

# Selected Labor & Employment Law Updates

*compiled by* Book Review/Updates Editor

This section of the *Journal* provides notes on recent cases, pending or newly enacted legislation, and other current legal materials. The Updates section is designed to aid the practitioner in relating the *Journal* articles to the daily practice of labor and employment law. The *Journal* welcomes outside submissions of brief judicial and legislative summaries.

This edition of the *Updates* section will focus on labor and employment cases decided by the Supreme Court toward the end of the October 2001 term.

*Supreme Court holds that ADA does not require an employer to violate an established seniority system as a reasonable accommodation. US Airways, Inc. v. Barnett, 122 S. Ct. 1516 (2002).*

Plaintiff Barnett sued defendant employer under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C.S. § 12101 et seq., alleging that the employer failed to reasonably accommodate his disability by not making a disability-based exception to the employer's seniority system. Barnett, who had injured his back while working, requested a transfer to the mailroom as a reasonable accommodation. The assignment would have violated the employer's established seniority system because at least two co-workers senior to the employee were entitled to the job.

The Ninth Circuit reversed a grant of summary judgment to the employer.

The Supreme Court held that a showing that the transfer would violate the seniority system warranted summary judgment for the employer unless the employee presented evidence of special circumstances that the assignment was reasonable.

*Supreme Court holds that federal immigration policy, as expressed by Congress in ICRA, foreclosed the Board from awarding back pay to an undocumented alien who has never been legally authorized to work in the*

*United States. Hoffman Plastic Compounds, Inc., v. NLRB*, 122 S. Ct 1275 (2002).

Petitioner Hoffman Plastic Compounds Inc. hired Jose Castro on the basis of documents appearing to verify his eligibility for employment but then fired Castro and other employees for supporting a union-organizing campaign in violation of the National Labor Relations Act (NLRA).

The National Labor Relations Board found that the layoffs violated section 8(a)(3) of the NLRA, 49 Stat. 452, as added, 61 Stat. 140, 29 U.S.C. § 158(a)(3). At a compliance hearing to determine the amount of back pay, Castro revealed that he had gained employment with petitioner by using a friend's birth certificate. The Administrative Law Judge (ALJ) determined that the Board was precluded from awarding Castro relief under *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883 (1984) and the Immigration Reform and Control Act of 1986, § 101(a)(1), 100 Stat. 3360, 8 U.S.C. § 1324a, which makes it illegal for employers to knowingly hire undocumented workers or for employees to use fraudulent documents to establish employment eligibility.

Four years after the ALJ's decision, the NLRB reversed its decision with regard to back pay and awarded payments to Castro. Hoffman appealed to the Court of Appeals for the District of Columbia, which denied the petition and the Supreme Court took cert.

The Supreme Court reversed the NLRB's award of back pay, holding that an award of back pay would undermine federal immigration policy as expressed in IRCA.

*Supreme Court holds that an EEOC charge that is filed without being under oath can be verified later, even though the verification occurs outside the applicable time limit. Edelman v. Lynchburg College*, 122 S. Ct. 1145 (2002).

Petitioner Edelman, alleging gender-based, national origin and religious discrimination faxed a letter to the EEOC. The agency advised him to file a charge within the 300 day time limit and sent him a Form 5 Charge of Discrimination. Edelman filed the Form 5 313 days after he was denied tenure. Edelman then sued in Virginia State Court under various state claims and added his Title VII claim later, and alleged that the letter faxed to the EEOC was timely filed and that the Form 5 related back to the letter.

The Court overturned the Fourth Circuit holding foreclosing the petitioner's Title VII claim and accepted the petitioner's "relation back" as an "unassailable interpretation of §706." Title VII §706(e)(1), requiring

that a charge of employment discrimination be filed with the EEOC within a specified number of days after the unlawful employment practice occurred, does not require that the charge be verified “under oath or affirmation” as mandated by §706(b) *at the time* the charge is filed.

*Supreme Court holds that the Department of Labor lacks authority to compel an employer to grant more than 12 weeks of FMLA leave in one year. Ragsdale v. Wolverine Worldwide, 122 S. Ct. 1155 (2002).*

A Labor Department regulation, 29 C.F.R. §825.700(a), requiring an employer to give an employee notice if paid leave counts toward the 12 week entitlement under the Family Medical Leave Act (FMLA), 29 U.S.C.S. § 2601 et seq. The employer had granted the employee 30 weeks of medical leave although the FMLA only requires 12 weeks of medical leave. When the employer refused her request for additional leave and terminated the employee when she did not return to work, the employee sued under the regulation, alleging that the employer was required to grant her an additional 12 weeks of leave because it had not informed her that the 30 weeks counted against her FMLA entitlement.

The Supreme Court held the regulation invalid, because it required the employer to grant more than 12 weeks of FMLA-compliant leave in one year. The Court found the regulation contrary to the FMLA and beyond the scope of the Secretary of Labor’s authority.

*Supreme Court unanimously holds that a complaint (at pleading stage) alleging violation of Title VII and the Age Discrimination in Employment Act (ADEA) need not contain specific facts establishing a prima facie case. Swierkiewicz v. Sorema N.A., 534 U.S. 506 (2002).*

Petitioner filed this suit against respondent, his former employer, alleging that he had been fired on account of his national origin in violation of Title VII of the Civil Rights Act of 1964, and on account of his age in violation of the Age Discrimination in Employment Act of 1967 (ADEA). In affirming the District Court’s dismissal of the complaint, the Second Circuit relied on its settled precedent requiring an employment discrimination complaint to allege facts constituting a prima facie case of discrimination under the framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973). The Second Circuit held that petitioner had failed to meet his burden because his allegations were insufficient as a matter of law to raise an inference of discrimination.

The Supreme Court reversed, holding that an employment

discrimination complaint need not contain specific facts establishing a prima facie case under the *McDonnell Douglas* framework, but only must contain “a short and plain statement of the claim showing that the pleader is entitled to relief” as required by Federal Rule of Civil Procedure 8(a)(2). The *McDonnell Douglas* framework is an evidentiary standard, not a pleading requirement. The employee alleged termination on account of his national origin and his age, sufficient to state a claim upon which relief could be granted. The Court reversed the Second Circuit’s heightened pleading standard which would require that a prima facie case be stated in the initial complaint, despite the fact that such direct evidence might be uncovered through discovery.

*Supreme Court holds that an agreement between an employer and an employee to arbitrate employment disputes does not bar the EEOC from pursuing victim-specific judicial relief such as back pay, reinstatement, and damages, in an ADA enforcement action. EEOC v. Waffle House Inc., 534 U.S. 279 (2002).*

Despite a written agreement between the employer and the employee to settle employment disputes through binding arbitration, the Supreme Court held that the existence of an arbitration agreement between private parties does not materially change the EEOC’s statutory function or the remedies otherwise available.

*Supreme Court unanimously holds that OSHA has jurisdiction over an oil drilling barge. Chao v. Mallard Bay Drilling Inc., 534 U.S. 235, 122 S. Ct. 738 (2002).*

OSHA imposes on covered employers a duty to provide working conditions that are free from recognized hazards that are causing or are likely to cause death or serious bodily harm to their employees, as well as an obligation to comply with safety standards promulgated by the Secretary of Labor. The coverage of the Act does not extend to working conditions regulated by other federal agencies. Although the Coast Guard regulates matters related to marine safety with respect to uninspected vessels, this regulation does not extend to occupational safety and health concerns. The Court held that the Coast Guard’s authority does not pre-empt OSHA’s authority to issue citations for OSHA violations on a barge.

*Supreme Court holds that manual tasks disability has focus on tasks of central importance to people's daily lives. Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002).*

To be substantially limited in performing manual tasks under the ADA, an individual is required to have an impairment that prevented or severely restricted the individual from doing activities that were of central importance to most people's daily lives and the impairment's impacts are required to be permanent or long-term. The Sixth Circuit had determined that the employee was disabled under the ADA.

The Supreme Court held that the Sixth Circuit misapplied the 'substantially limited' standard because it only analyzed the specific manual tasks the employee had performed on an engine fabrication assembly line and failed to ask whether respondent's impairments prevented or restricted her from performing tasks that were of central importance to most people's daily lives.