July News
GPSHRM
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Let me start with this....

"The important employer takeaway from the '22-'23 term is to review policies and practices relating to compensation, religious accommodation, and DE&I initiatives. Failure to do so could be very costly to employers," says Elaine Turner, an attorney with Hall Estill in Oklahoma City.

I saw this statement in a recent SHRM article. I think it speaks to the challenges HR professionals face in today's environment. Learning to navigate without alienating others or running afoul of the law, including Florida law, is a skill set we have come to know too often.

Artificial Intelligence

New York City's Automated Employment Decision Tools (AEDT) law, went into effect July 5. This law makes it unlawful for New York **City** employers to use an AEDT to screen a candidate or employee, for employment decisions (including promotion) unless an independent auditor has completed a bias audit within one year of the use of the tool and the audit information and the AEDT is made public.

Religious Accommodations

In Groff v. De Joy, Postmaster General, on June 29, the Supreme Court ruled the employer must show "the burden of granting an accommodation would result in substantial increased costs in relation to the conduct of its particular business."

Supreme Court Justice Alito also added, "Courts must apply the test in a manner that takes into account all relevant factors in the case at hand, including the particular accommodations at issue and their practical impact in light of the nature, size, and operating cost of an employer."

The Court vacated and remanded the case back to the lower courts to apply the clarified standard. Who knows which side will win the case. We will have to wait to see what happens next.

Affirmative Action Ruling

On June 29, the Supreme Court ruling in Students for Fair Admissions, Inc. v. President & Fellows of Harvard College and the University of North Carolina (UNC) focused on race-conscious admissions policies. The cases were brought under the Fourteenth Amendment and Title VI of the Civil Rights Act. This ruling does not apply to programs under Title VII of the Civil Rights Act and Executive Order 11246. This ruling does not apply to private employer programs. If you are an Affirmative Action employer, there is no requirement to make changes. Here is a closer look at Executive Order 11246.

Federal contractors cannot "discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The

contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship."

Let's also review an Equal Employment Opportunity Commission (EEOC) Guideline under 29CFR:

"The principle of nondiscrimination in employment because of race, color, religion, sex, or national origin, and the principle that each person subject to Title VII should take voluntary action to correct the effects of past discrimination and to prevent present and future discrimination without awaiting litigation, are mutually consistent and interdependent methods of addressing social and economic conditions which precipitated the enactment of Title VII. ***Voluntary*** *affirmative action to improve opportunities for minorities and women must be encouraged and protected in order to carry out the Congressional intent embodied in Title VII."*

What should employers consider in light of the university ruling and the national focus on Diversity, Equity, Inclusion, Belonging and Accessibility?

1) Review your diversity statements. Review for compliance with applicable laws. Consider seeking legal guidance.
2) Consider Employee Resource Groups (ERGs) that are business or mission related. For example, Sourcing and Recruitment ERG, Community Involvement ERG and Caregiver ERG. These programs should be open to all employees.
3) Create initiatives, **not quotas**.
4) Review your workforce data and demographics to create inclusion and belonging initiatives for everyone.

Last, here is a statement from EEOC Chair Charlotte Burrows.

"[The] Supreme Court decision effectively turns away from decades of precedent and will undoubtedly hamper the efforts of some colleges and universities to ensure diverse student bodies. That's a problem for our economy because businesses often rely on colleges and universities to provide a diverse pipeline of talent for recruitment and hiring. Diversity helps companies attract top talent, sparks innovation, improves employee satisfaction, and enables companies to better serve their customers.

However, the decision does not address employer efforts to foster diverse and inclusive workforces or to engage the talents of all qualified workers, regardless of their backgrounds. It remains lawful for employers to implement diversity, equity, inclusion, and accessibility programs that seek to ensure workers of all backgrounds are afforded equal opportunity in the workplace."

California Privacy Rights Act

You may or may not have employees in California, but this may be something you would be interested in learning more about if your organization is "for-profit." Check our SHRM's California resource for members.

Sources: Berkshire, SHRM, Fisher Phillips Insights, Equal Opportunity Employment Commission.