Sutherland Asbill & Brennan LLP
ATTORNEYS AT LAW

Legal Alert:
U.S. Supreme Court Will Hear Three New Employment and ERISA Cases

January 24, 2008

Employment cases continue to be a strong focus for the U.S. Supreme Court. In three more cases the Court agreed to hear on Friday concerning age discrimination, retaliation and ERISA claims, the Court's decisions will likely impact not only the success of employers in defending certain employment cases, but also the types (and number) of employees protected by anti-discrimination statutes. While many expect the Court to continue its relatively conservative approach in the employment area, even pro-employer decisions may negatively impact employers if the end result is to prompt Congress to roll back the Court's decisions.

In *Meacham v. Knolls Atomic Power Laboratory*, No. 06-1505, a group of former employees claimed that their employer's criteria for determining lay-offs adversely impacted older workers. The employer argued that its actions were based upon reasonable factors other than age. The Supreme Court will hear this case to determine who bears the burden of persuasion on the issue of whether the employer's actions were reasonable. In ruling on the lower court decision from the district court in New York, the U.S. Court of Appeals for the Second Circuit ruled that the *employee* must prove that his employer's actions were unjustified. *Meacham v. Knolls Atomic Power Laboratory*, 461 F.3d 134, 141-43 (2d Cir. 2006) (click here for the opinion). In contrast, the majority of other federal appellate courts that have considered the issue found that the employer bears the burden to prove its actions were reasonable. *Id.* at 151.

In discrimination cases, who bears the burden of proof regarding an employer's actions can determine the outcome of the case on summary judgment and at trial. The proof issues in this case are particularly significant as the nation's workforce continues to age and employers are faced with difficult policy decisions that impact a growing body of older workers. The outcome in *Meacham* certainly has the potential to impact employer success in employment cases.

In *Crawford v. Metropolitan Government of Nashville*, No. 06-1595, the Court will consider what constitutes protected activity in retaliation cases under Title VII, the type of cases for which, not incidentally, the EEOC has already seen the highest increased percentage of

© 2008 Sutherland Asbill & Brennan LLP. All Rights Reserved.
This communication is for general informational purposes only and is not intended to constitute legal advice or a recommended course of action in any given situation. This communication is not intended to be, and should not be, relied upon by the recipient in making decisions of a legal nature with respect to the issues discussed herein. The recipient is encouraged to consult independent counsel before making any decisions or taking any action concerning the matters in this communication. This communication does not create an attorney-client relationship between Sutherland Asbill & Brennan LLP and the recipient.

filings in recent years. The plaintiff in this case argued that she was discharged because she complained about sexual harassment by her supervisor. She made the complaint during an interview conducted as part of the employer's internal investigation of a harassment complaint filed against the supervisor by another employee. The U.S. Court of Appeals for the Sixth Circuit held that the plaintiff could not bring a retaliation claim under Title VII, which protects an employee who either "opposes" or "participates" in the investigation of an unlawful employment practice. Specifically, the court held that the plaintiff did not initiate any complaint prior to her participation in the investigation, or take any further action following the investigation. She therefore did not oppose any unlawful conduct as defined by the statute. *Crawford v. Metropolitan Government of Nashville*, No. 05-5258 (6th Cir. 2006) (click here for the opinion). The court further held that the plaintiff did not participate in protected activity because the statute only protects an employee's cooperation in an internal investigation once the employee has filed an EEOC charge or otherwise initiated proceedings under Title VII. *Id.*

The Supreme Court granted certiorari to determine whether Title VII protects employees who cooperate with an employee's internal investigation of a sexual harassment complaint. If the Court rules in the complaining employee's favor, the decision will expand Title VII protection to a significantly larger group of employees than are currently entitled to protection.

Finally, the Court will consider the standard of review for ERISA benefit claims in *Metlife v. Glenn*, 06-923. In that case, an employee challenged Metlife's decision to deny disability benefits. Metlife was authorized both to decide whether an employee was eligible for benefits and to pay those benefits. The Sixth Circuit ruled that this dual function creates an apparent conflict of interest, which is a factor that should be considered in determining whether an administrator has abused its discretion in denying a claim. *Metlife v. Glenn*, No. 05-3918 (6th Cir. 2006) (click here for the opinion). Two other federal appeals courts disagree. The Supreme Court will determine whether a plan administrator that also pays benefits operates under an apparent conflict of interest, and if so, how that conflict should be taken into account in reviewing a discretionary benefit decision. Again, if the Court rules in the employee's favor, the decision will result in higher scrutiny for benefits decisions by ERISA plan administrators.

The decision to add three new cases to a docket already committed to a significant number of employment issues is a signal that the Court intends to remain active in this area. If the Court continues its fairly conservative approach to employment cases and issues decisions favorable to employers, the trend may prompt Congress to take action on the legislative side. Employers should watch developments on both fronts for changes that will impact the number of lawsuits and ultimately their bottom line.

© 2008 Sutherland Asbill & Brennan LLP. All Rights Reserved.
This article is for informational purposes and is not intended to constitute legal advice.

Sutherland Asbill & Brennan LLP
ATTORNEYS AT LAW

If you are interested in more information about these developments, please feel free to contact any of the attorneys in our Human Capital Litigation or Employee Benefits groups, including the following:

George H. Bostick	202.383.0127	george.bostick@sablaw.com
Nicholas T. Christakos	202.383.0184	nicholas.christakos@sablaw.com
Adam B. Cohen	202.383.0167	adam.cohen@sablaw.com
Lisa C. Jern	404.853.8474	lisa.jern@sablaw.com
Allegra J. Lawrence-Hardy	404.853.8497	allegra.lawrence-hardy@sablaw.com
Alice Murtos	404.853.8410	alice.murtos@sablaw.com
W. Mark Smith	202.383.0221	mark.smith@sablaw.com
Steuart H. Thomsen	202.383.0166	steuart.thomsen@sablaw.com
William J. Walderman	202.383.0243	william.walderman@sablaw.com
Carol A. Weiser	202.383.0728	carol.weiser@sablaw.com
Sarah T. Thompson	404.853.8429	sarah.thompson@sablaw.com

© 2008 Sutherland Asbill & Brennan LLP. All Rights Reserved.
This article is for informational purposes and is not intended to constitute legal advice.