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Contacts

If you have questions or would like more information, please contact any of the attorneys listed at the end of this Alert. Hunton & Williams' [labor and employment law practice](#) covers the entire spectrum of labor and employment litigation, arbitration, administrative practice before the NLRB, EEOC, and the DOL, federal contract compliance, wage-hour standards, workplace safety and health standards, workers' compensation, contractual rights and remedies, Sarbanes-Oxley and whistleblower claims, workplace investigations and client counseling under federal and state labor and employment laws. Hunton & Williams LLP provides legal services to corporations, financial institutions, governments and individuals, as well as to a broad array of other entities. Since our establishment more than a century ago, Hunton & Williams has grown to more than 1,000 attorneys serving clients in 100 countries from 18 offices around the world. While our practice has a strong industry focus on energy, financial services and life sciences, the depth and breadth of our experience extends to more than 100 separate practice areas, including bankruptcy and creditors' rights, commercial litigation, corporate transactions and securities law, intellectual property, international and government relations, regulatory law, products liability, and privacy and information management.

Supreme Court Issues Four Decisions On Employment Cases

On June 19, 2008, the U.S. Supreme Court issued four important opinions that will have a lasting impact on employment laws. The topics included: state laws affecting employer communications related to union organizing; burden of proof in ADEA disparate impact cases; consideration of age as a factor in pension eligibility; and potential conflicts affecting the standard of review in employee benefits determinations under ERISA.

In *U.S. Chamber of Commerce v. Brown*, the Court reversed the Ninth Circuit Court of Appeals, which had upheld a California statute that would penalize employers who use state funds to "assist, promote, or deter union organizing." Such laws (which generally are enacted by state legislatures to facilitate union organizing) are pre-empted by the National Labor Relations Act ("NLRA"), the Court held, because they purport to regulate speech that is within a "zone protected and reserved for market freedom" under the NLRA. Although the NLRA protects workers' right to organize and bargain collectively, it also protects the "right of employers to engage in non-coercive speech about unionization." Given that a number of other states have similar legislation either pending or already on the books, this decision should have a wide-reaching impact. It is, however, possible that Congress could take some action to override the decision,

perhaps as part of the Employee Free Choice Act, which is expected to be re-introduced in the next term.

In *Meacham v. Knolls Atomic Power Lab.*, the Court reversed the Second Circuit and held that employers have the burden of proving that employee selections in a workforce reduction were based on reasonable factors other than age, when a disparate impact according to age is shown. Justice Souter, who authored the 7-1 majority opinion, noted that placing this burden of proof on employers "makes it harder and costlier to defend than if employers merely bore the burden of production," but that the result was dictated by the statute. This case confirms that, in a workforce reduction, the employer should establish and follow legitimate selection criteria, document the selection process, and conduct a thorough statistical analysis to avoid any conclusion that the process disproportionately affected older workers.

In *Kentucky Retirement Systems v. EEOC*, the Court reversed the Sixth Circuit and held that a retirement plan does not necessarily violate the Age Discrimination in Employment Act ("ADEA") when it makes age a condition of pension eligibility and treats workers differently based on their pension status. The challenged retirement plan provision included in its calculation of disability benefits the number of years left

before the worker would be eligible for retirement. In some cases, this meant that a younger worker could get higher monthly payments than an older worker. The Court concluded that the plan did not make stereotypical assumptions about age and did not always work to the disadvantage of older workers. Ultimately, the decision upholds the prohibition against age-based animus, but acknowledges that age need not be completely out of the picture in a retirement plan.

In *MetLife v. Glenn*, the Court upheld a Sixth Circuit decision refusing to give deference to a plan administrator's denial of benefits, where the plan administrator also had a stake in paying

for those benefits. Under case law interpreting the Employee Retirement Income Security Act ("ERISA"), a benefits determination by a plan administrator with authority to exercise discretion is not to be disturbed unless it is "arbitrary and capricious," absent a conflict of interest. In the *MetLife* case, the plan administrator was the insurer that ultimately would have to pay the benefits. Although Justice Breyer, writing for the 6-3 majority, stopped short of stating that no determinations by plan administrators who were also insurers should be entitled to deference, he stated that such facts could be deemed a conflict of interest to be considered as one of the factors in review by a court.

Because the lower court had ordered payment of the benefits, the majority opinion upheld that order. This decision could have a substantial impact on ERISA denial of benefits cases, in which challenges that previously were limited to the administrative record arguably might now be open to broad discovery to explore the possible effects of an alleged conflict of interest.

If you would like additional information on these or any other court decisions, or would like to discuss how such decisions might affect your business, please do not hesitate to contact any of the attorneys on the Hunton & Williams Labor & Employment Team.

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