the protected class, that she sought accommodation, that the employer did not accommodate her, and that the employer did accommodate others "similar in their ability or inability to work." The employer may then seek to justify its refusal to accommodate the plaintiff by relying on "legitimate, nondiscriminatory" reasons for denying her accommodation. But those reasons normally cannot consist simply of a claim that it is more expensive or less convenient to add pregnant women to the category of those whom the employer accommodates. If the employer offers a "legitimate, nondiscriminatory" reason, the plaintiff may show that the employer's proffered reasons are in fact pretextual.

In [*Mach Mining v. EEOC*](#) the Supreme Court held unanimously that a court may review whether the Equal Employment Opportunity Commission (EEOC) satisfied its statutory obligation to attempt to conciliate employment discrimination claims before filing a lawsuit. The EEOC found reasonable cause that Mach Mining discriminated against a class of women who applied for mining jobs. Mach Mining claimed that the EEOC failed to conciliate in good faith before suing it. The EEOC responded that its conciliation efforts are not subject to judicial review. While the Court held that a court may review whether EEOC satisfied its obligation to conciliate, review is narrow. The "strong presumption" favoring judicial review of administrative action isn't rebutted in this case because courts routinely enforce other compulsory prerequisite requirements to bringing a Title VII lawsuit. Regarding the scope of the court's review, a court should determine "that the EEOC afford[ed] the employer a chance to discuss and rectify a specified discriminatory practice." Unless an employer provides credible evidence to the contrary, "[a] sworn affidavit from the EEOC stating that it has performed the obligations noted above but that its efforts have failed will usually suffice to show that it has met the conciliation requirement."

In [*M&G Polymers USA v. Tackett*](#) the Court held unanimously that ordinary principles of contract law apply to determining whether lifetime contribution-free retiree health insurance benefits are vested or terminate when the collective bargaining agreement (CBA) expires. The CBA in this case said that those who retire at a certain age with certain years of service "will receive" fully paid for health insurance. When the CBA expired M&G announced that retirees would have to contribute to the cost of health insurance. The Sixth Circuit agreed with the retirees, applying the *Yard-Man* inference from a 1983 Sixth Circuit decision, that the retiree benefits vest for life. The Court criticized the *Yard-Man* inference on many grounds but most fundamentally that it "violates ordinary contract principles by placing a thumb on the scale in favor of vested retiree benefits in all collective-bargaining agreements." This case was decided under the federal Labor Management Relations Act, which does not apply to state and local

governments. But the same question arises under public sector CBAs, and arbitrators and courts may look to this decision for guidance.

Beneficiaries of Edison's 401(k) plan sued Edison for violating its fiduciary duty by selecting mutual funds with higher fees than "materially identical" funds. Edison argued that the claims were untimely as to three mutual funds added outside of the six-year statute of limitations. The Ninth Circuit agreed, reasoning that no change in circumstances triggered an obligation to review and change the investments within the six-year statute of limitations. The Supreme Court concluded that the Ninth Circuit failed to recognize "that under trust law a fiduciary is required to conduct a regular review of its investment with the nature and timing of the review contingent on the circumstances." So in this case as long as the breach of the continuing duty to monitor investments occurred within six years of the lawsuit it was timely. A lower court determining the precise nature of the fiduciary duty state and local governments owe employees under a state law similar to ERISA regulating public retirement plans may look to the Supreme Court's opinion in [*Tibble v. Edison International*](#).