

Employment Group Of The Year: Morgan Lewis

By Ryan Davis

Law360, New York (January 20, 2016, 7:08 PM ET) -- Morgan Lewis & Bockius LLP was involved in not one, but two unanimous victories for employers last year at the U.S. Supreme Court on the issues of health benefits and employee pay, earning the group a spot on Law360's list of Employment Groups of the Year.



In one case, known as *M&G Polymers USA LLC v. Tackett*, the justices vacated a decision that put M&G on the hook for some retirees' lifetime health benefits and held that when collective bargaining agreements are silent about the duration of employee benefits, courts cannot infer that the parties intended that they would vest for life.

The January 2015 decision rejected decades-old Sixth Circuit precedent that courts could infer that benefits vest for life. The high court sent the case back to the appeals court and ordered it to instead "apply ordinary principles of contract law."

Joseph Costello, the leader of the labor and employment practice at Morgan Lewis, said that the Sixth Circuit had been an outlier on the issue, which had drawn a great deal of litigation over medical benefits to that circuit. The high court made clear that there can be no difference across the courts, he said.

"The significance of the *Tackett* decision is that it rejects, once and for all, the notion that an employer would agree to take on the enormous financial burden of vested retiree medical benefits through silence or vague references in a collective bargaining agreement," Costello said. "That just defies common sense and can't be reconciled with basic contract principles."

The case arose after M&G told retirees in 2006 that they'd have to contribute to their health care costs. The retirees' lawsuit argued that they were entitled to contribution-free health benefits for life. The Sixth Circuit held that since the contract was silent on the duration of the benefits, courts could infer that they were intended to continue indefinitely.

The high court rejected that idea, writing that it “violates ordinary contract principles by placing a thumb on the scale in favor of vested retiree benefits in all collective-bargaining agreements.”

The Tackett decision came just over a month after the Supreme Court unanimously ruled in a case known as Integrity Staffing Solutions Inc. v. Busk that workers don't have to be paid for time they spent passing through security screenings.

The case that led to the December 2014 decision was brought by ex-workers at an Amazon.com Inc. warehouse against a staffing agency. The case was argued for the employers at the high court by Bancroft PLLC and Littler Mendelson PC, but Morgan Lewis was lead counsel for Amazon in the Busk case and 14 related cases, and developed and fine-tuned the employers' argument in the case.

The high court held that an activity is integral and indispensable to an employee's work, making it compensable, if it is one an employee cannot dispense with in order to perform his or her principal activities. It concluded that security screening do not fit the bill and other employee activities may not either.

In November 2014, Morgan Lewis persuaded a judge to reject a request for an injunction by the U.S. Equal Employment Opportunity Commission to prevent Honeywell International Inc. from penalizing workers who refuse to submit to biometric testing as part of a corporate wellness program.

The EEOC said that the tests violate the Americans with Disabilities Act, but the judge refused to halt the program. Costello said that the EEOC's aggressive approach to scrutinizing employee wellness programs has many employers on edge, particularly since Congress encouraged them to start such programs in the Affordable Care Act.

"The Honeywell decision is a clear indication that courts will not lightly second-guess the design of an employer's wellness program given the Affordable Care Act's endorsement of those programs," Costello said.

The employment group at Morgan Lewis has more than 270 attorneys across 16 U.S. offices, making it the third largest group in the firm in terms of headcount and revenue generation.

The group has made some important hires over the past year, including former National Labor Relations Board member Harry I. Johnson III, the fifth person in the last 40 years to either join Morgan Lewis from the NLRB or go to the board from the firm.

"We're not pursuing growth for growth's sake in terms of numbers of lawyers, but we are recruiting in key areas we think present opportunities for our group," Costello said.

Morgan Lewis sees its competitors in the employment law space as boutiques that only handle employment matters, since fewer large firms are making a major investment in labor and employment, Costello said.

However, since employment matters often involve other areas of the law like securities and tax, "it's a huge advantage to be part of a multi-purpose firm," he said.

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