

A hand in a dark suit jacket is shown from the wrist up, pointing upwards with the index finger. The years 2021, 2022, 2023, 2024, and 2025 are overlaid on the hand, with 2024 being the largest and most prominent. The background is a blurred outdoor scene with greenery and a building.

BUSINESS IN 2024

WEEKLY WEBINAR SERIES



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Your Host



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TODAY'S AGENDA

Theresa Rusnak (12:00 p.m. – 12:05 p.m.)

- Welcome / Agenda

Tom Eron (12:05 p.m. – 12:15 p.m.)

- NLRB Bans Captive Audience Meetings

Kelly McKinney (12:15 p.m. – 12:25 p.m.)

- SCOTUS Review of Reverse Discrimination Pleading Standards

John Riley (12:25 p.m. – 12:35 p.m.)

- Immigration Law Update

Kerry Langan (12:35 p.m. – 12:45 p.m.)

- New FMLA Opinion Letter

Theresa Rusnak (12:45 p.m.)

- Your Questions
- Adjourn

NLRB Bans Captive Audience Meetings



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SCOTUS Review of Reverse Discrimination Pleading Standards



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Reverse Discrimination

- Unfair treatment of members of the majority group based on their race, age, sex, or other protected class.
- Unlawful under Title VII.
- Example: hiring a woman over a man solely because of her gender, even though the male applicant is more qualified.

Current Standard

- To plead a claim under Title VII, plaintiff must show that he/she:
 - (i) is a member of a protected group;
 - (ii) was qualified for the position at issue;
 - (iii) was discharged or suffered some adverse employment action;
and
 - (iv) the action took place under circumstances giving rise to an inference of discrimination.

Additional Requirement for Majority-Group Plaintiffs

A majority-group plaintiff must also show:

“background circumstances to support the suspicion that the defendant is the unusual employer who discriminates against the majority.”

Ames v. Ohio Dept. of Youth Services

- Plaintiff, a heterosexual woman, was an “Administrator” that applied for a promotion to “Bureau Chief.”
- Promotion:
 - She was denied the promotion by three decision-makers, and
 - Employer promoted a gay woman instead.
- Demotion:
 - She was then demoted by two decision-makers, and
 - Employer replaced her with a gay man.

Ames v. Ohio Dept. of Youth Services

- Plaintiff argued that she was denied the promotion and demoted based on her sexual orientation.
- She met the usual elements under Title VII.
- However, her claim failed because she did not plead “background circumstances” to show the employer was the unusual employer who discriminates against the majority, here heterosexual individuals.

What are “background circumstances”?

- (1) Evidence that a member of the relevant minority group made the employment decision at issue, or
- (2) Statistical evidence showing a pattern of discrimination by the employer against members of the majority group.
 - A plaintiff cannot point to her own experience to establish a pattern.

Ames v. Ohio Dept. of Youth Services

- There was no evidence that a member of the relevant minority group (gay) made the employment decisions at issue:
 - The two decision-makers for both the promotion and demotion were heterosexual.

Ames v. Ohio Dept. of Youth Services

- There was no statistical evidence showing a pattern of discrimination by the employer against members of the majority group (heterosexual):
 - “Ames’ only evidence of a pattern of discrimination against heterosexuals is her own demotion and the denial of the Bureau Chief position. Under our caselaw, however, a plaintiff cannot point to her own experience to establish a pattern of discrimination.”

SCOTUS Review

- SCOTUS will hear the case and address split in Circuits:
 - D.C., 6th, 7th, 8th, 10th Circuits have all adopted the “background circumstances” test.
 - 3rd and 11th Circuits have expressly rejected this test.
 - The remainder (including the 2nd Circuit) have not applied the test to their reverse discrimination cases.

Takeaway

- If the Supreme Court eliminates the background circumstances requirement, it will be easier for majority-group plaintiffs to pursue discrimination claims, and
- Employers will likely see an increase in number of reverse discrimination claims.

Immigration Law Update



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New FMLA Opinion Letter



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Sexual Harassment Prevention Training

To combat harassment in the workplace, every New York State employer must provide harassment prevention training for all employees annually.

For more information on Bond's online sexual harassment training [click here](#) or email bondonline@bsk.com

New York Employment Law: The Essential Guide

Purchase through Amazon [here](#).

Thank You

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