The Work Week

Bassford Remele Employment Practice Group

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Welcome to another edition of *The Work Week with Bassford Remele.* Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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Supreme Court Hears Two Pivotal Employment Law Cases

Daniel R. Olson

The U.S. Supreme Court kicks off the 2024/2025 term today. As was the case for each of the past two years, the Court will issue another pair of employment-law decisions that will impact employers: *E.M.D. Sales, Inc. v. Carrera* and *Stanley v. City of Sanford, Fla*. Below is our annual preview of the Supreme Court docket for employers.

E.M.D. Sales, Inc. v. Carrera

The issue in *E.M.D. Sales, Inc. v. Carrera* is what evidentiary burden of proof employers must satisfy to establish an exemption under the Fair Labor Standards Act ("FLSA"). *E.M.D.* involved several employees of a grocery distributor who claimed they were misclassified as exempt "outside salespersons" and, therefore, owed overtime pay. The parties agreed that the employees worked more than 40 hours per week and were paid on a commission basis. Following a nine-day bench trial, the district court found that the employees were not "outside salespersons" exempt from the overtime requirements of the FLSA, and entered judgment in favor of the employees. In doing so, the district court applied a clear-and-convincing evidentiary standard, which is a higher standard of proof than a preponderance-of-evidence standard used in most civil cases. The Fourth Circuit affirmed.

Circuits are currently split on whether to apply the clear-and-convincing standard or a preponderance-of-evidence standard when analyzing exempt status under the FLSA. If the Supreme Court determines that a clear-and-convincing standard is the appropriate test, it will be more challenging for employers to prove the exempt status of an employee.

Stanley v. City of Sanford, Fla.

Stanley v. City of Sandford, Fla. focuses on whether a retired employee can maintain a disability-discrimination claim against an employer's denial of post-employment benefits. The plaintiff in *Stanley* was a former municipal firefighter. Following two decades of employment, she took disability retirement due to her battle with Parkinson's. Unbeknownst to her, the City modified its benefits plan years after her employment began. Whereas the City initially offered free health insurance up to the age of 65 for any employee retiring due to a qualifying disability, the City changed its plan to only provide for 24 months of free health insurance. The plaintiff sued, claiming the reduction in benefits was unlawful discrimination on the basis of her disability. The district court dismissed her complaint, concluding that disabled former employees have no standing to sue under the ADA because they are no longer "qualified individuals." The Eleventh Circuit affirmed.

Here again, circuits are split as to whether disabled former employees have standing to sue their former employer under the ADA. If the circuit split is resolved in favor of disabled retired employees, employers will face great coverage (and exposure) with their retired, disabled employers.

At Bassford Remele, we regularly monitor important changes in case law and legislation and advise our clients on the same. We'll provide updates when both *E.D.M.* and *Stanley* are decided, including the ramifications for employers thereafter.

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