

# EMPLOYMENT CASES

## Wins for Both Sides

By Debra S. Katz  
and Lisa J. Banks

**T**HE SUPREME COURT decided an unusually large number of employment cases this term. In resolving trenchant issues under the Americans With Disabilities Act (ADA) and the Family and Medical Leave Act (FMLA), and a number of recurring procedural problems in employment discrimination cases, the court has once again taken an active role in redefining the rights and responsibilities of employers and workers.

Employers scored victories making it more difficult for employees to bring ADA and FMLA claims. Employees, on the other hand, scored gains in several procedural areas. With respect to the most important procedural matter before it concerning the statute of limitations for claims under Title VII of the Civil Rights Act of 1964, the court gave both employers and employees something significant to complain about. The court also gave the Equal Employment Opportunity Commission (EEOC) a victory by endorsing its power to pursue victim-specific relief despite the existence of a private agreement to arbitrate.

In *U.S. Airways Inc. v. Barnett*, 122 S. Ct. 1516 (2002), the court held that employer seniority systems will generally, but not always, trump employees' requests for accommodation. In reaching this result, the court eschewed two competing *per se* rules and carved out a middle ground for analyzing reasonable accommodation in the context of a seniority system.

The majority rejected Robert Barnett's argument that violation of a seniority system should never be assessed at the reasonable-accommodation stage and is more properly left for the employer to argue as undue hardship. Likewise, the majority rejected *U.S. Airways'* argument that a proposed accommodation that violates a seniority system will always be unreasonable. Instead, the court created a rebuttable presumption that an accommodation that violates a seniority system is unreasonable and placed the burden on the employee to demonstrate "special circumstances" that warrant a contrary finding.

### Defining 'major life activity'

In *Toyota Manufacturing, Kentucky Inc. v. Williams*, 122 S. Ct. 681 (2002), a unanimous court clarified what a plaintiff must show to demonstrate that she has an impairment that substantially limits a major life activity. The court addressed the major life activity of manual tasks, in this case involving a Toyota assembly line worker with carpal tunnel syndrome and tendonitis. Ella Williams claimed she was disabled within the meaning of the ADA because she was substantially limited in the major life activity of performing manual tasks, but conceded that she could perform most manual tasks at home.

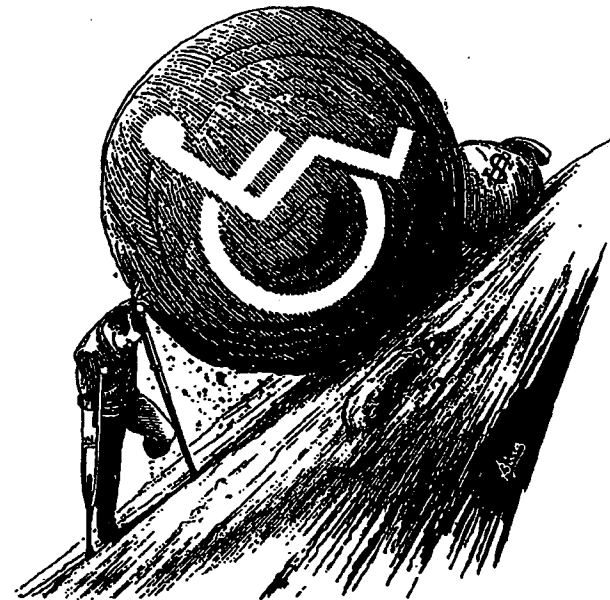
Justice Sandra Day O'Connor, writing for the court, stated that "[w]hen addressing the major life activity of performing manual tasks, the central inquiry must be whether the claimant is unable to perform the variety of tasks central to most people's daily lives, not whether the claimant is unable to perform the tasks associated with her particular job." The court determined that Williams was not impaired in the major life activity of manual tasks because she

could perform most manual tasks required in daily life.

Although the court emphasized that the ADA requires a "demanding standard for qualifying as disabled," it did not make that standard any more demanding. The *Williams* decision, which many commentators viewed as significantly raising the bar for ADA plaintiffs, simply clarified the analysis for major life activities. The court rejected the analysis of the 6th U.S. Circuit Court of Appeals that conflated the major life activity of manual tasks with the unique major life activity of working, which is the only activity that is, by definition, limited to the workplace.

Potentially more troubling for ADA plaintiffs is the court's opinion in *Chevron U.S.A. Inc. v. Echazabal*, 122 S. Ct. 2045 (2002), which expanded an af-

firmative defense under the ADA that allows employers to screen out workers who pose a "direct threat" to the safety of other individuals in the workplace. Mario Echazabal, an oil refinery worker who suffered from a liver impairment, was removed from his job because of Chevron's concern that exposure to chemicals in the workplace would cause him further harm. The 9th Circuit reversed the district court's ruling in favor of the employer, holding that the "direct threat" defense does not apply to threats to an individual's own health and safety.



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The court's unanimous decision upheld an EEOC regulation authorizing an employer to screen out disabled workers

whose disability creates a direct threat to their own health, and not just to that of their co-workers. In addressing a concern that the expansion of the affirmative defense is a form of workplace paternalism, the court pointed to an EEOC regulation that provides that the direct-threat defense must be based on "reasonable medical judgment that relies on the most current medical knowledge and/or the best available objective evidence." If both employers and the courts adhere to the "reasonable medical judgment" standard in assessing whether an employee would pose a direct threat, the result of this ruling may not have quite the negative impact that ADA plaintiffs fear.

In the first decision by the Supreme Court to interpret the FMLA, the court also gave employers the edge. In *Ragsdale v. Wolverine World Wide Inc.*, 122 S. Ct. 1155 (2002), the court struck down a Department of Labor (DOL) regulation that provided that an employee's 12-week leave allotment does not begin to run until the employer notifies the employee that the leave will count as FMLA leave.

### Procedural matters

Employers lost two out of three decisions addressing procedural matters. In *National Railroad Passenger Corp. v. Morgan*, 122 S. Ct. 2061 (2002), the court rejected the continuing-violation doctrine, which had allowed courts to consider discrete acts of discrimination that would ordinarily be time-barred when the untimely incidents represented an ongoing unlawful employment practice. Justice Clarence Thomas, writing for a unanimous court as to this aspect of the decision, concluded that a Title VII plaintiff raising claims of discrete discriminatory acts must file a charge with the EEOC within the time period designated in the statute.

Rejecting the employee's argument that an "unlawful employment practice" connotes an ongoing violation that can recur over a period of time, the court noted that discrete acts, such as failure to promote, denial of transfer or refusal to hire, are easy to identify, and each constitutes a separate actionable "unlawful employment practice." The court held that in order to be actionable, a charge must be filed within the required time of each discrete act of discrimination, even when it has a connection to other discriminatory acts. The court emphasized that the statutory filing requirement does not bar an employee from using the prior acts of discrimination as background evidence in support of a timely claim.

On the other hand, reasoning that hostile work environment claims, by their very nature, involve repeated conduct and are based on the cumulative effect of individual acts, a 5-4 majority held that the limitations period for such claims requires different treatment. In such cases, courts may consider acts that occur outside the applicable limitations period when determining liability. Thus, if an act contributing to the hostile work environment claim occurred within the filing period, the entire period of the hostile environment may be considered in determining liability.

However, in dicta that do not bode well for plaintiffs, the court stated that its holding "does not leave employers defenseless against employees who bring hostile work environment claims that extend over long periods of time," and that employers may raise a laches defense if the employee unreasonably delayed in filing and the employer is harmed as a result. We will undoubtedly see a proliferation of litigation on laches-related issues.

In *Edeiman v. Lynchburg College*, 122 S. Ct. 1145 (2002), the court made it easier for plaintiffs to assert discrimination

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# 'Waffle House' handed EEOC important win

'EMPLOYMENT' FROM PAGE C6  
claims with the EEOC, emphasizing that Title VII is a remedial scheme in which lay people are expected to initiate the process. Writing for a unanimous court, Justice David Souter upheld an EEOC regulation that permits an otherwise timely filer to verify a discrimination charge after the time for filing has expired.

The court construed two separate filing provisions of Title VII, which mandate both that an EEOC charge must be made under oath and that a charge must be filed within a certain time period. In reversing the 4th Circuit's determination that these provisions must be read as one, such that a verified charge must be filed within the prescribed time period, the court noted that reading the two provisions of Title VII together would not be facially inconsistent. The court nevertheless recognized that defining a charge as one "under oath or affirmation" was not plainly stated in the statute. Therefore, the EEOC's position that an otherwise timely charge may be amended to cure technical defects was reasonable in light of the nature of Title VII as a "remedial scheme" and the common law practice of allowing later verifications to relate back to earlier filings.

While not the most discussed employment case coming from the court this term, *Edelman* may be the most useful to pro se complainants who attempt to assert their claims of discrimination before the EEOC.


In another clear-cut procedural victory for plaintiffs, the court unanimously held in *Swierkiewicz v. Sorema NA*, 534 U.S. 506 (2002), that plaintiffs suing under federal employment discrimination statutes need not plead a prima facie case in order to survive a motion to dismiss. Rejecting a heightened pleading standard, the court reasoned that the prima facie case framework "is an evi-

dentiary standard, not a pleading requirement." An employment discrimination complaint need only comply with Federal Rule of Civil Procedure 8(a)(2) and contain "a short and plain statement of the claim showing that the pleader is entitled to relief."

In *EEOC v. Waffle House Inc.*, 534 U.S. 279 (2002), the court handed the EEOC—and by extension, covered employees—an important victory by holding that private agreements between an employer and an employee to arbitrate employment-related disputes do not prevent the EEOC from pursuing victim-specific judicial relief, such as back pay, reinstatement and damages, in suits brought on behalf of such employees.

Writing for the 6-3 majority, Justice John Paul Stevens held that despite the federal policy favoring arbitration inherent in the Federal Arbitration Act, the EEOC "is in command of the process" and is not bound by private arbitration agreements to which it is not a party, once a charge is filed with it. The court reasoned that the

EEOC has been statutorily entrusted with vindicating the public interest by pursuing enforcement actions and that giving greater effect to an agreement between private parties would undercut the EEOC's exclusive authority over the choice of forum and the prayer for relief once a charge has been filed.

Ironically, Thomas, former chairman of the EEOC, dissented, declaring that the agency must not be permitted to do on behalf of an employee "that which an employee agreed not to do for himself." Had the decision gone the way of Thomas' dissent, with the court holding that the EEOC's power to seek victim-specific relief is trumped by private arbitration agreements, the EEOC's enforcement powers would have been eviscerated. 

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**Private  
arbitration  
deals don't  
bind EEOC.**

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