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## **Today's Presenter:**

Anne M. Lavelle  
CTR Compliance Specialist

The Year in Review  
And What to Expect Next Year....



## OVERVIEW OF TOPICS:

- Supreme Court 2023
  - DEI
  - FLSA
  - Torts and Unions
  - Business and LGBTQ
- Supreme Court 2024
  - ADA testers
  - Lateral Transfers
  - Deference to Agencies
  - Whistleblower Claims
- Legislative Issues
  - FLSA
  - FTC noncompetes
  - Allegheny County and City of Pittsburgh Leave Laws

## Students for Fair Admissions, Inc. v. Harvard et. al.

- Harvard and University of North Carolina maintained affirmative action programs for admissions purposes that automatically considered race in a statistical manner with respect to minority applicants.
  - Suit filed in 2013 by Students for Fair Admissions
  - All of the lower courts upheld Harvard/UNC's affirmative action programs because there was no "discriminatory animus" and the limited use of race as just one factor in the admission decision.
- Violates 14<sup>th</sup> Amendment and Equal Protection Clause
- What does this mean for employers?
  - Not Title VII
  - Amazon bonus case/business accelerator program/advertising
  - Law firms sued for mentoring/scholarship opportunities
  - Google caps (or disallowance) for fellowships

## Helix Energy Solutions v. Hewitt

- Highly compensated employee
- Strict interpretation of salary basis under FLSA

## Glacier Northwest v. Teamsters:

- Union directly liable for property damage.
- Striking workers walked out and left concrete trucks running.



## 303 Creative LLC v. Elenis:

- Website creator refused to create wedding websites for LGBTQ couples
- Remember the wedding cake case?
- Same result
- Free Speech



## Acheson Hotels v. Laufer:

- ADA “tester” case
  - No intent to visit hotel
  - Other testers will visit
- Maine hotel with deficient website
  - Did not describe accessibility features

## Muldrow v. St. Louis:

- Lateral transfer without harm
  - Female police officer transferred – rank, pay and duties were substantially similar
- Is this an adverse employment action?
- Circuit split on Title VII

## Loper Bright Enterprises v. Raimondo:

- Current legal system requires a law giving power to agencies
  - Agencies then write volumes of regulations and hold hearings/make decisions that are not readily appealable.
- This case challenges the SEC system but the analysis and decision will impact all Federal (and likely state) agencies – EEOC, DOL, NLRB, etc.

## Murray v. UBS Securities, LLC.,

- Sarbanes-Oxley whistleblower
- Does whistleblower need to show retaliatory intent or only that the whistleblowing was one factor in employment decision?
- Decision likely to extend to all retaliation/whistleblower claims.



## **FLSA:**

- New proposed salary threshold – over \$1,059 week
  - Will include automatic increases
  - Comment period ended at the beginning of November
  - Awaiting final regulations and court challenges.

## FTC Noncompete Vote:

- Effort to eliminate virtually all noncompetes (except in extremely highly compensated/owner type situations)
- Vote delayed to April 24, 2024 due to volume of public comments on issue.

## Allegheny County/Pittsburgh Leave Laws:

- They've been in effect for a couple of years, but penalties were delayed a year.
- Now fully in effect – with penalties and investigations.

Thank you for attending!