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Thompson Coburn's  
Annual Labor, Employment and  
Employee Benefits Law Seminar



# Supreme Court Update

**David Deterding**

Thompson Coburn's Annual Labor,  
Employment and Employee Benefits Law Seminar

# 2021 Cases



- Van Buren v. United States
- Cedar Point Nursery v. Hassid
- NCAA v. Alston

# Van Buren v. U.S., 141 S. Ct. 1648 (2021)



- 6-3 Decision
- Authored by Justice Barrett
- Computer Fraud and Abuse Act (“CFAA”) does not prohibit a person from improperly using electronically stored information if the person was authorized to access the computer device



# Cedar Point Nursery v. Hassid, 141 S. Ct. 891 (2021)



- 6-3 Decision
- Authored by Chief Justice Roberts
- California labor regulation allowing union organizers to enter an agricultural employer's property to speak with farmworkers before work, after work, and on their lunch breaks is a *per se* physical taking of the employer's property.

# NCAA v. Alston, 141 S. Ct. 2141 (2021)



- Unanimous Decision
- Authored by Justice Gorsuch
- NCAA's rules limiting education-related benefits that schools may provide to student-athletes run afoul of Section 1 of the Sherman Act.
- The Court concluded that NCAA rules fixing wages for student-athletes are subject to antitrust scrutiny.

# 2022 Cases



- Badgerow v. Walters
- Hughes v. Northwestern
- Cummings v. Premier Rehab Keller
- Viking River Cruises v. Moriana

# Badgerow v. Walters



- 8-1 Decision
- Authored by Justice Kagan on 3/31/22
- Decision narrowed federal courts' jurisdiction to confirm or vacate an arbitration award under the FAA



# Hughes v. Northwestern



- 8-0 Decision
- Authored by Justice Sotomayor on 1/24/22
- Maintaining a large number of investment options will not absolve a fiduciary of its failure to remove/replace poor-performing, high-cost or otherwise imprudent investments
- Construction and maintenance of the plan investment lineup and diligent documentation of how those processes have been followed may warrant some judicial deference
- May have a chilling effect on retirement plan investment options

# Cummings v. Premier Rehab Keller



- Argued 11/30/21
- The justices are expected to decide the case by July
- Issue: Whether the compensatory damages available under Title VI of the Civil Rights Act of 1964 and the statutes that incorporate its remedies for victims of discrimination, such as the Rehabilitation Act and the Affordable Care Act, include compensation for emotional distress
- Why it Matters: Will indicate whether current Court is inclined to expand potential recovery for plaintiff's alleging discrimination. Language of opinion will likely point which way Court is leaning with respect to other types of discrimination actions and categories of available damages as well

# Viking River Cruises v. Moriana



- Argued 3/30/22
- Issue: Whether the Federal Arbitration Act requires enforcement of a bilateral arbitration agreement providing that an employee cannot raise representative claims, including under the California Private Attorneys General Act (PAGA).
- Why it Matters: If Supreme Court holds that the FAA applies to PAGA cases, it will represent a boon to CA employers' ability to minimize wage and hour claims.

# Missouri Statutory Change



- Missouri Domestic Violence Leave Law
- RSMo 285.630
- Missouri joins growing list of states with Domestic Violence Leave Laws

# Missouri Domestic Violence Leave Law RSMo. 285.630



- Effective Date: 8/28/21
- Unpaid Leave
- Legal and personal matters related to domestic violence
- 20 – 49 employees (1 week)
- 50+ employees (2 weeks)
- Qualifying Reasons
  - seeking medical attention;
  - obtaining victim services or counseling;
  - participating in safety planning; or
  - seeking legal assistance.
- Employers should consider amending current leave policies/handbooks

# Questions



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