

A yellow triangle pointing downwards, located to the left of the 'BLOGS' header.

BLOGS

Archive; Diversity & Inclusion; Employment Law Updates

Supreme Court Preview

In its 2010 Term, the Supreme Court issued a number of interesting opinions on employment law topics such as [class action lawsuits](#) (invalidating a class action brought by 1.5 million current or former Wal-Mart employees), [retaliation and Title VII](#) (allowing a third-party to bring a retaliation claim because of association under Title VII) and [immigration](#) (allowing states to punish employers for hiring unauthorized workers).

The Courts 2011 Term has fewer high-profile employment law cases, but a few cases are worth watching, including:

Hosanna-Tabor Church v. EEOC is of particular importance to religiously-affiliated organizations. The Court will decide whether the ministerial exception, which generally prohibits most employment lawsuits brought by employees performing religious functions against religious organizations, prohibits a lawsuit brought by an elementary school teacher at a religiously-affiliated school who taught both secular and religious subjects. Other blog commentary [here](#) and [here](#).

In ***Knox v. SEIU***, the Court may define important boundaries for the requirements that non-union members represented by a union must still pay at least a portion of normal union dues. Particularly, the Court will decide whether a state may condition employment on the payment of a union fees or assessment intended solely for political and ideological expenditures.

One case is noteworthy enough to mention even though the Court hasn't yet determined whether to hear it. ***Fisher v. University of Texas*** is not an employment case. However, the outcome of the case will be critical to college and university admissions, and it could have a significant impact on diversity and affirmative action efforts by private employers. A student, denied admission to the University of Texas, challenges the university's racial and ethnic preferences in admissions. The lower court [upheld](#) UT's program.

If the Court accepts review, the present, more conservative Supreme Court majority may draw firmer lines than in two landmark 2003 opinions involving the University of Michigan. In the first, *Grutter v. Bollinger*, Justice Sandra Day O'Connor's opinion held that the Constitution does not prohibit the narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body. In *Gratz v. Bollinger*, however, the Court struck down a more rigid, point-based admissions policy. Commentators believe (e.g., [here](#) and [here](#)) that the current Supreme Court is less likely to accept the nuanced distinctions of the Courts 2003 opinions.