

# Supreme Court Roundup: The High Court's Significant Labor and Employment Law Decisions of the 2001-02 Term

by Alan D. Berkowitz and Alison Donahue Kehner

October 2002



BOSTON · BRUSSELS · FRANKFURT · HARRISBURG · HARTFORD · LONDON · LUXEMBOURG  
NEW YORK · NEWPORT BEACH · PARIS · PHILADELPHIA · PRINCETON · WASHINGTON

[www.dechert.com](http://www.dechert.com)

Copyright 2002 Dechert. All rights reserved. Materials have been abridged from laws, court decisions and administrative rulings and should not be considered as legal opinions on specific facts or as a substitute for legal counsel.

# Supreme Court Roundup: The High Court's Significant Labor and Employment Law Decisions of the 2001-02 Term

by Alan D. Berkowitz and Alison Donahue Kehner

BOSTON

BRUSSELS

FRANKFURT

HARRISBURG

HARTFORD

LONDON

LUXEMBOURG

NEW YORK

NEWPORT BEACH

PARIS

PHILADELPHIA

PRINCETON

WASHINGTON

## ■ Introduction

The Supreme Court decided an extraordinarily large number of cases involving labor and employment law issues this last term. Out of 82 decisions in the 2001-02 term, 18 – or 22 percent – involved labor and employment issues.<sup>1</sup> Eight of those decisions involved cases under the anti-discrimination statutes, and four of the eight arose under the Americans with Disabilities Act (“ADA”). While it is difficult to say who benefited from the Court’s increased labor and employment caseload this term, many commentators view the Court as having handed the most significant victories to employers, especially in the cases involving the anti-discrimination statutes.

The purpose of this Supreme Court roundup is to highlight the most significant employment law decisions of this past term from the perspective of a private sector employer. The article concludes with a discussion of a case that the Supreme Court has just agreed to hear in the upcoming 2002-03 term.

## ■ Supreme Court's Significant Employment Decisions in 2001-02 Term

### ADA Issues: Raising the Bar for Plaintiffs

This term, the Supreme Court issued three important decisions interpreting the substantive provisions of the ADA.<sup>2</sup> In each case, the Court sided with the employer, further narrowing the scope of coverage under the statute.

---

<sup>1</sup> We use the phrase “labor and employment law issues” to describe decisions involving, in some fashion, an employment-related topic. Some of the cases included in this group are addressed elsewhere in these materials, while others have been omitted because they are not of particular significance to private sector employers.

<sup>2</sup> *EEOC v. Waffle House*, the Court’s other significant decision arising under the ADA, will be discussed in part B,1, *infra*, as the holding in that case reaches beyond the ADA context.

*Toyota Motor Mfg., Inc. v. Williams*, 122 S. Ct. 681 (2002) (decided Jan. 8, 2002)

In *Toyota Motor Mfg., Inc. v. Williams*, the Court continued its trend toward limiting the protected class of individuals under the ADA by clarifying the meaning of the phrase “substantially limited” when the major life activity involved is performing manual tasks. The Court held that the plaintiff, who developed carpal tunnel syndrome (“CTS”) and tendonitis after several years of working on an automobile assembly line, was not substantially limited in the major life activity of performing manual tasks.

Because of her CTS and tendonitis, the plaintiff was restricted in her ability to lift objects or to perform repetitive arm and wrist movements, especially overhead. Toyota thus placed plaintiff on a quality control team responsible for performing two out of a total of four “spot check” duties.

Eventually, however, Toyota restructured its quality control operations and required all employees on the line to perform all four quality control tasks. While the plaintiff could physically perform two of the four assignments in a satisfactory manner, she had difficulty completing certain of the additional tasks that she had been given. Specifically, the plaintiff could not perform the task requiring her to hold her hands and arms at approximately shoulder height for several hours at a time. Toyota eventually terminated the plaintiff’s employment, and she sued, claiming that Toyota failed to reasonably accommodate her disability. *Id.* at 686-87.

The district court granted summary judgment to Toyota, finding that the plaintiff’s impairment did not qualify as a “disability” under the ADA because it had not substantially limited her in a major life activity. On appeal, the Sixth Circuit reversed and entered partial summary judgment in the plaintiff’s favor on the disability issue. The court concluded that her condition “prevented her from doing the tasks associated with certain types of manual assembly line jobs that require the gripping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time.” *Williams v. Toyota Motor Mfg., Inc.*, 224 F.3d 840, 844 (6th Cir. 2000), *rev’d*, 122 U.S. 681 (2002).

The Supreme Court reversed in a unanimous opinion. It held that the Sixth Circuit applied the wrong standard in determining that the plaintiff was substantially limited in performing manual tasks because it analyzed only whether the plaintiff could perform a limited class of manual activities associated with her work on an assembly line. It explained that the Sixth Circuit focused too narrowly on the plaintiff’s inability to perform manual tasks that were central to her own current “specialized assembly line job,” because those tasks “are not an important part of most people’s daily lives.” 122 S.Ct. at 692. Instead, the Court explained that “the central inquiry must be whether the claimant is unable to perform the variety of [manual] tasks central to most people’s daily lives, not whether the claimant is unable to perform the tasks associated with her specific job.” *Id.* at 693.

The Court also stated that the Sixth Circuit improperly disregarded the very type of evidence that it should have focused upon in assessing whether the plaintiff was substantially limited in her ability to perform manual tasks. For example, the lower court found it irrelevant that the plaintiff could still brush her teeth, wash her face, and do laundry and other household chores. The Supreme Court explained, however, that these daily activities are among the types of manual tasks of central importance to a person's daily life, and thus should have been part of "substantially limited" inquiry. Moreover, while the record also indicated that the plaintiff's conditions required her to refrain from sweeping and dancing, to seek periodic assistance with dressing, and to reduce her gardening, playtime with her children and driving long distances, the Court opined that those modifications in lifestyle did not amount to such severe restrictions in activities to establish disability as a matter of law at the summary judgment stage of the proceedings.<sup>3</sup> *Id.* at 693.

*US Airways v. Barnett, 122 S.Ct. 1516 (2002) (decided April 29, 2002)*

In *US Airways v. Barnett*, the Supreme Court was squarely confronted with the task of balancing the seniority rights of non-disabled employees against the rights of disabled employees to reasonable accommodations, where those two interests collide. The Supreme Court determined that, at least in the majority of cases, seniority rights must trump the right to a reasonable accommodation.

After the plaintiff, Robert Barnett, injured his back while a cargo handler for US Airways, Inc., the company transferred him to a position in the mailroom that was less physically demanding. His mailroom position eventually became open to seniority-based employee bidding under the company's seniority system, and employees more senior to the plaintiff decided to bid for the job. The plaintiff sought an exemption to the seniority plan so that he could keep his job, but US Airways refused to grant his request and terminated his employment. *Id.* at 1519.

The plaintiff sued under the ADA, claiming that it would be a reasonable accommodation for US Airways to make an exception to the seniority plan that would have permitted him to remain in the mailroom position. The district court granted summary judgment to US Airways, finding that altering a seniority system so that the plaintiff could remain in his job would result in an "undue hardship" to both the company and its non-disabled employees. The Ninth Circuit reversed, holding that the existence of the seniority system was merely a factor in the undue hardship inquiry, and that a case-by-case, fact intensive analysis is required to determine whether any particular job assignment would constitute an undue hardship for an employer. *Id.* at 1519-20.

---

<sup>3</sup> The Court declined Toyota's invitation to grant summary judgment in its favor on the record, as that issue was not properly before the Court. *Id.* at 694. Nevertheless, based on the tenor of the opinion, it would be hard for the Sixth Circuit to rule any other way on remand.

The Supreme Court reversed the Ninth Circuit. The Court framed the question presented as whether a proposed accommodation that would normally be viewed as reasonable (i.e., a request to reassign a disabled employee to a light duty position) is rendered unreasonable as a matter of law because the assignment would violate a seniority system's rules. The answer to that question, the Court stated, was "yes," "in the run of cases." *Id.* at 1519, 1524. In a 5-4 ruling, the Court held that, "to show that a requested accommodation conflicts with the rules of a seniority system is ordinarily to show that the accommodation is not 'reasonable.'" *Id.* at 1519. By making such a showing, the employer will be entitled to summary judgment on the question of whether the plaintiff is a "qualified individual" under the ADA.

Despite this seemingly broad holding, the Court did not foreclose a plaintiff from defeating summary judgment in every instance involving a conflict between a requested accommodation and a seniority system. Indeed, it left open the possibility that an employee could avoid summary judgment notwithstanding the existence of a seniority system that, on its face, precluded the accommodation if the plaintiff presents evidence of special circumstances that make a seniority rule exception "reasonable" in a particular case. *Id.* at 1525. The Court also provided two examples of special circumstances that might qualify (although it made it clear that other showings would be sufficient). First, the plaintiff could show that the employer, having retained the right to change the seniority system unilaterally, exercises that right frequently enough that one more exemption would make little difference to the senior employees. Second, the plaintiff could show that the system contains so many built-in exceptions that one further exception to accommodate the disabled employee would be unlikely to matter. *Id.*

Some commentators predict that in the wake of *Barnett*, employers may attempt to argue that other facially neutral employer policies, not just seniority rules, should be afforded similar deference when they conflict with an employee's accommodation request. However, how broadly *Barnett* will be interpreted cannot be certain, particularly given the important role that seniority rights play in fostering effective labor-management relations.

*Chevron U.S.A., Inc. v. Echazabal*, 122 S.Ct. 2045 (2002) (decided June 10, 2002)

In *Chevron U.S.A., Inc. v. Echazabal*, the Court addressed whether the "direct threat" defense provided in the ADA allows an employer to lawfully terminate or refuse to hire an individual for a position that would pose a threat to himself or herself because of a disabling condition. The Court answered the question in the affirmative, upholding a regulation promulgated by the Equal Employment Opportunity Commission ("EEOC").

The plaintiff, Mario Echazabal, worked for several years as an independent contractor at a refinery owned by Chevron. He was offered permanent employment at Chevron twice pending the outcome of a company physical examination. Each time, the exam showed liver damage that Chevron doctors believed would be

aggravated by continued exposure to toxins at the refinery. In each instance, Chevron withdrew the offer of employment, and the second time it asked the contractor employing the plaintiff to either reassign him to a job without exposure to harmful chemicals or to remove him from the refinery altogether. After the contractor laid off the plaintiff, he filed suit claiming, *inter alia*, that Chevron violated the ADA in refusing to hire him, or even let him continue working in the plant, because of a disability, i.e., his liver condition. *Id.* at 2047-48.

The district court granted summary judgment to Chevron based on an EEOC regulation<sup>4</sup> allowing an employer to screen out a potential worker with a disability not only for risks that he would pose to others in the workplace but also for risks on the job to his own health or safety. The Ninth Circuit reversed, finding that the EEOC regulation exceeded the scope of permissible rulemaking under the ADA. The court recognized that the regulation is an enlargement of the statutory affirmative defense that allows employers to make decisions based on qualification standards “shown to be job related and consistent with business necessity,” see 42 U.S.C. § 121113(a), and that the ADA also provides that such lawful qualification standards “may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace,” see 42 U.S.C. § 121113(b). Nevertheless, the court found that the EEOC regulation exceeded the scope of permissible rulemaking because it went one step further by allowing an employer to screen out a disabled employee whose employment may pose a direct threat to *himself or herself* because of a disabling condition. *Id.* at 2048.

The Supreme Court disagreed with the Ninth Circuit and reversed in another unanimous opinion. It concluded that the EEOC regulation, which interpreted the “direct threat” defense to encompass the situation where the employee was a direct threat to himself, was a permissible exercise of administrative rulemaking. The Court determined that the plain language of the direct threat defense was ambiguous as to its scope, and that the EEOC’s interpretation was reasonable and thus permissible “[s]ince Congress has not spoken exhaustively on threats to a worker’s own health.” *Id.* at 2051-52. The Court also considered but rejected the plaintiff’s argument that the EEOC regulation fostered the type of workplace paternalism that the ADA was meant to eradicate. The Court found that the EEOC regulation did not allow employers to exclude persons from employment based on “generalized fears” or “paternalistic judgments” about disabled individuals, the very concerns that prompted Congress to enact the ADA. Rather, the regulation requires a particularized inquiry into the harms the individual plaintiff would probably face in a given employment situation, and the defense must be based on “a reasonable medical judgment that relies on the most current medical knowledge.” *Id.* at 2052-53.

---

<sup>4</sup> See 29 C.F.R. § 1630.15(b)(2) (2001).

## Remaining Anti-Discrimination Cases

*Arbitration Agreements: EEOC v. Waffle House, 122 S.Ct. 754 (2000)*  
(decided January 15, 2002)

The Court's pronouncement in *EEOC v. Waffle House* made it clear that even a valid arbitration agreement may not insulate an employer from litigating certain employment claims in court. In *Waffle House*, the Court held that an arbitration agreement between an employer and an employee, which required the employee to arbitrate any employment-related dispute or claim, did not bar the EEOC from pursuing victim-specific judicial relief on behalf of the employee in court.

After suffering a seizure at work, Eric Baker was terminated from his position as a grill operator at a South Carolina Waffle House restaurant. Baker filed a charge of discrimination with the EEOC, claiming that his discharge violated the ADA. The EEOC filed an enforcement action in district court against Waffle House, seeking injunctive and specific relief designed to make Baker whole, including back pay, reinstatement, compensatory and punitive damages. Waffle House filed a motion to stay the EEOC's action and to compel arbitration based on an agreement that Baker signed agreeing that "any dispute or claim" concerning his employment would be "settled by binding arbitration." The district court denied the motion based on a factual determination that Baker's employment contract did not include the arbitration agreement.

In reversing the district court's decision, the Fourth Circuit considered the effect the arbitration agreement had on the EEOC's ability to bring an enforcement action and seek victim-specific judicial relief. 193 F.3d 808, 808 (4th Cir. 1999), *rev'd*, 122 S. Ct. 744 (2002). The court held that the agreement did not foreclose the enforcement action because the EEOC was not a party to the contract, and it had independent statutory authority to bring suit in the public interest. Nevertheless, the court also held that the EEOC could only seek injunctive relief, and not victim-specific relief, because of the policy underlying the FAA favoring enforcement of arbitration agreements.

The Supreme Court reversed in a 6-3 opinion. The Court concluded that despite the preference for arbitration inherent in the FAA, once a charge is filed with the EEOC, the agency may pursue any form of relief authorized under statute. The Court concluded that the arbitration agreement between the employer and the employee could not limit the EEOC's statutory authority in the way the Fourth Circuit envisioned because the agency was not a party to the contract. *Id.* at 763. The Court also rejected the Fourth Circuit's conclusion that the public interest served by the EEOC seeking "make-whole" relief for the victim was outweighed by the goals underpinning the FAA. As the Court explained, "whenever the EEOC chooses from among the many charges filed each year to bring an enforcement action in a particular case, the agency may be seeking to vindicate a public interest, not simply

provide make-whole relief for the employee, even when it pursues entirely victim-specific relief.<sup>5</sup> *Id.* at 765.

*Family Medical Leave Act: Ragsdale v. Wolverine World Wide, Inc.*, 122 S.Ct. 1155 (2002) (decided March 19, 2002)

In a 5-4 decision under the Family Medical Leave Act (“FMLA”), the Supreme Court in *Ragsdale v. Wolverine World Wide, Inc.* held that a regulation of the United States Department of Labor was contrary to the language of the FMLA and thus was beyond the Secretary of Labor’s authority to enact. The plaintiff, Tracy Ragsdale, became ill with cancer and took a total of 30 weeks of unpaid sick leave under Wolverine World Wide, Inc.’s sick leave policy. The employer’s sick leave policy was more generous to its employees and provided a greater amount of leave than is required under the FMLA, which guarantees qualifying employees 12 weeks of unpaid leave each year. At the completion of the 30-week leave period, the plaintiff sought additional leave pursuant to FMLA, but her employer denied her request for leave or for part-time employment and terminated her employment when she did not return to work full time.

The plaintiff then sued Wolverine under the FMLA, claiming that a regulation adopted by the Department of Labor (“DOL”)<sup>6</sup> required her employer to grant her 12 additional weeks of leave as a remedy for the employer’s failure to inform her that the 30-week absence would count against her FMLA entitlement, as the regulation provided. Both the district court and the Eighth Circuit dismissed the plaintiff’s FMLA claim, finding that the DOL regulation contradicted the wording of the statute. *Id.* at 1159.

The Supreme Court agreed and affirmed the dismissal of the FMLA claim. It ruled that the statute could not be read to authorize, as a penalty, an additional 12 weeks of leave simply because of an employer’s failure to give notice that the initial leave would count against the FMLA entitlement. The Court held that even assuming that the regulatory requirement of fair notice is valid, “the Secretary’s categorical penalty for its breach is contrary to the Act” because the penalty is assessed automatically without regard to whether the employer’s actions interfered or restrained the employee’s exercise of his or her FMLA rights and caused prejudice to the employee. *Id.* at 1161. Such a result, the Court determined, was incompatible with the FMLA’s remedial mechanism that requires an employee to prove interference with and

---

<sup>5</sup> The Supreme Court’s decision in *EEOC v. Waffle House* abrogated *Merrill, Lynch, Pierce Fenner and Smith, Inc. v. Nixon*, 210 F.3d 814 (8th Cir. 2000) and *EEOC v. KidderPeabody & Co.*, 156 F.3d 298 (2d Cir. 1998).

<sup>6</sup> 29 C.F.R. § 825.700(a) (2001).

prejudice to FMLA rights to prevail against an employer and recover damages.<sup>7</sup> *Id.* at 1162.

The Court explained that the practical effect of the regulation was to create an irrebuttable presumption that the employer's technical violation of the notice requirement interfered with FMLA rights and prejudiced the employee to such a degree as to entitle the employee to 12 more weeks of leave. But the Court concluded that the regulation's presumptions "altered the FMLA's cause of action in [such] a fundamental way" that it could not be upheld as a reasonable exercise of the Secretary's authority to issue regulations "necessary to carry out" the FMLA under 29 U.S.C. § 2654. *Id.*

The Court also noted that the regulation was in considerable tension with the statute's admonition that "nothing in this Act . . . shall be construed to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under this Act." 29 U.S.C. § 2653. The Court determined that by automatically requiring an additional 12 weeks leave for a technical violation of the notice requirement, the regulation promotes the exact result Congress sought to avoid – that employers would be inclined to discontinue voluntary programs that provide a greater amount of leave than the 12 weeks mandated by the FMLA. As the Court aptly observed, "[t]he regulation imposes a high price for a good faith but erroneous characterization of an absence as non-FMLA leave, and employers like Wolverine might well conclude that the simpler, less generous route is the preferable one." *Id.* at 1165.

*Timeliness of Charges and Continuing Violations: National Railroad Passenger Corp. v. Morgan, 122 S.Ct. 2061 (2002) (decided June 10, 2002)*

In *National Railroad Passenger Corp. v. Morgan*, the Supreme Court clarified the circumstances under which a plaintiff may sue on events that occurred more than 180 (or 300) days before the filing of the charge of discrimination. There, the plaintiff brought an action against Amtrak, alleging that he had been subjected to several acts of discrimination and retaliation, as well as a racially hostile work environment, throughout his employment. While some of the allegedly discriminatory acts occurred within 300 days of the time that the plaintiff filed his EEOC charge, many took place prior to that time period.

The district court granted summary judgment to Amtrak in part, holding that the company could not be liable for conduct occurring outside of the 300-day filing period. The Ninth Circuit reversed, holding that a plaintiff may sue on claims that would ordinarily be time barred so long as they either are "sufficiently related" to

---

<sup>7</sup> 29 U.S.C. § 2615(a)(1) makes it unlawful for an employer to "interfere with, restrain, or deny the exercise of" FMLA rights described elsewhere in the statute, and violators are subject to consequential damages and appropriate equitable relief, *Id.*, § 2617(a)(1).

incidents that fall within the statutory time period or are part of a systematic policy or practice of discrimination that took place, at least in part, within the period.

The Supreme Court reversed in part and affirmed in part. First, the Court held that a Title VII plaintiff raising claims of discrete discriminatory or retaliatory acts must file his charge within the appropriate 180- or 300-day period or lose the ability to recover for it. The Court explained that each discrete discriminatory act starts a new clock for filing charges because each instance of discrimination is an “unlawful employment practice” that, according to the statute, must occur within the applicable time period. The Court rejected the Ninth Circuit’s “continuing violation” rule that allowed plaintiffs to recover for discrete acts outside the limitations period as long as at least one act fell within the charge filing period and the prior acts were “plausibly or sufficiently related” to that timely act of discrimination.<sup>8</sup> *Id.* at 2071-73.

Second, the Court held that a charge alleging a hostile work environment will not be time barred if all acts constituting the claim are part of the same unlawful practice and at least one act falls within the filing period. The Court reasoned that, unlike claims arising from discrete discriminatory acts, the essence of a hostile work environment claim is repeated conduct over a period of time. *Id.* at 2073. Thus, the unlawful employment practice cannot be said to have occurred on any particular day. Rather, it occurs on a number of occasions and, in direct contrast to discrete acts of discrimination, a single act of harassment may not be actionable on its face. In formulating the rule to be applied in hostile work environment cases, the Court rejected a line of circuit court precedent, followed by the district court in this case, which held that a plaintiff may not base a claim on acts that occurred outside the limitations period unless it would have been unreasonable to expect the plaintiff to sue before the statute ran on the conduct at issue. The Court concluded that applying such a rule in analyzing the timeliness of hostile work environment claims was not required by the language of the statute, as Title VII itself does not separate individual acts that are part of the hostile work environment claim from the whole for purposes of timely filing and liability. *Id.* The Court provided a simple, workable rule in analyzing the timeliness of hostile work environment claims: “[a] court’s task is to determine whether the acts about which an employee complains are part of the same actionable hostile work environment practice, and if so, whether any act falls within the statutory time period. *Id.* at 2076.

*Timing of EEOC Verification: Edelman v. Lynchburg College, 122 S.Ct. 1145 (2002) (decided March 19, 2002)*

Title VII provides that a “charge” must be verified and must be filed within a statutorily prescribed time period after the alleged wrongful employment practice

---

<sup>8</sup> The Court specifically stated, however, that it did not reach the question of what acts may be considered for purposes of determining liability where the plaintiff asserts a “pattern-or-practice claim,” as that issue was not presented in the case. *Id.* at 2073 n.9.

occurred.<sup>9</sup> The issue presented in *Edelman v. Lynchburg College* was whether an EEOC charge actually has to be verified as accurate by the charging party within the statutory time period required for the filing of a charge with the EEOC. The Supreme Court unanimously answered “no,” upholding the EEOC’s longstanding rule that a later verified charge will relate back to a timely unverified charge.

The plaintiff in *Edelman* sent a letter to the EEOC shortly after he learned that he had been denied tenure, claiming that the decision was discriminatory. In response, the EEOC sent him a “Form 5 Charge of Discrimination” to be completed, which the plaintiff eventually returned with a signed verification after the applicable time period for filing a charge had expired.

In reversing the Fourth Circuit’s dismissal based on its conclusion that the verification was untimely filed,<sup>10</sup> the Court noted that nothing in Title VII defines the term “charge.” Section 706(b) of the statute, 42 U.S.C. § 2000e-5(b), merely requires that a charge be verified without saying when the verification is due. Section 706(e)(1), 42 U.S.C. § 2000e-5(e), in turn, provides that a charge must be filed within a set time period, but it does not state whether the charge must be verified when filed. Based on the disconnect that was apparent from a reading of the two relevant provisions, the Court determined that the Fourth Circuit erred in assuming that the statute required a completely verified charge to be filed within the filing period. Given that the subsections at issue did not incorporate or cross-reference each other, the Court concluded that there was nothing in the language of Title VII itself that made it “plain” that the verification (as opposed to just the charge) had to be filed within the time period set forth in the statute. The Court thus held that the EEOC’s regulation was reasonable and entitled to deference. *Id.* at 1149.

Notably, the Court did not reach the issue on which the district court had granted summary judgment to Lynchburg – namely, that the letter itself did not constitute a “charge of discrimination” filed within the applicable time period. The Court expected the issue to be revisited on remand, especially given the fact that the EEOC did not appear to treat it as such when it was received. *Id.* at 1153.

---

<sup>9</sup> 42 U.S.C. § 2000e-5(e)(1), 42 U.S.C. § 2000e-5(b).

<sup>10</sup> Both the district court and the Fourth Circuit ruled for the employer, albeit for different reasons. The district court found that the letter that the plaintiff sent to the EEOC within the statutory time period did not constitute a “charge” sufficient to toll the filing period. The Fourth Circuit, by contrast, accepted that the letter constituted a charge of discrimination but nevertheless concluded that the plain language of Title VII foreclosed the relation back regulation.

*Pleading Requirements in Discrimination Cases: Swierkiewicz v. Sorema, N.A., 122 S.Ct. 992 (2002) (decided February 26, 2002)*

In *Swierkiewicz v. Sorema, N.A.*, the Court addressed the proper pleading standard in a Title VII action, and in the process reaffirmed that “notice pleading” under the Federal Rules of Civil Procedure governs employment discrimination claims. The plaintiff, Akos Swierkiewicz, a 53-year old native of Hungary, filed suit against his former employer, alleging that he had been terminated because of his national origin and age. The district court granted the employer’s motion to dismiss, finding that the plaintiff had not adequately alleged a prima facie case under the Supreme Court’s landmark decision in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). The Second Circuit affirmed.

The Supreme Court unanimously reversed the Second Circuit, holding that “an employment discrimination complaint need not include facts [establishing a prima facie case under *McDonnell Douglas*] and instead must contain only ‘a short and plain statement of the claim showing that the pleader is entitled to relief.’”<sup>11</sup> *Id.* at 992. The prima facie case under *McDonnell Douglas*, the Court explained, is an evidentiary standard, not a pleading requirement. In any event, there will be some cases where the *McDonnell Douglas* standard does not apply. Thus, as a matter of logic, the ordinary rules for assessing the sufficiency of a complaint must apply to the same degree in employment discrimination cases as they do in other areas of the law. *Id.* at 997-98.

## ■ Issues To Watch: The Supreme Court’s 2002-03 Docket

While the Supreme Court’s 2002-03 term officially began just this past Monday, October 7, 2002, the justices have already agreed to hear an ADA case this term. On Monday, October 1, 2002, the Court granted certiorari in *Clackamas Gastroenterology Associates, P.C. v. Wells*, 271 F.3d 903 (9th Cir. 2001), *cert. granted*,—S.Ct. —, 2002 WL 496771, 70 U.S.L.W. 3625 (U.S. Oct 01, 2002) (NO. 01-1435), a case involving the question of whether a professional corporation’s physician-shareholders are “employees” for purposes of determining whether the corporation constitutes an employer under the ADA. The plaintiff in *Wells* sued her former employer after she was terminated, claiming that her termination violated the ADA. The district court granted summary judgment to the professional corporation, finding that the physician-shareholders were not “employees” of the corporation, and thus, the employer did not employ 15 or more persons, the threshold number to constitute a covered entity under the ADA.<sup>12</sup> *Id.* at 903. In reaching this conclusion, the district court agreed with the employer’s argument that, pursuant to the

<sup>11</sup> See Fed. R. Civ. P. 8(a)(2).

<sup>12</sup> The parties agreed that if the physician-owners were not employees, the threshold number for coverage had not been met.

“economic realities” test, the four physician-shareholders should be regarded as “partners” and not as “employees” within the meaning of 42 U.S.C. § 12111(4) & (5).

The Ninth Circuit disagreed and reversed the district court’s determination. The court began its analysis by recognizing that it had not yet decided whether a shareholder in a professional corporation was an “employee” for purposes of determining coverage of the corporation as an “employer” under the ADA or any other anti-discrimination statute. Nevertheless, the court examined two decisions from other courts of appeals – the Seventh Circuit and the Second Circuit – that reached conflicting results on the issue. Ultimately, the court followed the Second Circuit’s approach in *Hyland v. New Haven Radiology Associates*, 794 F.2d 793 (2d Cir. 1986), and concluded that the use of the corporate form, including a professional corporation, precludes any examination designed to assess whether the owners of the corporation should be treated as “partners” for coverage purposes under the ADA. The court in *Hyland* reasoned that because the incorporators of the professional corporation made a conscious decision to utilize the corporate form and avail itself of many business advantages, “they should not now be heard” to say that their firm is “essentially a medical partnership,” and not a corporation. Citing the “broad purposes of the ADA,” the Ninth Circuit agreed that medical professionals should not be allowed to have the “best of both worlds” by utilizing the corporate form to avail themselves of favorable tax and civil liability benefits while claiming that they are like partners in a partnership in order to avoid liability for employment discrimination. *Id.* at 904.

While this case arises under the ADA, the Court’s ultimate decision in *Wells*, whatever it will be, will have implications that reach beyond that specific context. Indeed, as the Ninth Circuit noted, several employment discrimination statutes contain nearly identical language, including Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act.