CLIENT ALERT

Three Important Supreme Court Decisions for Employers from 2018

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As this year comes to a close, we reflect on three important cases decided by the Supreme Court this year that fundamentally impact the employee-employer relationship.

Encino Motorcars, LLC v. Navarro

On April 2, 2018, the Supreme Court, in a 5-4 decision by Justice Thomas, held that service advisors at an automobile dealership were exempt from the Fair Labor Standards Act (FLSA) overtime pay requirement. The provision at issue involved an FLSA exemption in overtime pay for "salesm[e]n . . . primarily engaged in . . . servicing automobiles." The significance of this case is in the court's rejection of the principle espoused by the Ninth Circuit, and many lower courts, that exemptions to the FLSA should be construed narrowly. The court "reject[ed] this principle as a useful guidepost for interpreting the FLSA" and refused to give the exemption "anything but a fair reading." While this decision directly impacts car dealerships with service advisors, its implications are much broader. We can expect the *Encino* decision to spark challenges to other exemptions under the FLSA, with outcomes more likely to be favorable to employers seeking to broaden exemptions to overtime pay.

Epic Systems Corp. v. Lewis

On May 21, 2018, the Supreme Court, in a 5-4 decision by Justice Gorsuch, upheld the validity of mandatory arbitration agreements and attendant class action waivers used by employers as a condition of continued employment. The court noted the policy in the Federal Arbitration Act (FAA) of liberally favoring arbitration agreements and rejected arguments that use of such agreements in the employment context runs afoul of the National Labor Relations Act. While this is good news for employers who elect to use mandatory arbitration agreements and class action waivers, such employers are not necessarily completely in the clear. In response to the #MeToo movement, many states and localities are introducing legislation prohibiting the use of mandatory arbitration agreements specifically with respect to claims of sexual harassment. Maryland and New York State, for example, now void any such agreements in order to prevent arbitration, which is typically confidential, from being used as a means of silencing sexual harassment victims. Whether these bans are enforceable under the FAA and in light of the *Epic* decision is an issue we can expect to play out in the courts in the coming year. In the meantime, employers who use mandatory arbitration agreements should be mindful of state and local limitations in the context of sexual harassment claims and watch for developments in 2019.

Janus v. AFSCME

On June 27, 2018, the Supreme Court held in a 5-4 decision by Justice Alito that states and public-sector unions may no longer extract agency fees from employees who elect not to join labor unions, overturning 40 years of precedent. The court reasoned that doing so violated the First Amendment rights of these non-union members by "compelling them to subsidize private speech on matters of substantial public concern." Employees now must affirmatively consent to such payments before their collection. Nonmembers were already entitled to refunds from dues paid for political activities, such as supporting a certain political

candidate. The unions argued, however, that collective bargaining—which arguably benefits all—is different. Public-sector labor unions are now concerned about "freeloading" from nonmembers and stand to lose tens of millions of dollars in agency fee collections. Whether and to what extent this monumental decision for the public sector may impact labor unions in the private sector remains to be seen.

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