



A Review of the Supreme Court's 2010 – 2011 Term

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As the United States Supreme Court's 2010-2011 term drew to a close, commentators observed several trends in its holdings. In particular, cases involving the First Amendment dominated the term, and the Court imposed substantial barriers to class actions. These latter decisions, in particular, hold major implications for employers.

The Roberts Court continues to be viewed as generally pro-business, with Senate Judiciary Committee Chairman Patrick Leahy (D-Vt.) calling the Court the "most business-friendly Supreme Court in the last 75 years." That characterization is not entirely accurate in the area of employment law, however, which requires a more nuanced examination of the Court's rulings. The nine major employment-related decisions issued by the Court this term include:

- Two class action cases (*Wal-Mart*, *AT&T Mobility*);
- Two retaliation cases (*Kasten*, *Thompson*);
- One case on the "cat's paw" theory of liability (*Staub*);
- One immigration case (*Whiting*);
- Two public employee cases (*Borough of Duryea*, *NASA*); and
- One ERISA case (*CIGNA Corp.*)

Interestingly, the Court's employment decisions this term were typically either unanimous or split 5-4 along conservative/liberal lines. (Justice Kagan was recused from four decisions because of her former position as U.S. Solicitor General.) Viewed in the aggregate, these decisions suggest hostility to large class actions, but receptivity to—and in some circumstances, expansion of—individual employee rights. Indeed, on substantive issues of employment law, the Court tended to side with the plaintiffs, either unanimously or by a substantial majority. Of the nine decisions, four are viewed as generally favorable to employers, three are viewed as generally favorable to employees, one (*Whiting*) is not favorable to either, and one (*CIGNA Corp.*) contains aspects that are favorable to employers and aspects that are favorable to employees. Therefore, the fact that conservative justices continue to play a dominant role has not translated into an across-the-board pro-employer trend.

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