

A Year in Review: Notable Labor and Employment Cases from 2020

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Sources of Law

- Title VII of the Civil Rights Act
- The Americans with Disabilities Act
- The Family and Medical Leave Act
- The Fair Labor Standards Act

Title VII of the Civil Rights Act

- *Bostic v. Clayton County*, 140 S. Ct. 1731 (2020)
 - Prohibition of discrimination based on “sex” encompasses discrimination based on sexual orientation or transgender status; “homosexuality and transgender status are inextricably bound up with sex.”
 - No news for Wisconsin, Illinois and Indiana employers: Seventh Circuit previously ruled that sexual orientation discrimination is prohibited by Title VII: *Hively v. Ivey Tech Community College*, 853 F.3d 339 (7th Cir. 2017)

Title VII of the Civil Rights Act

- *Kellogg v. Ball State University*, 984 F.3d 525 (7th Cir. 2021)
 - Statement made by employer during an interview in 2006 enough to overturn summary judgment on sex-based pay discrimination claim
 - Theory: salary compression; employer discriminated against employee by setting her starting salary lower than other similarly situated male employees because her husband worked

The Americans with Disabilities Act

- *Tonyan v. Dunham's Athleisure Corp.*, 966 F.3d 681 (7th Cir. 2020)
 - Employer did not violate ADA by terminating injured employee because she could not perform essential functions of the job
 - Injured employee permanently unable to lift more than two pounds; job description clearly stated employee would “frequently” lift/carry 50 pounds
 - “We usually do not second-guess the employer’s judgment in describing the essential requirements of the job.”

The Americans with Disabilities Act

- *McAllister v. Innovation Ventures, LLC*, 983 F.3d 963 (7th Cir. 2020)
 - Employer did not violate ADA by terminating injured employee after she requested several additional months of leave after taking two months of leave
 - Doctor’s note precluded her from working in any capacity; “An employer is entitled to rely on a physician's recommendation that the employee is not able to safely perform an essential function of his job.”
 - *Severson v. Heartland Woodcraft, Inc.*, 872 F.3d 476 (7th Cir. 2017) (two-to-three month leave after expiration of FMLA leave entitlement not reasonable accommodation under the ADA)

The Fair Labor Standards Act

- *Bigger v. Facebook, Inc.*, 947 F.3d 1043 (7th Cir. 2020)
 - Collective action plaintiffs cannot use the FLSA notice process to provide notice of their suit to employees who have signed valid arbitration agreements
 - Burden on plaintiff to prove that each arbitration agreement is invalid before the notices are sent
 - Provides employers with framework for limiting scope of collective actions; however, buyer beware - individually arbitrating claims can be just as costly

The Family and Medical Leave Act

- *Lutes v. United Trailers, Inc.*, 950 F.3d 359 (7th Cir. 2020)
 - Employee alleged employer violated the FMLA by failing to inform him of FMLA eligibility and rights when he called in sick after suffering an injury; employee terminated after failing to comply with employer's attendance policy
 - Under certain circumstances, employers must request additional information from employee to determine whether leave qualifies under the FMLA
 - Employees must comply with the employer's notice requirements and procedures for requesting leave

U.S. Supreme Court Case to Watch in 2021

- *Van Buren v. United States* (argued November 30, 2020)
 - Question: Does a person who is authorized to access information on a computer for certain purposes violate the Computer Fraud and Abuse Act if he/she accesses that information for an improper purpose?

Questions?

Thank You!

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