

Employment Law 2005

A Look Back



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Deakins**
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2005 In Review

- **U.S. Supreme Court**
- **Other Case Law**
- **Legislative and Regulatory Developments**

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U.S. Supreme Court Review

“A Taxing Subject”

Commissioner of Internal Revenue v. Banks

January 29

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U.S. Supreme Court Review

Attorneys Fees

Who Has to Pay Income Tax?

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U.S. Supreme Court Review

Both Do Impact of AMT American Jobs Creation Act

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EMPLOYERS & LAWYERS, WORKING TOGETHER

U.S. Supreme Court Review

“Whistling at the Gym”

**Jackson v. Birmingham Board
of Education**

March 29

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U.S. Supreme Court Review

Womens' Sports

Title IX

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U.S. Supreme Court Review

No Explicit Retaliation Provision

Implied Cause of Action

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U.S. Supreme Court Review

Support for Whistleblowing

Not Good Statutory Construction

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“Disparate Housewives”

Smith v. City of Jackson, MS

March 30

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U.S. Supreme Court Review

Reminder

*Disparate
Treatment* v. *Disparate
Impact*

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U.S. Supreme Court Review

History Of The ADEA

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U.S. Supreme Court Review

Unique ADEA Language

“Reasonable Factors Other
Than Age”

(RFOA Provision)

U.S. Supreme Court Review

“Liberal Wing”

(Justices Stevens, Souter, Ginsburg, Breyer)

- **Focus On Similarities**

U.S. Supreme Court Review

“Conservative Wing”

➤ Focus On Difference

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U.S. Supreme Court Review

Smith Dissent

(Justices O'Connor, Kennedy, Thomas)

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U.S. Supreme Court Review

Justice Scalia

Defers to EEOC Regulations

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U.S. Supreme Court Review

Points Of Agreement

1. RFOA narrows claims
2. *Wards Cove* applies

U.S. Supreme Court Review

Practical Impact

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U.S. Supreme Court Preview

*“These Boots Are Made
For Walking”*

IBP, Inc. v. Alvarez

Tum v. Barber Foods, Inc.

November 8

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U.S. Supreme Court Review

Portal to Portal Act of 1947
When does workday start?
What about walking time?

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U.S. Supreme Court Review

Practical Impact

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U.S. Supreme Court Review

Changes at the Court

Chief Justice John Roberts

Justice Sam Alito (?)

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U.S. Supreme Court Review

**Burlington Northern v. White
(6th Cir.)**

**Adverse Employment Action?
What Is It?**

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U.S. Supreme Court Review

- 1) **Ultimate Employment Action**
- 2) **Any Act That Would Deter Protests About Bias**
- 3) **Materially Adverse Change**

Other Courts

Discrimination

- *Kruchowski v. The Weyerhaeuser Co.* (10th Cir.)
 - OWBPA Release Invalidated – Statistical Data
- *Walker v. Mueller Industries, Inc.* (7th Cir.)
 - No Derivative Claim
 - No Retaliation, No Adverse Employment Action

Discrimination

- *Leonel v. American Airlines, Inc.* (9th Cir.)
 - Medical Examination Under the ADA, Must Be Last
- *Strate v. Midwest Bankcentre, Inc.* (8th Cir.)
 - Associational Liability Under ADA
- *Cloutier v. Costco Wholesale Corp.* (1st Cir.)
 - Piercing Ban OK

Discrimination

Gender Stereotyping

- Smith v. Salem (6th Cir.)
- Barnes v. Cincinnati (6th Cir.)
- Jespersen v. Harrah's (9th Cir.)

Harassment

- *Miller v. Department of Corrections* (CA Sup. Ct.)
 - Liability for Paramour Favoritism
- *Galdamez v. Potter* (9th Cir.)
 - Customer Harassment

Family Leave

- *Tellis v. Alaska Airlines, Inc.* (9th Cir.)
 - Cross Country Trip
- *Willemssen v. The Conveyor Co.* (D. Iowa)
 - 12 Months
- *Taylor v. Progress Energy* (4th Cir.)
 - No Waiver of FMLA Rights

Family Leave

- *Bellum v. PCE Constructors, Inc.* (5th Cir.)
 - Not As the Crow Flies
- *Urban v. Dolgencorp of Texas, Inc.* (5th Cir.)
 - No Return of Medical Certification

Regulatory Developments

Exempt Employee Regulations ("Part 541")

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Regulatory Developments

“Who Is An Applicant?”



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Regulatory Developments

First USERRA Regulations



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