

U.S. Supreme Court Roundup – 2018-2019

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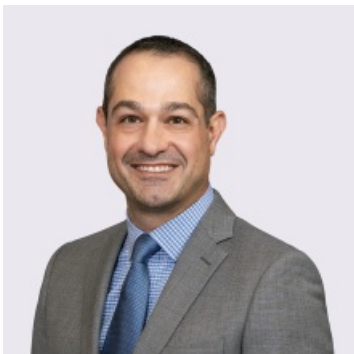
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The U.S. Supreme Court term that ended in June 2019 included decisions on many topics important to workplace law, including class actions, arbitration, and administrative exhaustion and Title VII claims.

Class Actions, Arbitration

The Court ruled in a 5-4 decision that class action arbitration is such a departure from ordinary, bilateral arbitration of individual disputes that courts may compel class action arbitration only where the parties expressly declare their intention in their arbitration agreement. *Lamps Plus, Inc. v. Varela*, 138 S. Ct. 1697 (2019). The Court said, “Courts may not infer from an ambiguous agreement that parties have consented to arbitrate on a classwide basis.”

In another case, the Court ruled that the Federal Arbitration Act’s Section 1 exemption for “contracts of employment of seamen, railroad employees, or any other class of workers engaged in foreign or interstate commerce” applies to transportation workers, regardless of whether they are classified as independent contractors or employees. *New Prime, Inc. v. Oliveira*, 139 S. Ct. 532 (2019).

In a case on the class action rules, the Court held that Federal Rules of Civil Procedure Rule 23(f), which establishes a 14-day deadline to seek permission to appeal an order granting or denying class certification, is not subject to equitable tolling. *Nutraceutical Corp. v. Lambert*, 139 S. Ct. 710 (2019).

Title VII

The requirement under Title VII of the Civil Rights Act that a complainant file a charge of discrimination with the Equal Employment Opportunity Commission prior to filing suit in federal court is a prudential, claim-processing rule that does not determine whether a court has subject-matter jurisdiction over the dispute, the Court held in a unanimous ruling. *Fort Bend County, Texas v. Davis*, No. 18-525 (June 3, 2019).

Deference to Agencies

By the thinnest of margins, a majority of the Court declined to overrule the so-called *Auer* (or *Seminole Rock*) deference doctrine, under which courts defer to an agency’s reasonable interpretation of its own ambiguous regulation. *Kisor v. Wilkie*, No. 18-15 (June 26, 2019). Still, the Court has significantly limited the doctrine’s application.

In another case, dodging the question of whether the Hobbs Act requires a federal court to accept the 2006 Federal Communication Commission Order that provides the legal interpretation for the Telephone Consumer Protection Act, which bars any “telephone facsimile machine” from sending an unsolicited advertisement to another fax machine, the Court ruled unanimously that the lower court failed to consider two preliminary issues. *PDR Network, LLC v. Carlton*, No. 17-1705 (June 20, 2019). Leaving open the deference courts must accord to agency interpretations, the Court remanded

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Alternative Dispute Resolution

the case to the lower court.

Age Discrimination in Employment Act

The Court has ruled that the Age Discrimination in Employment Act applies to state and local government employers, regardless of their size. *Mount Lemmon Fire District v. Guido*, 139 S. Ct. 22 (2018).

State Wage-Hour Laws

The Court held unanimously that workers on oil drilling platforms off the coast of California are covered by the Fair Labor Standards Act, not California's overtime and wage laws. *Parker Drilling Management Services, Ltd. v. Newton*, No. 18-389 (June 10, 2019).

Preview Next Term

The Court's docket for next term, which begins October 2019, is filling up with cases significant to employers and businesses. For instance, the Court has agreed to review three cases on whether Title VII protects LGBTQ individuals from employment discrimination. Its decision will settle a conflict in the circuit courts.

In addition, the Court has agreed to review a case involving prosecution for identity theft under Kansas law based on information in the Form I-9 Employment Eligibility Verification. It will tackle the question of whether the Immigration Reform and Control Act preempts states from using information in Form I-9 to prosecute a person under state law.

Please contact your Jackson Lewis attorney if you have any questions about these and other legal issues.

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- [Snooze and Lose: Defendants Need to Raise Plaintiffs' Failure to File Charge Early in Litigation](#)
- [U.S. Supreme Court Upholds Agency-Deference Under Auer, But Weakened Doctrine Emerges](#)
- [U.S. Supreme Court Leaves Open Issue of Federal Communication Agency Interpretation of TCPA, For Now](#)
- [Supreme Court: Age Discrimination in Employment Act Applies to All State, Local Government Employers](#)
- [Supreme Court: State Wage-and-Hour Laws Inapplicable to Drilling Platform Workers](#)
- [U.S. Supreme Court to Rule on LGBTQ Workplace Protections under Title VII](#)
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