EVERSHEDS SUTHERLAND

Step by step
Employee Benefits in the Supreme Court

October 2017

Contents

Did you know?

Since 1975, the Supreme Court has issued opinions in 128 employee benefits cases, including cases under:

67 ERISA

5 Tax

45 Other federal statutes

11 US Constitution

Employee Benefits in the Supreme Court

Over the past four decades, one of the oddities in the work of the Supreme Court is the frequency with which it takes up cases involving retirement, health, disability, life insurance, leave or other private or public employee benefit arrangements.

By our count, in the Court's last 42 terms starting with the October 1975 term—the Employee Retirement Income Security Act of 1974, as amended (ERISA), in the main took effect on January 1, 1975—the Court has issued merits opinions in:

- 125 argued cases and one unargued case directly involving employee benefit arrangements including IRAs, and
- two additional argued cases substantially implicating these arrangements even though employee benefits were not directly involved on the facts,

for an astonishing total of 128 decisions.

As of this writing, the Court has no employee benefit cases scheduled for argument during its October 2017 term,[1] although interesting petitions for certiorari are pending. As a point of reference, there were no benefit cases scheduled for plenary review at the start of the October 2016 term, and the Court ended up taking and deciding three benefit cases.

The Supreme Court's body of work

The preponderance of the Court's employee benefit cases has involved the labor law titles of ERISA, including the administration and enforcement of the remedies provided under that statute for plan fiduciaries, participants and beneficiaries, which accounts for 67 of the 128 cases. That subtotal also includes cases considering the defined benefit plan termination insurance program administered by the Pension Benefit Guaranty Corporation (PBGC), including:

- *Nachman Corp. v. PBGC* (1980), the Court's first holding under ERISA and the source of the Court's often-quoted observation that ERISA is a "comprehensive and reticulated statute" enacted by Congress after almost a decade of studying the private retirement system, and
- Two cases considering the constitutionality of the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), which modified the operation of that termination insurance program for private-sector plans that cover employees of more than one employer (usually in a union setting).

The Court's non-ERISA employee benefit decisions primarily arise under other federal statutes, including:

- The National Labor Relations Act (NLRA) or Labor Management Relations Act (LMRA)—18 cases, including cases involving the interpretation of collective bargaining agreements (CBA) providing for employee benefits;
- Federal statutes specific to benefits provided to federal civilian and military personnel—16 cases. These statutes include:
  - The Federal Employees' Group Life Insurance Act of 1954 (FEGLIA) and Federal Employees Health Benefits Act of 1959 (FEHBA), which created systems through which employee life and health benefits are provided to federal government civilian employees and annuitants;
  - The Public Salary Tax Act of 1939 (PSTA), which *inter alia* prohibits discrimination in State taxation between State and federal public employees;
  - The Servicemen's Group Life Insurance Act of 1965 (SGLIA), which created the current government-provided life insurance program for members of the US armed services;
  - The Military Selective Services Act of 1967 (MSSA), which *inter alia* requires that a military service member who applies for re-employment if still qualified be restored by his or her employer to his or her former position or a position of like seniority, status and pay; and
  - The Uniformed Services Former Spouses' Protection Act of 1982 (USFSPA), which changed prior law (as declared by the Court) by permitting the States to treat military retirement pay as community property.
- The federal employment discrimination statutes—14 cases, consisting of 8 cases considering Title VII (including the amendments enacted in the Pregnancy Discrimination Act of 1978 (PDA)) and 6 cases considering the Age Discrimination in Employment Act of 1967 (ADEA);
- The federal Bankruptcy Code—6 cases;
- The Internal Revenue Code (IRC)—5 cases. This is perhaps surprising, given the substantial role that tax law plays in regulating employee benefits, but the Court has a practice of leaving tax decisions to other adjudicators. Tax rules for employee benefits have figured prominently in other Supreme Court cases, including *Alessi v. Raybestos-Manhattan, Inc.* (1981);

1 The Court has taken 2 cases for the October 2017 term (*Cyan, Inc. v. Beaver County Employees' Retirement Fund* and *Leidos, Inc. v. Indiana Public Retirement System*) arising under the securities laws in which employee benefit funds are named parties but that do not present "employee benefit" issues.

- The Family and Medical Leave Act of 1993 (FMLA), which requires specified employers to allow up to 12 weeks of unpaid leave to eligible employees for certain family or medical reasons—3 cases;
- The Coal Industry Retiree Health Benefit Act of 1992 (Coal Act), which restructured the system for providing private health care benefits to coal industry retirees—2 cases;
- The Affordable Care Act (ACA)—2 cases; and
- 1 case each under the federal antitrust laws, the federal securities laws, and several other statutes.

Constitutional questions are the exception in this body of decisions. In addition to the MPPAA cases, there is:

- A 1976 Eleventh Amendment case deciding whether sovereign immunity bars a retroactive award of retirement benefits in a Title VII case against a State;
- A 1978 Contract Clause case considering a pre-ERISA Minnesota statute imposing a funding surcharge on the termination of a pension plan affecting Minnesota residents;
- A 1994 Due Process Clause case concerning State remedies for unconstitutionally taxed retirement benefits for federal employees;
- Another 1994 Due Process Clause case addressing a retroactive IRC amendment limiting an estate tax benefit plan deduction;
- A 1998 Takings Clause case considering the Coal Act; and
- 2 Eleventh Amendment/sovereign immunity cases under the FMLA in suits against States (in 2003 and 2012).

While it well may be overreaching, we have also included two other constitutional decisions as the 127th and 128th decisions in our count, even though the facts did not involve employee benefits:

- *National Federation of Independent Business v. Sebelius* (2012), upholding the constitutionality of the ACA, which has a direct and substantial bearing on health insurance programs offered in the workplace;[2] and
- *US v. Windsor* (2013), which struck down as unconstitutional § 3 of the Defense of Marriage Act (DOMA) and ruled that same-sex marriages recognized under State law must also be recognized under federal law. While *Windsor* did not directly involve an employee benefit arrangement, that may be where it has had the greatest impact in the operation of US businesses.

On the other hand, we have excluded from our count cases where an employee benefit plan was a party but the issue was not an "employee benefit" issue (e.g., securities law claims against an issuer by a pension fund invested in those securities); and workers' compensation, Social Security, Railroad Retirement Act, Longshore and Harbor Workers' Compensation Act and Black Lung Benefits Act benefits cases. We have also excluded decisions considering the permissibility under the ADEA of mandatory retirement ages, on the basis that those are primarily "employment" rather than "employee benefit" cases, with the exception of one early case where the Court allowed a mandatory retirement age because it was embedded in a pre-ADEA pension plan.

In this body of decisions, the issues the Court has considered can be divided into four categories.

- Substantive issues are handily the most common type of question the Court has addressed (64 cases). They tend to arise as much under other federal statutes (e.g., Title VII, the ADEA, the Bankruptcy Code and tax law) as they do under ERISA. Interestingly, holdings under the foundational provisions of ERISA—such as who is an employee or participant or fiduciary for ERISA purposes—are unusual, and account for only 6 cases.[3]
- Questions of litigation process have also been regularly considered by the Court (36 cases). Many of these cases unpack the remedial provisions of ERISA. For example, subrogation and reimbursement issues have in recent terms become a recurring topic for the Court.
- Federal preemption of State laws affecting employee benefits, either by ERISA or otherwise, are nearly as numerous; 32 cases consider preemption issues, the "Serbonian bog" of ERISA jurisprudence.[4]
- In contrast, the Court has directly considered plan process and management questions in only 5 cases.[5] The litigation process cases can be instructive on these issues, however, as in *Tibble v. Edison International* (2015) and *Fifth Third Bancorp. v. Dudenhoeffer* (2014), which spoke to the standards for ERISA fiduciaries while ruling on time bar and judicial presumption issues, respectively, or *Firestone Tire & Rubber Co. v. Bruch* (1989), which provided guidance on the functioning of plan administrators while addressing the judicial standard of review for their determinations.

2 In distinction, *Burrell v. Hobby Lobby, Inc.* (2014), finding the ACA-mandated coverage of contraceptives in violation of the Religious Freedom Restoration Act, did involve on its facts employer-provided health insurance.

3 *Firestone Tire & Rubber Co. v. Bruch* (1989); *Massachusetts v. Monash* (1989); *Nationwide Mut. Ins. Co. v. Darden* (1992); *Varity Corp. v. Howe* (1996); *Pegram v. Herdrich* (2000); *Yates MD PC Profit-Sharing Plan v. Hendon* (2004).

4 *DiFelice v. Aetna U.S. Healthcare*, 346 F.3d 442, 454 & n.1 (3d Cir. 2003)(Becker, J., concurring), appropriating Justice Cardozo's literate characterization of the "accidental results/accidental means" dichotomy under accidental death insurance policies. Although various Justices have expressed frustration if not outright irritation about the frequency with which they deal with ERISA preemption (see, for example, the first paragraph of Justice Stevens's majority opinion in *DeBuono v. NYSA-ILA Medical and Clinical Services Fund* (1997)), none (perhaps understandably) has yet picked up Judge Becker's allusion.

5 Because some cases consider a substantive or preemption issue in addition to a litigation process question, the total above exceeds 128.

That is, the Court has been concerned with who can bring claims involving employee benefits, what kind of claims can they bring, what kind of remedies can they seek—issues uniquely in the purview of courts, as distinguished from plan sponsors, administrators, fiduciaries or regulators—and whether State laws implicating employee benefits will be enforced, as frequently as it has considered substantive issues affecting employee benefits.

Of the 128 cases, 69 involved retirement arrangements, 32 involved health plans, 19 involved disability benefits, and 15 involved life insurance, leave or fringe benefit arrangements.[6]

Why so many cases?

On its face, the Supreme Court's recurring interest in employee benefit issues is mystifying. The Court has regularly accepted cases involving employee benefits even as it has purposefully reduced the size of its docket, from a total of about 180 merits opinions in its October 1975 term to about 70 in its most recent October 2016 term. (The inflection point for the Court's docket occurred during the Rehnquist Court.) As distinguished from its usual practice, the Court has even been willing to return to a benefit issue without taking a hiatus for the issue to "percolate" in the lower courts. And this recurring interest flies in the face of some evidence that not every Justice regards writing ERISA opinions as the most stimulating work handled inside 1 First Street NE. For example, Chief Justice Rehnquist had this to say in 2003:

> *At his annual talk to the Fourth Circuit Court of Appeals, Chief Justice William Rehnquist described ERISA as "The Employee Retirement, etc., law," saying that "you get so used to these acronyms that you forget what they stand for." As [a published press report] notes, the Chief Justice said that "[t]he thing that stands out about [ERISA cases] is that they're dreary," and the only reason they grant review to them was "duty, not choice."*[7]

Justice Ginsburg once referred to ERISA cases as "sloughly,"[8] while Justice O'Connor apparently preferred "tedious."[9]

The place of employee benefits in the national economy and in the civil caseload of the federal courts may provide some of the explanation. For example:

- The United States spends 17% of GDP annually (more than $3 trillion) on health care, and private health plans provided through the workplace currently cover 49% of the US population.[10]
- About 1 million working-age Americans are drawing benefits from private disability plans.[11]
- As of June 30, 2017, more than $26 trillion had been accumulated in US retirement plans—which constitutes 25% to 30% of American household wealth.[12]

In general, access to those benefits and funds is controlled by the plan sponsor, fiduciary and/or benefit provider rather than by the worker/participant/beneficiary. This structure predictably will lead to disputes, which seem to scale to the significance of benefits in the economy and in the financial health of American households.

- Benefits litigation makes up an appreciable share of the civil caseload of the US District Courts. In the ***data published by the Administrative Office of the US Courts*** for the 12 months ending March 15, 2015 and 2016, approximately 8,200 cases identifiably raising employee benefit issues (ERISA or FMLA) were filed in US District Courts during each 12-month period, or about 5% of the roughly 176,000 civil cases commenced under federal statutes during each of those periods.
  - » Much of that is claims litigation; ERISA federalized most private retirement, health and disability claims litigation.
  - » The employee benefit filings exceed the total District Court filings in the same periods under the federal antitrust, banking, civil forfeiture, environmental, immigration, securities and tax statutes combined.

  In taking and addressing benefit issues, specifically including litigation process issues, the Court can be seen as performing its function of managing the workload of the federal judicial system.

6 Again, some cases involved more than one type of benefit arrangement.

7 Note, *Not Just Old Wine In New Bottles: Kentucky Ass'n Of Health Plans, Inc. v. Miller Bottles A New Test For State Regulation Of Insurance*, 38 Akron L. Rev. 253 at n.3 (2005)(citing Mauro, *Courtside* (July 14, 2003); citations omitted).

8 "True there was an occasional grumble, for example, from the Justice assigned to write in a sloughly ERISA case." Ginsburg, *In Memoriam: William H. Rehnquist*, 119 Harvard L. Rev. 1, 6 (2005).

9 See *infra* at 10.

10 Fiscal Times, ***US Health Care Costs Surge to 17 Percent of GDP*** (Dec. 3, 2015); Kaiser Family Foundation, ***US Health Expenditures 1960-2015, Health Care Coverage of the Total Population: 2016***.

11 CNN Money, ***Disability claims skyrocket: Here's why*** (April 11, 2013).

12 Investment Company Institute, ***Retirement Assets Total $26.6 Trillion in Second Quarter 2017*** (Sept. 27, 2017); Bloomberg, ***U.S. Household Wealth Rises $1.7 Trillion to Another Record*** (Sept. 21, 2017).

– This volume of litigation produces a correlative volume of lower court splits—i.e., different outcomes among the 13 Circuits, typically. Another traditional function of the Court is to resolve lower court splits in the interest of finality, certainty and national uniformity, which is particularly pertinent here in light of the Congressional determination embedded in ERISA that the benefit plans of multistate employers should be governed by the same rules across all jurisdictions. Of the 128 cases in our count, the Court in its opinion expressly noted a split among the courts below in 33 of those cases.

This is not to say that the Court uniformly achieves this objective. As Justice Scalia drily noted in his concurring opinion in *California Division of Labor Standards Enforcement v. Dillingham Construction NA, Inc.* (1997)(footnotes omitted):

> *Since ERISA was enacted in 1974, this Court has accepted certiorari in, and decided, no less than 14 cases to resolve conflicts in the Courts of Appeals regarding ERISA pre-emption of various sorts of State law. The rate of acceptance, moreover, has not diminished (we have taken two more ERISA pre-emption cases so far this Term), suggesting that our prior decisions have not succeeded in bringing clarity to the law.*

Justice Scalia himself was perhaps more successful; of the 6 cases in our count where he authored the majority opinion, arguably 5 of them addressed the issue to be decided with sufficient clarity that a return visit to the Court was not required. Nelson, *The Late Justice Scalia and the Development of ERISA Jurisprudence*, ABA Section of Employment and Labor Law Employee Benefits Committee Newsletter (Summer 2016).

The Court also traditionally takes cases that it deems to raise important questions, and significant new laws are often a source of important issues warranting the Court's attention. ERISA and the PDA, FMLA and ACA were all substantial to monumental pieces of legislation enacted at the start of or during the period we surveyed. While it may not always find them interesting, the Court often finds benefit issues to be "important" and accepts cases on that basis (expressly noted in the majority opinion 18 times in our count).[13]

> *In a 2009 interview,[14] Justice Thomas recounted that, when he first came on board the Court in 1991, ERISA (17 years after enactment) along with the amended Bankruptcy Code was important new legislation that had "changed the legal landscape" and was generating "cert-worthy" cases.*

Finally, the import of employee benefits in the economy and to workers/voters regularly draws the attention of State governments. Consider, as an example, the recent interest of a few States in mandating State-run retirement plans for employers that are not otherwise providing such benefits (following the failure of the auto-IRA concept to gain traction at the federal level during the previous Administration). Given the preeminent place of federal law in governing employee benefits for private sector and federal employees—expressed by Congress in ERISA, FEHBA, and elsewhere—the courts are left to mediate the role if any left for State law, and the Supreme Court has the final and most respected authority to resolve those questions.

[T]o determine whether a state law has the forbidden connection [to an ERISA plan], we look both to "the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive," as well as to the nature of the effect of the state law on ERISA plans ....[15]

13 As a matter of drafting style, not every Justice reflects in a majority opinion the basis on which the Court decided to take the case. We expect that most benefit cases were accepted by the Court to address an important question or lower court split, whether or not the majority opinion so states.

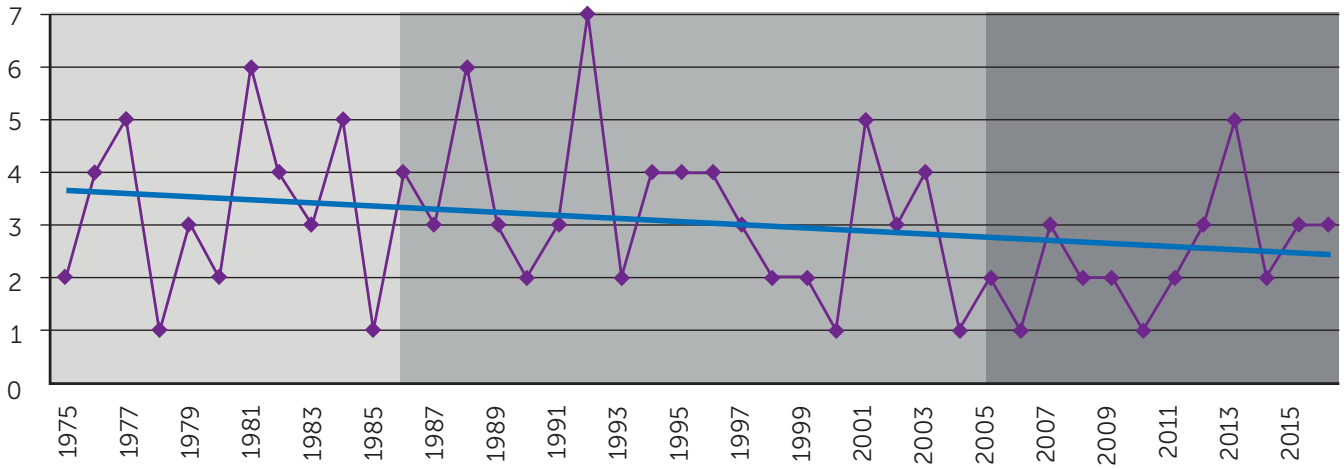
14 *CSPAN Supreme Court Project* at 00:56:55 (Oct. 9, 2009).

15 *California Divison of Labor Standards Enforcement v. Dillingham Construction NA Inc.* (1997).

Inside the numbers

The Cases

Employee benefit cases per term



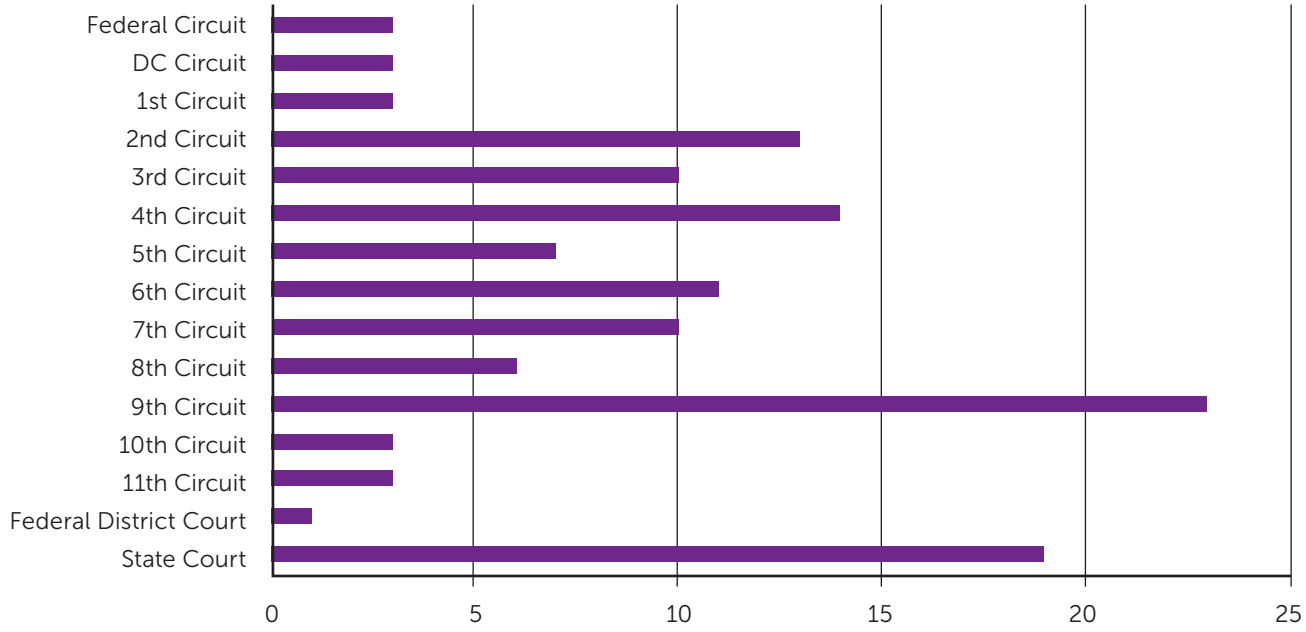
Starting with the October 1975 term, the Court has issued at least one merits opinion involving employee benefits in every term. By our count, the Court decided:

- The most employee benefit cases (7) in the October 1992 term;
- 6 cases in the October 1981 and 1988 terms;
- 5 cases in 4 different terms, most recently in the October 2013 term;
- 4 cases in 7 different terms, most recently in the October 2003 term;
- 3 cases in 11 different terms, including in the most recent October 2015 and 2016 terms;
- 2 cases in 11 terms, most recently in the October 2014 term; and
- A single case in 6 terms, most recently in the October 2010 term.

The trend line shows a modestly falling linear regression currently predicting 2 to 3 decisions per term, with the heavier concentration of cases weighted to the front half of this period.

This time period covers more than half of the Burger Court (1969-1986), the Rehnquist Court (1986-2005) and the Roberts Court (starting in 2005). During this period, the Burger and Rehnquist Courts each averaged about 3.2 employee benefit cases per term, and the Roberts Court about 2.5 cases.

The Courts Below



Employee benefit cases have come to the Supreme Court across its principal sources of jurisdiction—on certiorari from the federal Circuit Courts of Appeal, on appeal from three-judge federal District Court decisions as required by an Act of Congress, and on appeal from State appellate courts. (None of the cases could or did arise under the Court's original jurisdiction.)

- The 9th Circuit has generated by far the most benefit cases for the Court, which is logical since it has the heaviest caseload of any of the Circuits. In fact, at 23 cases, its contribution to this body of cases is underweight to its relative caseload.
- In contrast, the 14 cases originating in the 4th Circuit are overweight to its relative caseload.[16]
- Cases from the other Circuits roughly correlate with their relative caseloads, except that the 5th and 11th Circuits are light.
- And 19 cases came from State courts, including 2 each from courts in California, Georgia, Maine, Massachusetts and Virginia. In the main, these cases presented preemption or PSTA intergovernmental tax immunity questions.

16 For 2015-2016 data on the relative caseloads of the circuits, see Administrative Office of the US Courts, *Federal Judicial Caseload Statistics, Table B*.

The Litigants

The private-sector industries that have most often appeared as litigants before the Supreme Court in cases involving employee benefits are:

- The life insurance industry (18 cases), which seems logical given that industry's unique role in providing health, disability, and life benefits in addition to its involvement with retirement benefits as product and service provider (and plan sponsor); and
- The manufacturing industry (24 cases), which also seems logical given its share of the employment of the US workforce (as much as 25% during the 1970s)[17] and sponsorship of benefit plans during much of this period, as well as the demands it has made over the years on the PBGC termination insurance program.

Active or retired public employees (or their survivors) were litigants in 26 cases—with 16 cases involving federal civilian and military personnel, which usually consider the interaction between federal and State law, and 10 cases involving State or local government employees, primarily arising under Title VII, the ADEA or the FMLA.

The US Government, either directly or through its agencies (including the Internal Revenue Service in 3 cases and PBGC in 4), has been the most frequent litigant before the Court in benefit cases (20). A select list of other litigants has appeared before the Court more than once:

- 3 cases—MetLife and (through political subdivisions and agencies) California; and
- 2 cases—Harris Trust, Liberty Mutual, Kentucky (through agencies) and Massachusetts.

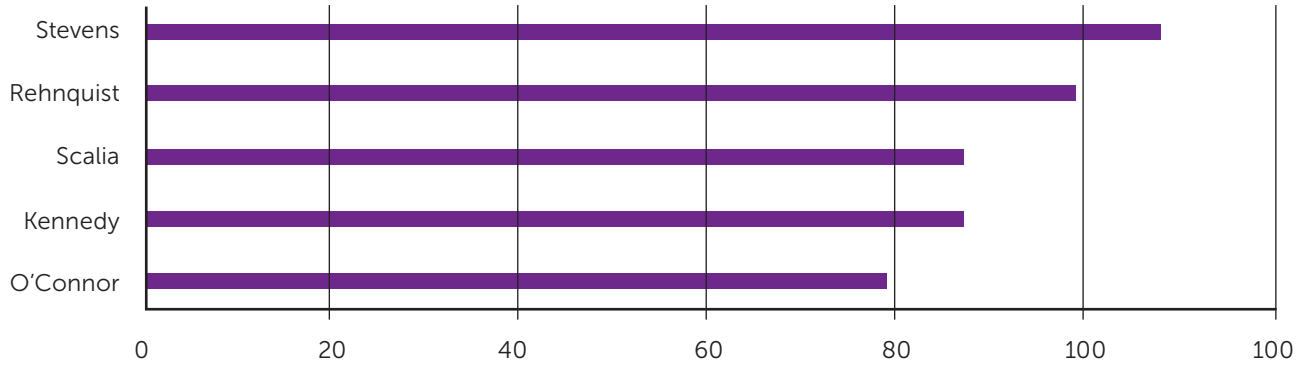
Curiously, the Department of Labor (DOL)—which administers and can bring litigation to enforce the labor title of ERISA, typically filing dozens of cases annually—has never appeared before the Supreme Court as a named litigant in an ERISA case.

The Government frequently participates as an amicus through the Solicitor General in Supreme Court benefit cases involving other litigants. We have identified an amicus brief from the Government in 45 of the cases in our count.

- Justice Marshall went so far as to write that "[f]or a court to attempt to answer these questions [in ERISA cases] without the views of the agencies responsible for enforcing ERISA, would be to 'embar[k] upon a voyage without a compass.'"[18]
- In ERISA cases, the Government usually but not always supports the position of participants or beneficiaries as against other parties.
- The Government bats better than .600 in its amicus program; the Court decided for the party supported in the Government's brief in 29 of those 45 cases.
- And the Government prevailed in 14 of the 20 cases in which it appeared as a litigant.

The Justices

Justices participating in the most employee benefit decisions

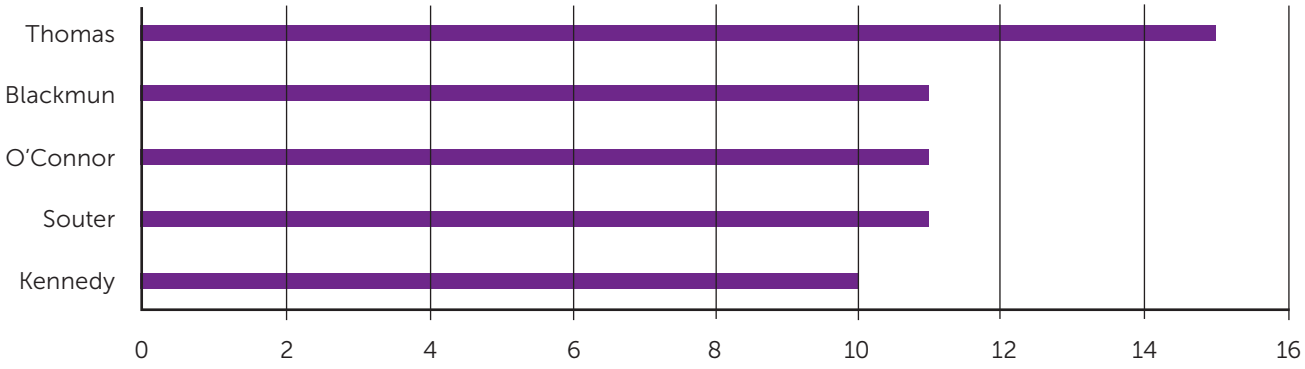


A total of 20 Justices have participated in employee benefit decisions during this period. (Justice Gorsuch has yet to participate in one of these cases.) As befits the third longest tenured Justice in the history of the Court, serving during 34 of the 42 terms we surveyed, Justice Stevens participated in the most employee benefit decisions (108) in our count.

17 Federal Reserve Bank of St. Louis, *Percent of Employment in Manufacturing in the United States* (June 10, 2013).

18 *Mead Corp. v. Tilley*, 490 US 714, 725-26 (1989)(citation omitted).

Justices authoring the most majority/plurality opinions



This body of cases includes 2 per curiam opinions—*Arizona Governing Committee v. Norris* (1983) (issued after argument) and *Amgen Inc. v. Harris* (2016) (issued without argument). In the other cases, each of the participating Justices has delivered at least 1 of the 126 majority/plurality opinions. Justice Thomas has been the most frequent author of majority opinions (15), followed by Justices Blackmun, O'Connor and Souter.

It is a bit of a myth, at least more recently, that the opinion in employee benefit cases is routinely assigned to the junior Justice in the majority. Of the 126 majority/plurality opinions in our count, only 13 were delivered by the junior Justice in the majority. On the other side of the coin, however, only 5 were written by the Chief Justice and only 4 by the senior Justice in the majority if not the Chief Justice.

- Chief Justice Burger delivered the majority opinion in only 1 case in our count (in the ADEA mandatory retirement age case).
- Early in his tenure, Justice Rehnquist was assigned the majority opinion in 4 employee benefit cases, including both unanimous decisions in the October 1975 term. Once he became Chief Justice, he took only 1 majority opinion (in one of the FMLA sovereign immunity cases against a State) in the next 19 years.
- Chief Justice Roberts assigned himself a unanimous ERISA opinion during his first term on the Court (*Sereboff v. Mid Atlantic Medical Services* (2006)), and subsequently has written for the Court in 2 divided decisions.
- Although he was among the most tenured members of the Court during this period, Justice Brennan chose to write 3 benefit opinions when he was the senior Justice in the majority, including an ERISA preemption opinion (*Fort Halifax Packing Co. v. Coyne* (1987)).

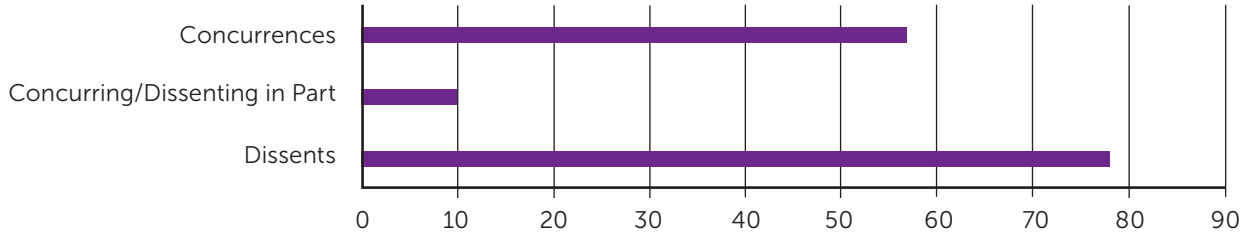
As it turned out, Justice Ginsburg's first majority opinion for the Court actually was in an ERISA case—*John Hancock Mut. Life Ins. Co. v. Harris Trust* (1993), involving the ERISA "guaranteed benefit policy" definition for insurance products. As she recalled later:

> *At the end of the October 1993 sitting, I anxiously awaited my first opinion assignment, expecting—in keeping with tradition—that the brand-new justice would be slated for an uncontroversial, unanimous opinion. When the list came around, I was dismayed. The chief justice gave me an intricate, not at all easy, ERISA case, on which the court had divided 6-3. (ERISA is the acronym for the Employee Retirement Income Security Act, candidate for the most inscrutable legislation Congress ever passed.) I sought Justice O'Connor's advice. It was simple. "Just do it," she said, "and, if you can, circulate your draft opinion before he makes the next set of assignments. Otherwise, you will risk receiving another tedious case." That advice typifies Justice O'Connor's approach to all things. Waste no time on anger, regret or resentment, just get the job done.*[19]

- Justice O'Connor was certainly no stranger to benefit cases; she authored the majority opinion in 11 of the cases in our count, but not starting until her sixth term on the Court.
- When he was junior, Justice Kennedy had both a similar experience to Justice Ginsburg's—during his first term, he was assigned the majority opinion in *Florida v. Long* (1988), a 5-4 decision—and a minor specialty in delivering the Court's opinion in benefit cases involving public employees.
- More traditionally, Justice Breyer was assigned the 9-0 opinion in *Milwaukee Brewery Workers Pension Plan v. Jos. Schlitz Brewing* (1995) during his first term.
- Justice Alito has participated in 29 benefit decisions, been in the majority 26 times, but has been assigned only 1 majority opinion.
- The first (and, to date, only) majority opinions from Justice Sotomayor in benefit cases (2) were also in unanimous decisions, albeit not in her first term.
- Justice Kagan has experienced both ends of the continuum in her 2 majority opinions, authoring the majority opinion in an 8-0 decision and a 5-4 decision.

19 R. Ginsburg, M. Harnett and W. Williams, My Own Words 90 (2016).

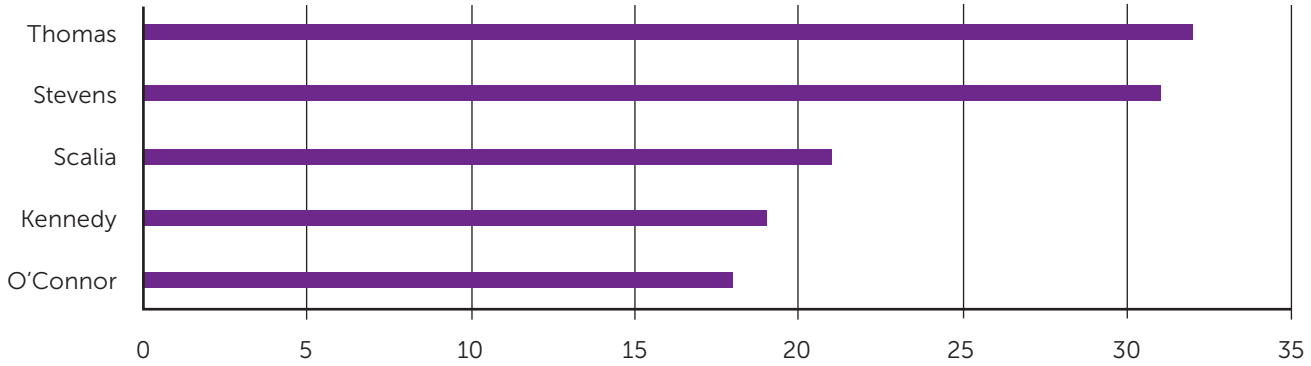
Separate opinions in employee benefit cases



Separate opinions appear in employee benefit decisions at a rate roughly comparable to that in the Court's output generally.[20] In the 128 decisions, there are 145 separate opinions in 87 cases, with dissents (78) outnumbering concurrences (57). The balance is separate opinions concurring in part and dissenting in part (10).

- Justice Stevens and Justice Scalia have been the most frequent authors of both concurrences (7 and 8, respectively) and dissents (14 and 8, respectively).
- Justice Ginsburg (7) and Justices White, Thomas and Breyer (6 each) also have contributed dissents with some frequency.

Justices authoring the most opinions

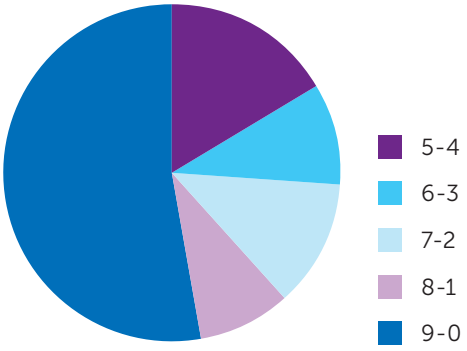


All in, Justice Thomas remains the Court's most prolific author of employee benefit opinions, with a total of 32 when his majority and separate opinions are combined. He is followed by Justice Stevens and Justice Scalia, because of their proclivity for writing separate opinions, and then Justice Kennedy and Justice O'Connor, driven primarily by their majority opinions.

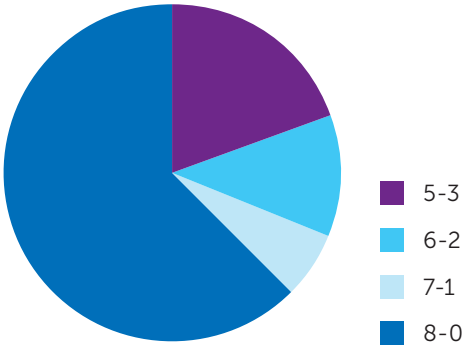
20 SCOTUSblog, *October Term 2016 Stat Pack* at 8 (June 28, 2017).

Voting in Employee Benefit Cases

Nine Justices voting



Eight Justices voting

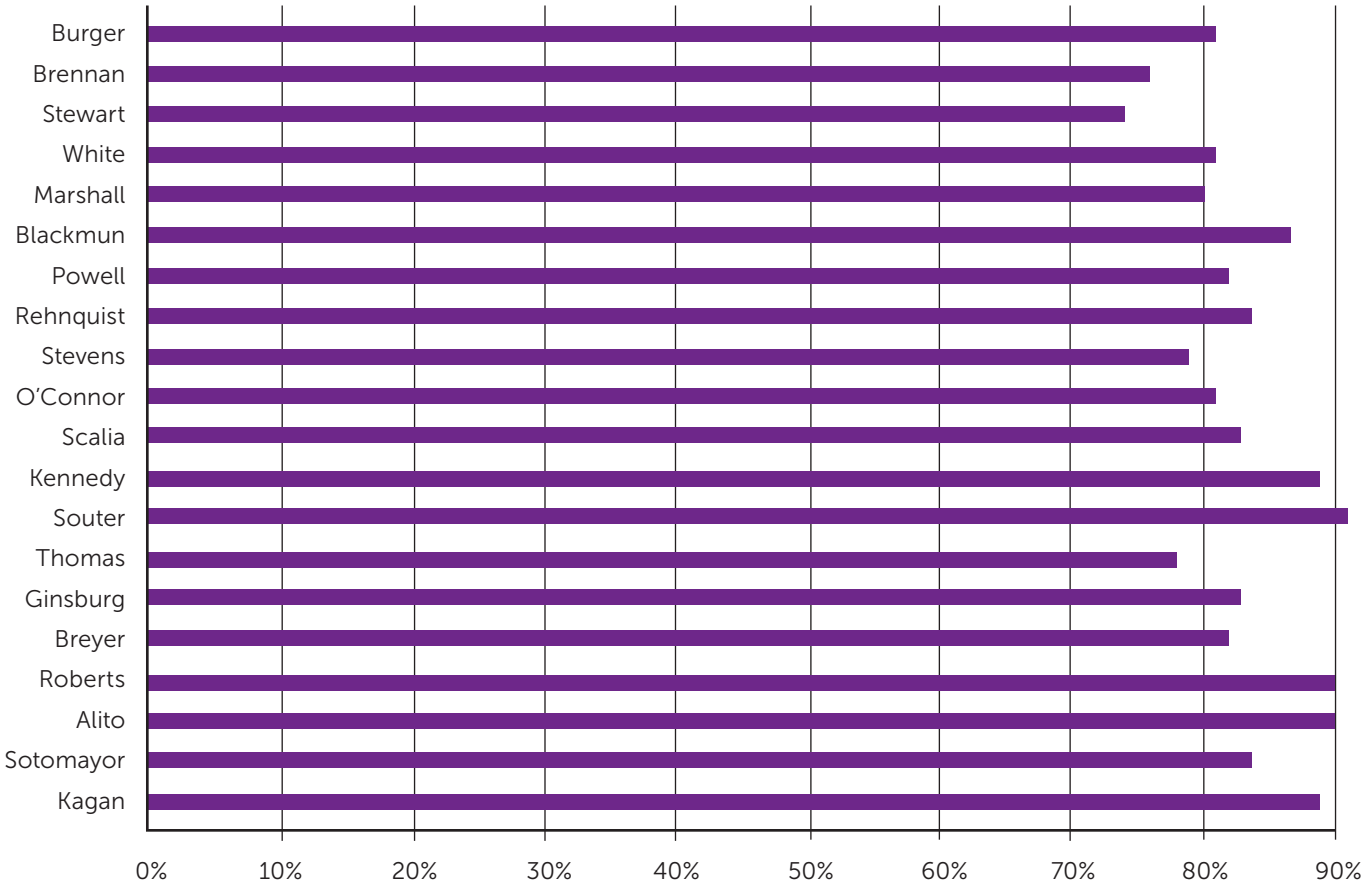


While the voting in employee benefit cases predictably has covered the range of possibilities, unanimous decisions (a 9-0 or 8-0 vote) are more common than the closest possible decision (a 5-4 vote or, if only eight Justices are participating in a decision, a 5-3 vote). In fact, just over 50% of the cases in our count (67) were decided unanimously, while only 24 were decided by the closest possible vote.

- At 50%, this degree of unanimity is a bit above the recent norm for the Court's overall decisions measured term by term.[21]
- The leading authors of the Court's opinion in unanimous benefit decisions are Justices Thomas (9), O'Connor and Souter (8), and Blackmun and Ginsburg (6).
- In terms with at least 2 benefit decisions, all the decisions were unanimous in 7 terms (the October 1975, 1991, 1994, 1998, 1999, 2014 and 2016 terms).
- The Court's opinion in close cases has been scattered among the Justices, with Justice Kennedy providing the most at 4.
- There has been no term with multiple decisions where all the votes were the closest possible, although the October 2001 term came remarkably close with 5 cases decided by 5-4 or 6-3 votes.
- Only one case was decided by fewer than eight Justices: *Malone v. White Motor Corp.* (1978), a 4-3 decision with two dissenting opinions.
- Plurality opinions such as *Eastern Enterprises v. Apfel* (1998), *Conkright v. Frommert* (2010), and *Coleman v. Maryland Court of Appeals* (2012) are a rarity.

21 SCOTUSblog, *October Term 2016 Stat Pack* at 16 (June 28, 2017).

In the majority



Because of these voting patterns, all the Justices have been in the majority[22] in a high percentage of their employee benefit cases.

- The most disagreeable Justices—Justice Stewart (who participated in only 19 cases) and Justice Brennan—were still in the majority in about 75% of their cases, which translates to roughly half of the non-unanimous decisions in which they participated.
- And 3 Justices have been in the majority in 90% of their cases or more—Chief Justice Roberts, Justice Alito (both in a smaller sample size) and, at 91%, Justice Souter. In his 54 benefit cases, Justice Souter dissented only 5 times and never authored a dissenting opinion.
- These results are not out of line with the recent experience of the Court in its overall merits decisions.[23]

22 This statistic excludes cases where a Justice did not join in the majority opinion but voted with the majority in a separate opinion that concurred in the judgment.

23 SCOTUSblog, *October Term 2016 Stat Pack* at 17 (June 28, 2017).

Justices Agreeing in Majority Result in Non-Unanimous Decisions[24]

Burger Court

Cases: 20

	Brennan		Stewart (12)		White		Marshall		Blackmun		Powell		Rehnquist		Stevens		O'Connor (8)	
Burger	7	35%	6	50%	9	45%	8	40%	11	55%	10	50%	9	45%	11	60%	3	38%
Brennan			3	25%	8	40%	11	55%	9	45%	6	30%	4	20%	8	40%	2	25%
Stewart					5	42%	4	33%	6	50%	7	58%	6	50%	5	42%		
White							11	55%	10	50%	9	45%	7	35%	10	50%	3	38%
Marshall									10	50%	9	45%	5	25%	10	50%	1	13%
Blackmun											10	50%	6	30%	10	50%	1	13%
Powell													9	45%	11	55%	2	25%
Rehnquist															9	45%	2	25%
Stevens																	4	50%

With respect to the critical task of achieving majority results in non-unanimous decisions, Justices Blackmun, Powell and Stevens performed an effective function during the Burger Court, agreeing with all but two of their colleagues at least 45% of the time when each pair of Justices participated in a decision (yellow shading), if not 55% or more (dark blue shading), followed by the Chief Justice.

Rehnquist Court

Cases: 29

	Brennan (10)		White (15)		Marshall (11)		Blackmun (16)		Powell (2)		Stevens		O'Connor		Scalia		Kennedy (27)		Souter (19)		Thomas (18)		Ginsburg (14)		Breyer (13)	
Rehnquist	6	60%	11	73%	7	64%	10	63%	1		12	41%	18	62%	18	62%	18	67%	11	58%	8	44%	9	64%	6	46%
Brennan			5	50%	7	70%	5	50%	2		60	40%	4	40%	5	50%	4	50%								
White					6	55%	9	60%	0		5	33%	9	60%	11	73%	11	85%	3	60%	3	75%				
Cases 29					Marshall		6	55%	2		4	18%	5	45%	6	55%	5	56%								
							Blackmun		2		6	38%	8	50%	11	69%	9	64%	5	83%	4	80%	1			
									Powell		2		1		1											
											Stevens		7	24%	8	28%	7	26%	8	42%	3	17%	6	43%	5	38%
													O'Connor		14	48%	14	52%	8	42%	6	33%	6	43%	5	38%
															Scalia		19	70%	9	47%	11	61%	4	25%	1	8%
																	Kennedy		9	47%	11	61%	6	43%	3	23%
																			Souter		7	39%	11	79%	7	54%
																					Thomas		3	21%	1	8%
																							Ginsburg		7	54%

These dynamics changed over the lengthy Rehnquist Court. Early in that Court, the senior Justices—Brennan, White, Marshall and Blackmun—all regularly made common cause with their colleagues in reaching majority results. Over the course of the Court, the Chief Justice was in agreement with all the other Justices in at least 40% of the non-unanimous decisions, followed by Justices Scalia and Kennedy and, later in the Court, Justice Souter.

24 The case count for individual Justices who did not serve for the entirety of the Burger, Rehnquist or Roberts Court, as applicable, is shown parenthetically. Unshaded cells indicate a pair of Justices who did not overlap on the Court. Where a pair of Justices participated together in only a de minimis number of cases during a Court—in the most obvious example, Justice Powell participated in only 2 non-unanimous decisions during the Rehnquist Court—we have not included a percentage of agreement. In cases involving multiple issues with different votes, we have included the case in these charts (or excluded it) on the basis of the most prominent issue.

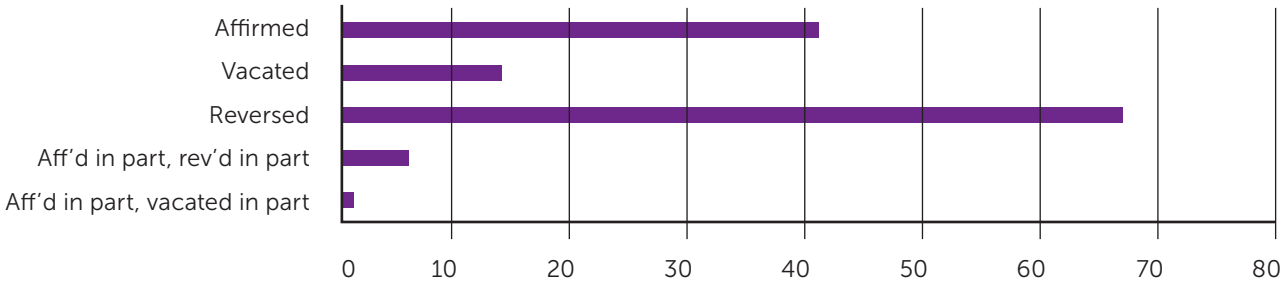
Roberts Court

Cases: 11

	Stevens (5)		Scalia (10)		Kennedy		Souter (4)		Thomas		Ginsburg		Breyer		Alito		Sotomayor (6)		Kagan (6)		Gorsuch	
Roberts	4	80%	6	60%	6	55%	3	75%	8	73%	2	18%	4	36%	7	54%	1	17%	3	33%		
Stevens			2	40%	1	20%	3	75%	3	60%	2	40%	2	40%	2	40%						
Scalia					5	50%	1	25%	6	60%	1	10%	1	10%	4	40%	1	20%	1	20%		
Kennedy							1	25%	6	55%	2	18%	4	36%	6	55%	3	50%	4	67%		
Souter									2	50%	1	25%	2	50%	2	50%						
Thomas											1	9%	3	27%	6	55%	1	17%	2	33%		
Ginsburg													3	2%	1	9%	2	33%	2	33%		
Breyer															3	27%	3	50%	4	67%		
Alito																	1	17%	2	33%		
Sotomayor																			3	50%		
Kagan																						

The pattern thus far in the Roberts Court, with only 11 non-unanimous decisions and continuing turnover among the Justices, seems more diffuse. To date, Chief Justice Roberts and Justice Kennedy have regularly joined with 6 of 10 other Justices (in differing combinations) to reach majority results in non-unanimous benefit cases.

Outcomes in Employee Benefit Cases



Finally, the rate of affirmances in employee benefit decisions (32%) slightly exceeds the recent norm for the Court.[25] The Court has accepted a meaningful number of employee benefit cases where it affirmed the decision of the lower court (41), although it is much more common for the Court to change the result below by vacating (14) or reversing (67).[26]

25 Based on the data reported in the SCOTUSblog final Stat Pack, the unweighted average rate of affirmance in all the Court's merit decisions for the last five terms has been 27%.

26 The total in the chart exceeds 128 because in *Burwell v. Hobby Lobby Stores, Inc.* (2014) the Court reviewed two lower court decisions, affirming one and reversing the other.

Supreme Court Employee Benefit Decisions

**CJ or senior Justice in the majority
*Junior Justice in the majority

Case	Case Origin	Holding	Opinion by:	Vote
October 2017 Term				
October 2016 Term				
Advocate Health Care Network v. Stapleton, 581 US __ (2017)	7th Circuit (rev'd)	*Plan maintained by a "principal-purpose" organization qualifies as an ERISA "church plan," regardless of whether a church originally established plan.*	Kagan* Separate opinion by Sotomayor (concur)	8-0
Howell v. Howell, 581 US __ (2017)	Arizona Supreme Court (rev'd)	State court may not order veteran to indemnify divorced spouse for loss in divorced spouse's portion of veteran's retirement pay caused by veteran's waiver of retirement pay to receive service-related disability benefits. [USFSPA]	Breyer Separate opinion by Thomas (concur)	8-0
Coventry Health Care v. Nevils, 581 US __ (2017)	Missouri Supreme Court (rev'd)	For a federal insurance plan covering federal employees, FEHBA preemption overrides Missouri law barring subrogation and reimbursement.	Ginsburg Separate opinion by Thomas (concur)	8-0
October 2015 Term				
Gobeille v. Liberty Mutual Insurance Co., 577 US __ (2016)	2nd Circuit (aff'd)	ERISA preempts Vermont law requiring disclosure of health claim payments and other information to State agency.	Kennedy Separate opinions by Thomas (concur) and Ginsburg (dissent)	7-2
Amgen, Inc. v. Harris, 577 US __ (2016)	9th Circuit (rev'd)	Plan participants in stock drop case did not sufficiently plead breach of fiduciary duty claim in light of *Fifth Third Bancorp. v. Dudenhoeffer.*	Per curiam	9-0
Montanile v. Board of Trustees, 577 US __ (2016)	11th Circuit (rev'd)	*When ERISA plan participant wholly dissipates a third-party settlement on nontraceable items, the plan fiduciary may not bring suit under ERISA § 502(a)(3) to attach the participant's separate assets.*	Thomas Separate opinions by Thomas and Breyer (concur) and Ginsburg (dissent)	6-2
October 2014 Term				
Tibble v. Edison International, 575 US __ (2015)	9th Circuit (vacated)	*ERISA time bar to breach of fiduciary duty claim does not run from the initial selection of plan investments, in light of plan fiduciary's continuing duty of prudence to monitor investments.*	Breyer	9-0
M&G Polymers USA, LLC v. Tackett, 574 US __ (2015)	6th Circuit (vacated)	*Courts cannot infer employer's intent to vest welfare benefits from ambiguous or silent CBA, but instead must use ordinary contract principles to discern employer intent; 6th Circuit's "**Yard-Man** inference" doctrine rejected.*	Thomas Separate opinion by Ginsburg (concur)	9-0

**CJ or senior Justice in the majority
*Junior Justice in the majority

Case	Case Origin	Holding	Opinion by:	Vote
October 2013 Term				
Fifth Third Bancorp. v. Dudenhoeffer, 573 US __ (2014)	6th Circuit (vacated)	ESOP trustees are not entitled to any special presumption of prudence under ERISA.	Breyer	9-0
Clark v. Rameker, 573 US __ (2014)	7th Circuit (aff'd)	Funds in inherited IRA are not excluded from bankruptcy estate under "retirement funds" exemption.	Sotomayor	9-0
Burwell v. Hobby Lobby Stores, Inc., 573 US __ (2014)	3rd Circuit (rev'd) 10th Circuit (aff'd)	ACA-mandated employer insurance coverage for contraceptives violated Religious Freedom Restoration Act as applied to closely held for-profit corporation.	Alito Separate opinions by Kennedy (concur) and Ginsburg, Breyer and Kagan (dissent)	5-4
Haluch Gravel Co. v. Central Pension Fund, 571 US __ (2014)	1st Circuit (rev'd)	Benefit fund's appeal from district court decision in action to collect contributions from participating employer was untimely; unresolved attorney's fee issue did not prevent judgment on the merits from being final.	Kennedy	9-0
Heimeshoff v. Hartford Life & Accident Ins. Co., 571 US __ (2013)	2nd Circuit (aff'd)	*Contractual limitations period in ERISA plan is enforceable.*	Thomas	9-0
October 2012 Term				
US v. Windsor, 570 US __ (2013)	2nd Circuit (aff'd)	*DOMA § 3 is unconstitutional and same-sex marriages recognized under State law must also be recognized for federal law purposes.*	Kennedy** Separate opinions by Roberts, Scalia and Alito (dissent)	5-4
US Airways v. McCutchen, 569 US __ (2013)	3rd Circuit (vacated)	In ERISA § 502(a)(3) action based on an equitable lien by agreement, equitable defenses may not override governing plan terms, although they may aid in filling gaps in plan terms.	Kagan* Separate opinion by Scalia (dissent)	5-4
Hillman v. Maretta, 569 US __ (2013)	Supreme Court of Virginia (aff'd)	FEGLIA preempts Virginia statute revoking federal employee's pre-divorce life insurance beneficiary designation that was not updated before death.	Sotomayor Separate opinions by Thomas and Alito (concur)	9-0
October 2011 Term				
National Federation of Independent Business v. Sebelius, 567 US __ (2012)	11th Circuit (aff'd and rev'd in part)	*Suit was not barred by Anti-Injunction Act, ACA individual mandate is a permissible exercise of Congress's Article I § 8 taxing authority, and Medicaid expansion provisions were unconstitutionally coercive to the extent they threatened loss of all federal Medicaid funding.*	Roberts** Multiple separate opinions	9-0

**CJ or senior Justice in the majority
*Junior Justice in the majority

Case	Case Origin	Holding	Opinion by:	Vote
Coleman v. Maryland Court of Appeals, 566 US __ (2012)	4th Circuit (aff'd)	Suits against States under FMLA self-care provision are barred by sovereign immunity.	Kennedy Separate opinions by Scalia and Thomas (concur) and Ginsburg (dissent)	5-4
October 2010 Term				
CIGNA Corp. v. Amara, 563 US 421 (2011)	2nd Circuit (vacated)	ERISA § 502(a)(3), but not § 502(a)(1)(B), may provide basis for equitable reformation of plan in light of notice failures.	Breyer	8-0
October 2009 Term				
Hardt v. Reliance Standard Co., 560 US 242 (2010)	4th Circuit (rev'd)	Claimant need not be a "prevailing party" to be eligible for attorney's fees award under ERISA so long as she has achieved "some degree of success on the merits."	Thomas Separate opinion by Stevens (concur)	9-0
Conkright v. Frommert, 559 US 506 (2010)	2nd Circuit (rev'd)	District court should apply deferential standards in reviewing ERISA plan administrator's interpretation of how to determine benefits for rehired employees.	Roberts** Separate opinion by Breyer (dissent)	5-3
October 2008 Term				
AT&T v. Hulteen, 556 US 701 (2009)	9th Circuit (rev'd)	Pension benefits calculated in part under accrual rule, applied only pre-PDA, that gave less retirement credit for pregnancy than for medical leave generally and that accorded with bona fide seniority system's terms did not violate PDA.	Souter Separate opinion by Stevens (concur) and Ginsburg (dissent)	7-2
Kennedy v. Dupont Savings and Investment Plan, 555 US 285 (2009)	5th Circuit (aff'd)	*ERISA anti-alienation provision does invalidate former spouse's waiver of plan benefits in non-QDRO divorce decree, but plan administer properly disregarded waiver and distributed benefits to former spouse in accordance with the plan terms.*	Souter	9-0
October 2007 Term				
Kentucky Retirement Systems v. EEOC, 554 US 135 (2008)	6th Circuit (rev'd)	*Kentucky retirement plan for hazardous duty workers that determined disability retirement on actual years of service plus years left until normal retirement (generally, age 55) did not violate ADEA as to employees disabled after age 55.*	Breyer Separate opinion by Kennedy (dissent)	5-4
Metropolitan Life Ins. Co. v. Glenn, 554 US 105 (2008)	6th Circuit (aff'd)	*Conflict on the part of ERISA plan administrator should be weighed as a factor in determining whether discretionary benefit determination was an abuse of discretion.*	Breyer Separate opinions by Roberts (concur), Kennedy (concur and dissent in part) and Scalia (dissent)	7-2

**CJ or senior Justice in the majority
*Junior Justice in the majority

Case	Case Origin	Holding	Opinion by:	Vote
Larue v. DeWolff, Boberg & Associates, Inc., 552 US 248 (2008)	4th Circuit (vacated)	*ERISA provides a remedy for fiduciary breaches that impair the value of individual participant's account.*	Stevens Separate opinions by Roberts and Thomas (concur)	9-0
October 2006 Term				
Beck v. PACE International Union, 551 US 96 (2007)	9th Circuit (rev'd)	Merger with a multiemployer plan is not a permissible method under ERISA of terminating a single-employer defined benefit plan.	Scalia	9-0
October 2005 Term				
Empire Healthchoice Assurance Inc. v. McVeigh, 547 US 677 (2006)	2nd Circuit (aff'd)	Action for reimbursement from beneficiary by administrator of federal employee health plan does not arise under FEHBA or other federal law and may not be brought in federal court under federal question jurisdiction.	Ginsburg Separate opinion by Breyer (dissent)	5-4
Sereboff v. Mid Atlantic Medical Services, 547 US 336 (2006)	4th Circuit (aff'd)	ERISA plan fiduciary may sue beneficiary under § 502(a)(3) for equitable reimbursement of medical expenses from specific funds recovered by the beneficiary from third parties.	Roberts**	9-0
October 2004 Term				
Rousey v. Jacoway, 544 US 320 (2005)	8th Circuit (rev'd)	IRA assets are excluded from owner's bankruptcy estate under "retirement plan" exemption.	Thomas	9-0
October 2003 Term				
Aetna Health Inc. v. Davila, 542 US 200 (2004)	5th Circuit (rev'd)	Claim that HMO failed to exercise ordinary care under Texas Health Care Liability Act was preempted by ERISA and removable to federal court.	Thomas Separate opinion by Ginsburg (concur)	9-0
Central Laborers Pension Fund v. Heinz, 541 US 739 (2004)	7th Circuit (aff'd)	ERISA § 204(g) prohibits plan amendment expanding the categories of postretirement employment that triggers suspension of early retirement benefits already accrued.	Souter Separate opinion by Breyer (concur)	9-0
Yates MD PC Profit-Sharing Plan v. Hendon, 541 US 1 (2004)	6th Circuit (rev'd)	Working owner of a business may qualify as a "participant" in an ERISA pension plan sponsored by his corporation.	Ginsburg Separate opinions by Scalia and Thomas (concur)	9-0
General Dynamics Land Systems, Inc. v. Cline, 540 US 581 (2004)	6th Circuit (rev'd)	Employer did not violate ADEA by eliminating retiree health insurance benefits for workers under 50 but retaining benefits for workers over 50.	Souter Separate opinions by Scalia and Thomas (dissent)	6-3

**CJ or senior Justice in the majority
*Junior Justice in the majority

Case	Case Origin	Holding	Opinion by:	Vote
October 2002 Term				
Black & Decker Disability Plan v. Nord, *538 US 822* (2003)	9th Circuit (vacated)	ERISA does not require plan administrators to accord special deference to opinions of treating physicians in making benefit determinations.	Ginsburg	9-0
Nevada Dept. of Human Resources v. Hibbs, 538 US 731 (2003)	9th Circuit (aff'd)	Suits against States under FMLA family care provision are not barred by sovereign immunity.	Rehnquist** Separate opinions by Scalia and Kennedy (dissent)	6-3
Kentucky Assn of Health Plans v. Miller, *538 US 329* (2003)	6th Circuit (aff'd)	Kentucky "any willing provider" statutes regulate insurance and are not preempted by ERISA.	Scalia	8-0
October 2001 Term				
Rush Prudential HMO, Inc. v. Moran, *536 US 355* (2002)	7th Circuit (aff'd)	ERISA does not preempt Illinois HMO Act, which requires (1) independent medical review of claim and (2) provision by HMO of services determined to be medically necessary by reviewing physician.	Souter Separate opinion by Thomas (dissent)	5-4
Devlin v. Scardelletti, *536 US 1* (2002)	4th Circuit (rev'd)	ERISA plan participant, a non-named class member, who objected in a timely manner to approval of class settlement at fairness hearing, may bring an appeal without first intervening.	O'Connor Separate opinion by Scalia (dissent)	6-3
Ragsdale v. Wolverine Worldwide, Inc., *535 US 81* (2002)	8th Circuit (aff'd)	DOL regulation, providing that leave taken by employee does not count against employee's FMLA entitlement if employer does not designate leave as FMLA leave, was contrary to FMLA.	Kennedy Separate opinion by O'Connor (dissent)	5-4
Barnhart v. Sigmon Coal Co., *534 US 438* (2002)	4th Circuit (aff'd)	Coal Act does not permit allocation of benefit responsibility for retired miners to successors in interest of out-of-business signatory operators.	Thomas Separate opinion by Stevens (dissent)	6-3
Great-West Life & Annuity Ins. Co. v. Knudson, *534 US 204* (2002)	9th Circuit (aff'd)	ERISA § 502(a)(3) does not authorize claim by insurer for reimbursement of benefit payments recovered from third parties, where claim was not directed to specific funds held by beneficiary.	Scalia Separate opinions by Stevens and Ginsburg (dissent)	5-4
October 2000 Term				
Egelhoff v. Egelhoff, *532 US 141* (2001)	Washington Supreme Court (rev'd)	ERISA preempts Washington statute providing that designation of spouse as beneficiary of non-probate asset, including a life insurance policy or employee benefit plan, is revoked automatically upon divorce.	Thomas Separate opinions by Scalia (concur) and Breyer (dissent)	7-2

**CJ or senior Justice in the majority
*Junior Justice in the majority

Case	Case Origin	Holding	Opinion by:	Vote
October 1999 Term				
Harris Trust & Savings Bank v. Salomon Smith Barney Inc., *530 US 238* (2000)	7th Circuit (rev'd)	ERISA equitable relief remedy extends to a non-fiduciary party in interest to a prohibited transaction.	Thomas	9-0
Pegram v. Herdrich, *530 US 211* (2000)	7th Circuit (rev'd)	Mixed treatment and eligibility decisions by HMO physicians are not ERISA fiduciary decisions	Souter	9-0
October 1998 Term				
UNUM Life Ins. Co. v. Ward, *526 US 358* (1999)	9th Circuit (aff'd in part, rev'd in part)	1. ERISA did not preempt California "notice-prejudice" rule under which insurer cannot avoid liability for untimely claim absent actual prejudice. 2. ERISA preempts California rule treating employer as agent for health insurer.	Ginsburg	9-0
Hughes Aircraft Co. v. Jacobson, 525 US 432 (1999)	9th Circuit (rev'd)	ERISA did not prohibit amendments to defined benefit plan providing for early retirement program and creating additional noncontributory benefits for new participants.	Thomas	9-0
October 1997 Term				
Eastern Enterprises v. Apfel, *524 US 498* (1998)	1st Circuit (rev'd)	Coal Act, under which benefit responsibilities for retired miners was allocated to a company that left the industry in 1965, violated constitutional Takings Clause.	O'Connor Separate opinions by Thomas (concur), Kennedy (concur and dissent in part) and Stevens and Breyer (dissent)	5-4
Geissal v. Moore Medical Corp., *524 US 74* (1998)	8th Circuit (vacated)	Employer may not deny COBRA continuation coverage under its health plan to an otherwise eligible beneficiary because he is covered under another group health plan at the time he elects COBRA coverage.	Souter	9-0
Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp., *522 US 192* (1997)	9th Circuit (rev'd)	MPPAA six-year statute of limitations on multiemployer pension fund's action to collect unpaid withdrawal liability does not begin to run until employer fails to make a payment on the schedule set by the fund.	Ginsburg	9-0
October 1996 Term				
Boggs v. Boggs, *520 US 833* (1997)	5th Circuit (rev'd)	ERISA preempts Louisiana law allowing a nonparticipant spouse to transfer by testamentary instrument an interest in undistributed pension plan benefits.	Kennedy Separate opinion by Breyer (dissent)	5-4
De Buono v. NYSA-ILA Medical and Clinical Services Fund, *520 US 806* (1997)	2nd Circuit (rev'd)	ERISA does not preempt New York gross receipts tax on ERISA funded medical centers.	Stevens Separate opinion by Scalia (dissent)	7-2

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Case	Case Origin	Holding	Opinion by:	Vote
Inter Modal Rail Employees Assn. v. Atchison, Topeka & Santa Fe Railway Co., 520 US 510 (1997)	9th Circuit (vacated)	ERISA prohibition on interference with attainment of rights under ERISA plans is not limited to rights capable of vesting.	O'Connor	9-0
California Division of Labor Standards Enforcement v. Dillingham Construction NA, Inc., 519 US 316 (1997)	9th Circuit (rev'd)	California's prevailing wage law does not "relate to" employee benefit plans and is not preempted by ERISA.	Thomas Separate opinion by Scalia (concur)	9-0
October 1995 Term				
US v. Reorganized CF&I Fabricators of Utah, 518 US 213 (1996)	10th Circuit (aff'd in part, rev'd in part)	IRC § 4971 tax on accumulated plan funding deficiency is not entitled to Bankruptcy Code priority but should not have been subordinated to claims of other general creditors.	Souter Separate opinion by Thomas (concur and dissent in part)	9-0
Lockheed Corp. v. Spink, 517 US 882 (1996)	9th Circuit (rev'd)	1. ERISA does not preclude an employer from conditioning the receipt of early retirement benefits on waiver of employment claims. 2. Amendments to ERISA and ADEA prohibiting age-based benefit accrual rules do not apply retroactively.	Thomas Separate opinion by Breyer (concur and dissent in part)	1:9-0 2:7-2
Varity Corp. v. Howe, 516 US 489 (1996)	8th Circuit (aff'd)	Plan sponsor/ administrator was acting as an ERISA fiduciary and breached its fiduciary obligations in significantly and deliberately misleading plan participants into withdrawing from welfare plan, who may bring suit under ERISA.	Breyer* Separate opinion by Thomas (dissent)	6-3
Peacock v. Thomas, 516 US 349 (1996)	4th Circuit (rev'd)	District court lacked jurisdiction over new action by plan participant/ judgment creditor in prior ERISA suit seeking to impose liability for money judgment on company officer/ shareholder not otherwise liable for judgment.	Thomas Separate opinion by Stevens (dissent)	8-1
October 1994 Term				
New York State Blue Cross Plans v. Travelers, Inc., 514 US 645 (1995)	2nd Circuit (rev'd)	ERISA does not preempt New York statute requiring hospitals to collect a surcharge from patients covered by a commercial insurer but not from patients covered by a Blue Cross/Blue Shield plan.	Souter	9-0
Curtiss-Wright Corp. v. Schoonejongen, 514 US 73 (1995)	3rd Circuit (rev'd)	Retiree medical plan provision reserving to the employer the right to modify or amend was valid under ERISA.	O'Connor	9-0

**CJ or senior Justice in the majority
*Junior Justice in the majority

Case	Case Origin	Holding	Opinion by:	Vote
Milwaukee Brewery Workers Pension Plan v. Jos. Schlitz Brewing, 513 US 414 (1995)	7th Circuit (aff'd)	MPPAA calculates its installment schedule on the assumption that interest begins accruing on the first day of the plan year following withdrawal.	Breyer*	9-0
Reich v. Collins, 513 US 106 (1994)	Supreme Court of Georgia (rev'd)	Due Process violation for Georgia to hold out post-payment remedy for unconstitutionally taxed federal retirement benefits and then declare, only after disputed taxes were paid, that no such remedy existed.	O'Connor	9-0
October 1993 Term				
US v. Carlton, 512 US 26 (1994)	9th Circuit (rev'd)	Retroactive IRC amendment limiting availability of federal estate tax deduction for proceeds of sales of stock to ESOP did not violate Due Process Clause.	Blackmun Separate opinions by O'Connor and Scalia (concur)	9-0
John Hancock Mut. Life Ins. Co. v. Harris Trust, 510 US 86 (1993)	2nd Circuit (aff'd)	ERISA "guaranteed benefit policy" exclusion does not apply to "free funds" under a group annuity contract.	Ginsburg* Separate opinion by Thomas (dissent)	6-3
October 1992 Term				
Nursing Home Pension Fund v. Demisay, 508 US 581 (1993)	2nd Circuit (rev'd)	Federal court does not have authority under NLRA to require multiemployer fund trustees to transfer assets to new fund established by employers that left the CBA.	Scalia Separate opinion by Stevens (concur)	9-0
Mertens v. Hewitt Assocs., 508 US 248 (1993)	9th Circuit (aff'd)	ERISA does not authorize suits for money damages against non-fiduciaries who knowingly participate in a fiduciary's breach of fiduciary duty.	Scalia Separate opinion by White (dissent)	5-4
Harper v. Virginia Dep't of Taxation, 509 US 86 (1993)	Virginia Supreme Court (rev'd)	*Davis v. Michigan Dept. of Treasury* applies retroactively.	Thomas* Separate opinions by Scalia and Kennedy (concur) and O'Connor (dissent)	7-2
Concrete Pipe & Prods. v. Constr. Laborers Trust, 508 US 602 (1993)	9th Circuit (aff'd)	MPPAA does not unconstitutionally deny contributing employer an impartial adjudicator, or violate Due Process or Takings Clauses.	Souter Separate opinions by O'Connor and Thomas (concur)	9-0
Commissioner v. Keystone Consol. Indus., 508 US 152 (1993)	5th Circuit (rev'd)	When applied to an employer's funding obligation, the contribution of unencumbered property to a defined benefit plan is IRC § 4975 prohibited transaction.	Blackmun Separate opinion by Stevens (dissent)	8-1

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Case	Case Origin	Holding	Opinion by:	Vote
Hazen Paper Co. v. Biggins, 507 US 604 (1993)	1st Circuit (vacated)	Employer does not violate ADEA by interfering with an older employee's pension benefits that would have vested by virtue of the employee's years of service (as distinct from age).	O'Connor Separate opinion by Kennedy (concur)	9-0
District of Columbia v. Greater Washington Board of Trade, 506 US 125 (1992)	DC Circuit (aff'd)	ERISA preempts DC law requiring employers who provide health insurance for active employees to also provide equivalent coverage for employees eligible for workers' compensation benefits.	Thomas* Separate opinion by Stevens (dissent)	8-1
October 1991 Term				
Patterson v. Shumate, 504 US 753 (1992)	4th Circuit (aff'd)	Anti-alienation provision in a qualified pension plan constitutes a restriction on transfer enforceable under "applicable nonbankruptcy law" and thus plan benefits are excluded from bankruptcy estate.	Blackmun Separate opinion by Scalia (concur)	9-0
Barker v. Kansas, 503 US 594 (1992)	Kansas Supreme Court (rev'd)	Kansas tax on military retirees is inconsistent with PSTA principles of intergovernmental tax immunity.	White Separate opinion by Stevens (concur)	9-0
Nationwide Mut. Ins. Co. v. Darden, 503 US 318 (1992)	4th Circuit (rev'd)	ERISA "employee" status determined under traditional agency law principles.	Souter	9-0
October 1990 Term				
Ingersoll-Rand Co. v. McClendon, 498 US 133 (1990)	Texas Supreme Court (rev'd)	ERISA preempts Texas common law claim that employee was unlawfully discharged to prevent attainment of ERISA plan benefits.	O'Connor	9-0
FMC Corp. v. Holliday, 498 US 52 (1990)	3rd Circuit (vacated)	ERISA preempts Pennsylvania Motor Vehicle Financial Responsibility Law precluding reimbursement from a tort recovery for ERISA benefit payments.	O'Connor Separate opinion by Stevens (dissent)	7-1
October 1989 Term				
PBGC v. LTV Corp., 496 US 633 (1990)	2nd Circuit (rev'd)	PBGC decision to restore terminated plans of bankrupt employer was not arbitrary and capricious.	Blackmun Separate opinions by White (concur and dissent in part) and Stevens (dissent)	8-1
Guidry v. Sheet Metal Workers National Pension Fund, 493 US 364 (1990)	10th Circuit (rev'd)	Constructive trust in union's favor on pension benefits of former official convicted of embezzlement violated ERISA anti-alienation provision.	Blackmun	9-0
OPM v. Richmond, 496 US 414 (1990)	Federal Circuit (rev'd)	Erroneous advice given by federal government employee to a Navy civilian benefit claimant cannot estop the government from denying benefits not otherwise permitted by law.	Kennedy* Separate opinions by White and Stevens (concur) and Marshall (dissent)	7-2

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Case	Case Origin	Holding	Opinion by:	Vote
October 1988 Term				
Public Emp. Retirement Sys. v. Betts, 492 US 158 (1989)	6th Circuit (rev'd)	ADEA § 4(f)(2) exempts all provisions of bona fide employee benefit plans from purview of ADEA, unless plan is subterfuge for discrimination in non-fringe-benefit aspects of the employment relationship.	Kennedy* Separate opinion by Marshall (dissent)	7-2
Mead Corp. v. Tilley, 490 US 714 (1989)	4th Circuit (rev'd)	Upon termination of defined benefit plan, ERISA does not require payment of unreduced early retirement benefits before surplus assets revert to employer.	Marshall Separate opinion by Stevens (dissent)	8-1
Mansell v. Mansell, 490 US 581 (1989)	California Court of Appeal (rev'd)	USFSPA does not grant State courts power to treat as property divisible upon divorce military retirement pay waived by the retiree in order to receive veterans' disability benefits.	Marshall Separate opinion by O'Connor (dissent)	7-2
Massachusetts v. Morash, 490 US 107 (1989)	Mass. Supreme Judicial Court (rev'd)	Policy to pay discharged employees their unused vacation time is not an ERISA plan, and criminal action to enforce that policy is not preempted.	Stevens	9-0
Davis v. Michigan Dept. of Treasury, 489 US 803 (1989)	Michigan Court of Appeals (rev'd)	Michigan's scheme of taxing federal employees but not State or local employees on retirement benefits violates PSTA principles of intergovernmental tax immunity.	Kennedy* Separate opinion by Stevens (dissent)	8-1
Firestone Tire & Rubber Co. v. Bruch, 489 US 101 (1989)	3rd Circuit (aff'd in part, rev'd in part)	1. Plan administrator's denial of benefits is subject to de novo review by court unless plan expressly gives discretionary authority to administrator. 2. "Participant" entitled to disclosure of plan documents under ERISA, and damages for failure to disclose, does not include persons who claim to be but are not entitled to plan benefits.	O'Connor Separate opinion by Scalia (concur)	9-0
October 1987 Term				
Florida v. Long, 487 US 223 (1988)	11th Circuit (rev'd)	*Norris* rather than *Manhart* establishes appropriate date for commencing liability for employer-operated pension plans that offered discriminatory payment options.	Kennedy* Separate opinions by Blackmun (concur and dissent in part) and Stevens (dissent)	5-4
Mackey v. Lanier Collection Agency & Serv., 486 US 825 (1988)	Georgia Supreme Court (aff'd)	ERISA preempts Georgia law exempting ERISA plan benefits from garnishment, but not general garnishment statute.	White Separate opinion by Kennedy (dissent)	5-4
Laborers Trust Fund v. Advanced Lightweight Conc., 484 US 539 (1988)	9th Circuit (aff'd)	ERISA does not confer federal court jurisdiction to determine whether employer's unilateral decision to make post-contract contributions violates NLRA.	Stevens	8-0

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Case	Case Origin	Holding	Opinion by:	Vote
October 1986 Term				
Fort Halifax Packing Co. v. Coyne, 482 US 1 (1987)	Maine Supreme Court (aff'd)	Maine severance pay statute is not preempted by ERISA or NLRA.	Brennan** Separate opinion by White (dissent)	5-4
Rose v. Rose, 481 US 619 (1987)	Tennessee Court of Appeals (aff'd)	Tennessee statute pursuant to which veteran was ordered by State divorce court to pay child support from his veterans' disability benefits is not preempted by federal law.	Marshall Separate opinion by White (dissent)	8-1
Metropolitan Life Ins. Co. v. Taylor, 481 US 58 (1987)	6th Circuit (rev'd)	Common law contract and tort claims to recover benefits from ERISA plan are preempted by ERISA and removable to federal court.	O'Connor Separate opinion by Brennan (concur)	9-0
Pilot Life Ins. Co. v. Dedeaux, 481 US 41 (1987)	5th Circuit (rev'd)	ERISA preempts State common law suit for alleged improper processing of benefit claims under an ERISA disability insurance plan.	O'Connor	9-0
October 1985 Term				
Connolly v. PBGC, 475 US 211 (1986)	9th Circuit (aff'd)	MPPAA withdrawal liability provisions do not violate constitutional Takings Clause.	White Separate opinion by O'Connor (concur)	9-0
October 1984 Term				
Massachusetts Mut. Life Ins. Co. v. Russell, 473 US 134 (1985)	9th Circuit (rev'd)	ERISA does not provide a cause of action for extra-contractual damages caused by improper or untimely processing of benefit claims.	Stevens Separate opinion by Brennan (concur)	9-0
Central State Pension Fund v. Central Transp., 472 US 559 (1985)	6th Circuit (rev'd)	ERISA permits multiemployer pension trust provision authorizing audits of contributing employers' payroll and other pertinent records.	Marshall Separate opinion by Stevens (concur and dissent in part)	9-0
Metropolitan Life Ins. Co. v. Massachusetts, 471 US 724 (1985)	Mass. Supreme Judicial Court (aff'd)	Neither ERISA nor NLRA preempts Massachusetts statute requiring minimum mental health care benefits in health insurance policies.	Blackmun	8-0
Allis-Chalmers, Inc. v. Lueck, 471 US 202 (1985)	Wisconsin Supreme Court (rev'd)	State-law bad faith claim under disability insurance plan included in CBA is preempted by federal labor law and subject to arbitration where claim depends on CBA interpretation.	Blackmun	9-0
Lindahl v. OPM, 470 US 768 (1985)	Federal Circuit (rev'd)	Limited judicial review of Merit System Protection Board disability decisions is permitted.	Brennan** Separate opinion by White (dissent)	5-4

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Case	Case Origin	Holding	Opinion by:	Vote
October 1983 Term				
PBGC v. R.A. Gray & Co., *467 US 717* (1984)	9th Circuit (rev'd)	Application of the withdrawal liability provisions of the MPPAA during the 5-month period prior to the statute's enactment does not violate the Due Process Clause.	Brennan	9-0
Schneider Moving & Storage Co. v. Robbins, *466 US 364* (1984)	8th Circuit (aff'd)	Multiemployer plan trustee may seek judicial enforcement of obligation to contribute under trust document, without first submitting to arbitration an underlying dispute about CBA term.	Powell	9-0
NLRB v. Bildisco and Bildisco, *465 US 513* (1984)	3rd Circuit (aff'd)	Under Bankruptcy Code and NLRA, debtor in possession may reject CBA requiring benefit fund contributions before rejection of CBA by bankruptcy court.	Rehnquist Separate opinion by Brennan (concur and dissent in part)	5-4
October 1982 Term				
Arizona Governing Committee v. Norris, *463 US 1073* (1983)	9th Circuit (aff'd in part, rev'd in part)	State retirement plan discriminated in violation of Title VII by requiring higher contributions for female employees than male employees, and all retirement benefits derived from contributions made after this decision must be calculated without regard to the beneficiary's sex.	Per curiam Separate opinions by Marshall and Powell	5-4
Shaw v. Delta Air Lines, Inc., *463 US 85* (1983)	2nd Circuit (aff'd in part, vacated in part)	1. New York Human Rights Law forbidding discrimination in employee benefit plans on the basis of pregnancy is preempted by ERISA insofar as it prohibits practices permitted under federal law. 2. New York Disability Benefits Law requiring employers to pay sick leave benefits to pregnant employees is not preempted by ERISA.	Blackmun	9-0
Franchise Tax Bd. v. Laborers Vacation Trust, *463 US 1* (1983)	9th Circuit (vacated)	Action by State tax authorities to enforce tax levy against ERISA benefit fund neither is preempted by nor arises under ERISA, and is not subject to removal to federal court.	Brennan	9-0
Newport News Shipbuilding and Dry Dock Co. v. EEOC, *462 US 669* (1983)	4th Circuit (aff'd)	Limitation in employer's health insurance plan, providing pregnancy benefits for female employees to the same extent as for other medical conditions but providing less extensive pregnancy benefits for spouses of male employees, violated PDA.	Stevens Separate opinion by Rehnquist (dissent)	7-2
October 1981 Term				
Blue Shield of Virginia v. McCready, *457 US 465* (1982)	4th Circuit (aff'd)	Participant under employer-provided health plan had standing to bring action that group heath provider's coverage for services of psychiatrists but not psychologists, unless supervised by physician, violated Clayton Act.	Brennan** Separate opinions by Rehnquist and Stevens (dissent)	5-4

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Case	Case Origin	Holding	Opinion by:	Vote
Mine Workers v. Robinson, 455 US 562 (1982)	DC Circuit (rev'd)	LMRA does not authorize federal courts to review for reasonableness CBA provisions allocating health benefits among potential beneficiaries of employee benefit trust fund.	Stevens	9-0
Kaiser Steel Corp. v. Mullins, 455 US 72 (1982)	DC Circuit (rev'd)	Participating employer is entitled to plead and have adjudicated alleged illegality of "purchased-coal" clause for required contribution to union welfare funds.	White Separate opinion by Brennan (dissent)	6-3
Ridgway v. Ridgway, 454 US 46 (1981)	Maine Supreme Court (rev'd)	Deceased insured's beneficiary designation of current spouse under SGLIA life insurance policy prevails over the constructive trust imposed upon the policy proceeds by State court to effectuate divorce decree.	Blackmun Separate opinions by Powell and Stevens (dissent)	5-3
NLRB v. Amax Coal Co., 453 US 322 (1981)	3rd Circuit (rev'd)	Management-appointed trustees of Taft-Hartley plan are not representatives of the employer for NLRA collective bargaining or grievance purposes.	Stewart Separate opinion by Stevens (dissent)	8-1
McCarty v. McCarty, 453 US 210 (1981)	California Court of Appeal (rev'd)	Federal law precludes State court from dividing military retired pay pursuant to State community property laws. [Predates USFSPA]	Blackmun Separate opinion by Rehnquist (dissent)	6-3
October 1980 Term				
Rowan Co. v. US, 452 US 247 (1981)	5th Circuit (rev'd)	FICA regulations treating employer reimbursements for meals and lodging as taxable wages, which was inconsistent with treatment under income tax withholding regulations, are invalid.	Powell Separate opinion by White (dissent)	6-3
Alessi v. Raybestos-Manhattan, Inc., 451 US 504 (1981)	3rd Circuit (aff'd)	1. Federal law permits the offset of retirees' pension benefits by workers' compensation awards. 2. ERISA preempts New Jersey law prohibiting such offsets.	Marshall	8-0
October 1979 Term				
Coffy v. Republic Steel Corp., 447 US 191 (1980)	6th Circuit (rev'd)	Supplemental unemployment benefits provided pursuant to CBA are prerequisites of seniority to which returning veteran is entitled to credit for military service under Vietnam Era Veterans' Readjustment Assistance Act.	Marshall	9-0
Nachman Corp. v. PBGC, 446 US 359 (1980)	7th Circuit (aff'd)	Plan limitation of liability clause does not prevent benefits from being nonforfeitable and thus covered by PBGC insurance program.	Stevens* Separate opinions by Stewart and Powell (dissent)	5-4
US v. Clark, 445 US 23 (1980)	Court of Claims (aff'd)	Natural child of deceased federal employee is entitled to civil service survivor benefit when child has lived with employee in regular parent-child relationship regardless of whether child was living with employee at time of death.	Marshall Separate opinions by Powell (concur) and Rehnquist (dissent)	7-2

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October 1978 Term				
Teamsters v. Daniel, 439 US 551 (1979)	7th Circuit (rev'd)	Securities Act and Securities Exchange Act do not apply to a noncontributory, compulsory pension plan.	Powell Separate opinion by Burger (concur)	8-0
October 1977 Term				
Allied Structural Steel Co. v. Spannaus, 438 US 234 (1978)	Minnesota District Court (rev'd)	Minnesota statute imposing a pension funding charge on employer terminating a qualified plan covering a Minnesota resident or closing a Minnesota office violates the constitutional Contract Clause.	Stewart Separate opinion by Brennan (dissent), Burger and Marshall (concur and dissent in part)	5-3
City of Los Angeles v. Manhart, 435 US 702 (1978)	9th Circuit (vacated)	Differential in required contributions by men and women to city retirement plan violates Title VII, although retroactive money recovery is not appropriate.	Stevens* Separate opinions by Blackmun (concur) and Burger and Marshall (concur and dissent in part)	6-2
Malone v. White Motor Corp., 435 US 497 (1978)	8th Circuit (rev'd)	Minnesota statute establishing minimum vesting and funding standards for pension plan is not preempted by federal labor law prior to effective date of ERISA.	White Separate opinions by Powell and Stewart (dissent)	4-3
United Airlines, Inc. v. McMann, 434 US 192 (1977)	4th Circuit (rev'd)	Pension plan established in 1941 with age 60 mandatory retirement age is not a subterfuge to evade ADEA and is allowable under § 4(f)(2) exception.	Burger** Separate opinions by Stewart and White (concur) and Marshall (dissent)	7-2
Commissioner v. Kowalski, 434 US 77 (1977)	3rd Circuit (rev'd)	Cash meal allowance provided to New Jersey state trooper is taxable income and not excluded as meal provided for convenience of employer.	Brennan Separate opinion by Blackmun (dissent)	7-2
October 1976 Term				
Alabama Power Co. v. Davis, 431 US 581 (1977)	5th Circuit (aff'd)	Veteran returning to employment is entitled under MSSA § 9, which requires employer to rehire returning veteran without loss of seniority, to credit toward under employer's pension plan for period of military service.	Marshall	9-0
Don E. Williams Co. v. Commissioner, 429 US 569 (1977)	7th Circuit (aff'd)	Accrual basis corporate taxpayer is not entitled to deduction for pension plan contribution in the form of fully secured promissory demand notes.	Blackmun Separate opinions by Stevens (concur) and Stewart (dissent)	7-2

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Case	Case Origin	Holding	Opinion by:	Vote
Walsh v. Schlecht, 429 US 401 (1977)	Oregon Supreme Court (aff'd)	CBA required benefit fund contributions to be made solely for benefit of employees of signatory contractors with those benefits being measured by hours worked by employees of nonsignatory subcontractors and, as so interpreted, does not violate Taft-Hartley Act prohibition against agreements by employers to pay money to representatives of their employees.	Brennan Separate opinion by White (dissent)	8-1
General Electric Co. v. Gilbert, 429 US 125 (1976)	4th Circuit (rev'd)	Exclusion of pregnancy-related disabilities from disability plan coverage does not violate Title VII (prior to PDA).	Rehnquist* Separate opinions by Stewart and Blackmun (concur) and Brennan and Stevens (dissent)	6-3
October 1975 Term				
Fitzpatrick v. Bitzer, 427 US 445 (1976)	2nd Circuit (aff'd in part, rev'd in part)	Eleventh Amendment sovereign immunity does not bar Title VII award of retroactive retirement benefits and attorneys' fees against Connecticut for sex discrimination in State retirement plan.	Rehnquist Separate opinions by Brennan and Stevens (concur)	9-0
Liberty Mut. Ins. Co. v. Wetzel, 424 US 737 (1976)	3rd Circuit (vacated)	Partial summary judgment granted by district court finding Title VII violation in employer's disability insurance and maternity leave policy, without addressing remedies, is not appealable as a final decision.	Rehnquist	8-0

What happens next?

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