Supreme Court issues two FLSA employer-friendly decisions

Employees' road in seeking to sue their employers for violations of the Fair Labor Standards Act just got substantially rockier, thanks to two U.S. Supreme Court decisions issued at the end of the 2017-2018 term. Here are the highlights.

Case No. 1: FLSA exemptions. *Encino Motors, LLC v. Navarro* (No. 16-1362, 2018) addressed whether service advisors at car dealerships were exempt employees. The appellate court took the traditional route and ruled that FLSA exemptions should be interpreted narrowly. The Supreme Court disagreed and reversed the appellate court's decision.

According to the court, since the FLSA doesn't say that exemptions should be construed narrowly, they should, instead, be given a fair reading. A fair reading depends on the context, the court noted.

Key: Exemptions must be weighed as part of the law's overall approach to overtime pay. *Not a slam dunk:* While it may now be theoretically easier to classify employees as exempt, the criteria for the white-collar exemptions, and the cost of noncompliance (i.e., back pay and liquidated damages), haven't changed.

In addition, the decision will have no impact on state law. *Boomerang effect:* Since state wage and hour laws are unaffected by *Encino Motors*, you should anticipate more lawsuits brought in state court.

THE TAKEAWAY: It will take time for lower federal courts to establish new parameters for evaluating employees' exempt status, so this area of the law will probably remain unsettled for some time. And remember, you still bear the burden of proving that your employees are exempt.

Case No. 2: Arbitration of FLSA claims. *Epic Systems Corp. v. Lewis* (No. 16-285, 2018) consolidated three lower court cases. The issue the Supreme Court addressed was whether, under the Federal Arbitration Act, employees could be compelled to arbitrate their cases individually, instead of bringing class-action lawsuits against their employers. Technically, these arbitration clauses are called class-action waivers. The court ruled that class-action waivers are valid.

Each case involved FLSA violations. In each case, employers and employees entered into contracts that provided for individual arbitration proceedings to resolve disputes. Regardless, employees brought class-action lawsuits against their employers. Two appellate courts ruled for employees. The Supreme Court reversed those two decisions.

Supreme Court: The FAA doesn't override the FLSA. The FLSA does permit collective actions by employees, but there's no suggestion that it overrides the FAA.

THE TAKEAWAY: Requiring employees to arbitrate FLSA or other workplace disputes is OK, but doing so won't bind the Department of Labor, which can still enforce the law on employees' behalf.

The general rule is that employees must affirmatively consent to arbitration, so including these clauses in job

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applications or employee handbooks may not be enough. *Better:* Employees should separately consent to arbitration. You should also ensure that your agreement fits your business—there is no one-size-fits-all solution. You'll need to be particular, so advice from legal counsel is recommended. Finally, you should consider how arbitration will affect your ability to recruit and retain top talent.

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