

Legal Notes: December 2014

A few interesting employment cases are pending before the federal Supreme Court currently.

One involves pregnant women (as opposed to pregnant men). UPS refused to give accommodations to a pregnant UPS driver. The driver had a light weight restriction that allowed her to do most, but not all of her job without help. Rather than provide the help when necessary, UPS decided to put her on an unpaid leave. Such leave caused the driver all sorts of problems, including most significantly, the loss of insurance.

What many people don't understand is that pregnant women are not covered under the disability laws, such as the ADA because technically pregnant women are not always "disabled." The definition of disability usually includes the idea that the condition is permanent, or at least long term. While a pregnancy may see long term to pregnant women, it is never permanent. There is a federal Pregnancy Discrimination Act, but such law does not clearly spell out accommodation provisions, like the ADA does. This is what the current Supreme Court case is deciding.

As a practical matter, this issue may not arise often for longer term employees. Such employees can usually qualify for at least some FMLA leave, albeit unpaid but with continuation of benefits.

The other case involves whether a bank is required to pay overtime to mortgage loan officers. Such loan officers fall into the vast grey area between hourly and salaried employees (or non-exempt and exempt). Exempt employees are "exempt" from the overtime laws and are usually salaried white collar workers, such as loan officers. The question before the court is whether the Department of Labor properly classified such category of employees as non-exempt, or being required to receive overtime pay.

As I've written before, this area is ripe for abuse by employers. The classification rules are vague, to say the least. Employee often are reluctant to challenge such classification for fear of losing their jobs, however the potential for large damage awards is great for some employees that regularly clock in large amounts of overtime.