THE TOP FIFTH CIRCUIT AND TEXAS SUPREME COURT EMPLOYMENT LAW CASES OF THE LAST SIX MONTHS

HBA L&E Section
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1. *E.M.D. Sales, Inc. v. Carrera,* 145 S.Ct 34 (2025)

The U.S. Supreme Court unanimously held that to prevail in a FLSA case, an employer need only prove the exemption by a preponderance of the evidence, not by clear and convincing evidence, as the Fourth Circuit U.S. Court of Appeals had held.

2. Ayorinde v. Team Indus. Servs., Inc., 121 F.4th 500 (5th Cir. 2024)

- Ayorinde resigned after having been demoted and having his pay cut. He sued for racial discrimination, retaliation, racial harassment and also claimed he had been constructively discharged. The district court dismissed all his claims on summary judgment. Ayordine appealed. The Fifth Circuit affirmed, finding none of his claims supported by evidence.
- As to the constructive discharge claim the Court found that Ayorinde had failed to exhaust his administrative remedies because his EEOC Charge did not include allegations suggesting that his working conditions had become so intolerable that a reasonable person in his position would have felt compelled to resign.

3. Shahrashoob v. Texas A&M University, 125 F.4th 641 (5th Cir. 2025)

- Shahrashoob is Iranian. She was a non-tenured track professor at Texas A&M, teaching chemical engineering and other classes. Two years into her employment, she filed an EEOC Charge alleging national origin discrimination.
- Shortly thereafter, Texas A&M: (1) offered her a shortened term appointment of four and one-half months, whereas all her prior appointments had been for nine-months; and (2) hired Dr. Mohammed Alam, an Indian, as a permanent instructor in the same department in which she worked.
- Shahrashoob's employment ended after the four and one-half month term and she sued for national origin discrimination and retaliation.

3. Shahrashoob v. Texas A&M University, 125 F.4th 641 (5th Cir. 2025)

- Shahrashoob's claims were dismissed on summary judgment and she appealed. The Fifth Circuit affirmed.
- Shahrashoob's premised her *prima facie* case of discrimination upon her claim that she was treated worse than a similarly situated employee – namely Dr. Alam.
- The Court disagreed that Shahrashoob had shown that Dr. Alam was similarly situated because, among other reasons, she: (1) failed to present evidence of Dr. Alam's job title, responsibilities, his supervisor, or who determined his employment status; and (2) failed to present evidence of his research responsibilities, historical performances, or other attributes that would render the two of them similarly situated.

3. Shahrashoob v. Texas A&M University, 125 F.4th 641 (5th Cir. 2025)

- The Court also found that Shahrashoob's retaliation claim had been properly dismissed by the district court because Shahrashoob failed to present proof of pretext.
- Texas A&M alleged that it had given Shahrashoob the shortened term appointment of four and one-half months because of budgetary constraints and teaching needs.
- The Fifth Circuit noted its precedent holding that in a retaliation case, pretext may be shown through temporal proximity plus other significant record evidence. But that precedent did not apply here because, while Shahrashoob did show temporal proximity, she failed to present other significant evidence to support her claim.

4. Rodriguez v. City of Corpus Christi, 129 F.4th 890 (5th Cir. 2025)

- Rodriguez was the city Public Health Director for Corpus Christi. In July 2021 she emailed the Assistant City Manager complaining about not receiving overtime pay as she had previously been receiving since the COVID pandemic. In March 2022, she was terminated based on alleged employee complaints that had been made against her. She sued for, among other things, FLSA retaliation.
- The district court (Judge Drew B. Tipton) dismissed all Rodriguez's claims on summary judgment. She appealed and the Fifth Circuit affirmed.
- The Court held that Rodriguez's email was not clear that she was asserting any rights under the FLSA, and thus she failed to have engaged in any protected activity under the FLSA. Hence, summary judgment was proper.

4. Rodriguez v. City of Corpus Christi, 129 F.4th 890 (5th Cir. 2025)

- The Court also found that Rodriguez had failed to present evidence of pretext.
- Rodriguez tried to prove pretext by asserting that the alleged employee complaints the city relied on as the supposed reason for firing her were "unconfirmed and never brought to her attention."
- The Fifth Circuit held that even if the alleged employee complaints were "unconfirmed and never brought to her attention" that would not be proof of pretext.
- The Court noted that Rodriguez herself did not dispute the existence of the complaints. Accordingly, on the undisputed evidence, she had failed to present evidence of pretext and summary judgment was proper on this ground too.

5. Restaurant Law Center v. Dept. of Labor, 120 F.4th 163 (5th Cir. 2024)

- In this case, the Fifth Circuit vacated the DOL's so-called "80/20/30 Rule" that governed how tipped employees must be paid under the FLSA for the employer to take a "tip credit" against the minimum wage. The Fifth Circuit found the Rule inconsistent with the FLSA's text and arbitrary and capricious.
- The Fifth Circuit strongly criticized the DOL's 80/20/30 Rule's framework because it impermissibly "disaggregate[d] the component tasks of a single occupation." Relying in part on the recent *Loper Bright* Supreme Court case that changed the law regarding a court's deference to federal agency pronouncements, the Fifth Circuit concluded that the Rule was invalid because it strayed too far from "the FLSA's focus on employees' occupations rather than on their discrete pursuit of tips."

6. Dike v. Columbia Hosp. Corp. of Bay Area, No. 24-40058, 2025 WL 315126 (5th Cir., Jan. 28 2025)

- Dike was an African American CNA at the hospital where he worked. He was repeatedly written up and then given a final warning. He was subsequently fired for disappearing for 90 minutes without approval or explanation. Dike sued under Section 1981 for discrimination, retaliation, and being subjected to a racially hostile environment. All his claims were dismissed on summary judgment. Dike appealed.
- The Fifth Circuit quickly affirmed the dismissal of all his discrimination and retaliation claims. It credited the "strong grounds" the employer had for disciplining and terminating him.

6. Dike v. Columbia Hosp. Corp. of Bay Area, No. 24-40058, 2025 WL 315126 (5th Cir., Jan. 28 2025)

- That left his claim that he was subjected to a racially hostile environment. The Court reversed summary judgment on that claim based on 12 different incidents, including numerous racist comments and slurs from coworkers against him and other African Americans, race-based work assignments, falsely accusing him of hitting a patient, and reassigning him after two patients used racial slurs against him.
- The Fifth Circuit found that the district erred in holding that so-called "second hand" harassment is *per* se inadmissible or irrelevant.
- The Fifth Circuit also found that the district court erroneously disregarded his evidence of the defendant's deference to patients' racial preferences. The Court noted that such deference has repeatedly been found unlawful.

7. Texas Tech. Univ. Health Sciences Ctr. – El Paso v. Flores, No. 22-0940, 2024 WL 5249446 (Tex., Dec. 31, 2024)

- The school's President asked Flores, a 60-year-old internal candidate, "how old are you?" in an interview. She was rejected and a 37-year-old candidate received the position. She sued for age discrimination and retaliation under the TCHRA. The school filed a plea to the jurisdiction which was denied in full by the trial court.
- The El Paso Court of Appeals affirmed the denial of the school's plea to the jurisdiction as to Flores's age discrimination claim but reversed it as to her retaliation claim. The school then appealed to the Texas Supreme Court.

7. Texas Tech. Univ. Health Sciences Ctr. – El Paso v. Flores, No. 22-0940, 2024 WL 5249446 (Tex., Dec. 31, 2024)

- The court unanimously held that the interview question about age was "no evidence" of pretext or age discrimination because it credited the President's explanation in an affidavit that he asked the question to remind the applicant that she had filed an age discrimination charge against the school that was pending at that very time.
- There was no other evidence of pretext or age discrimination, and therefore the lower courts should have dismissed Flores's age discrimination claim for lack of jurisdiction.
- The concurrences by Justices Blacklock and Young are worth reading. They question continuing adherence to the *McDonnell Douglas* framework and give insight into their views about discrimination laws and their effects on workplaces and the larger American culture.

8. Dallas Cty. Hosp. Sys. v. Kowalski, 704 S.W.3d 550 (Tex. 2024)

- Kowalski had neck and back pain and asked for a new keyboard in hopes that would alleviate the pain. The County classified the request as a reasonable accommodation, which triggered a process (including gathering information from Kowalski's doctor) that Kowalski did not want to participate in.
- Nevertheless, Kowalski did as the County asked, but all the while explicitly asserted that she was not disabled. In addition, her chiropractor stated in writing on a form that Kowalski was not disabled as defined by the ADA/TCHRA.
- Shortly after Kowalski submitted the required forms to the County, the County told Kowalski that her position had been eliminated and offered her a new position similar to her prior role.

8. Dallas Cty. Hosp. Sys. v. Kowalski, 704 S.W.3d 550 (Tex. 2024)

- Kowalski rejected the offer, resigned, and sued for disability discrimination and retaliation under the TCHRA. The trial court and court of appeals refused to dismiss her claims on a plea to the jurisdiction. The county appealed to the Texas Supreme Court.

- The Texas Supreme Court unanimously reversed and ordered Kowalski's case dismissed with prejudice.

- The Court found that Kowalski's and her chiropractor's repeated insistence that she was not disabled defeated any claim of actual disability. Similarly, the Court found that the same proof defeated a "regarded as" claim of disability discrimination.

8. Dallas Cty. Hosp. Sys. v. Kowalski, 704 S.W.3d 550 (Tex. 2024)

- The Court further held that the fact the County required Kowalski to fill out forms as part of the reasonable accommodation process was not evidence that the county regarded Kowalski to be disabled. The Court noted that the form the County used was intended, in part, to determine if the employee even has a disability for which an accommodation may be needed. Merely inquiring into whether the employee has a disability is not evidence that the county regarded Kowalski to be disabled.
- The Court found Kowalski's retaliation claim failed because she never even complained about perceived *disability* discrimination.

9. DeWolff, Bobert & Associates, Inc. v. Pethick, No. 24-10375, 2025 WL 999124, ___ F4th ___ (5th Cir., Apr. 3, 2025)

- Pethick was DeWolff's Regional VP of Sales. He took a job at a competitor and shortly thereafter some of DeWolff's prospective clients hired the competitor.
- DeWolff sued Pethick and his new employer for trade secret misappropriation. The district court dismissed the case on summary judgment because it found that DeWolff failed to show any damages.
- The Fifth Circuit affirmed on two different grounds.
- First, it found DeWolff failed to show that any of the information at-issue qualified as a trade secret.
- Second, it found DeWolff failed to prove that the Defendants used any of the alleged trade secrets.

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